



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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ENFORCEMENT OF ARBITRAL AWARDS IN INDIA: PROCEDURAL CHALLENGES & JUDICIAL APPROACH

-Vaishnavi Rekha

ABSTRACT

Arbitration is designed to give commercial parties a quick, efficient, and definitive way to settle disputes. However, the real effectiveness of arbitration hinges not just on the tribunal's ability to make a decision, but also on how well the winning party can enforce that decision. In India, the Arbitration and Conciliation Act of 1996 lays out distinct processes for enforcing both domestic and foreign arbitral awards. Section 36 allows for the enforcement of domestic awards just like a court decree, while Sections 47-49 outline how foreign awards can be recognized and enforced.

The legal landscape has seen some major changes, especially after the Arbitration and Conciliation (Amendment) Act of 2015. One key change was the removal of the automatic stay that used to occur when a Section 34 application was filed, which aimed to stop unsuccessful parties from stalling enforcement simply by starting challenge proceedings. At the same time, judicial rulings have tightened the reins on judicial interference by limiting the public-policy defense, discouraging reviews of the merits, and treating the enforcement of foreign awards as a more controlled supervisory task.

That said, there are still some significant procedural hurdles to overcome. Section 34 proceedings can drag on for a long time; stay applications can hold up recovery; and executing under the Code of Civil Procedure, 1908 brings its own set of challenges typical of ordinary decree execution. Plus, parties might try to revive failed challenges during execution proceedings. When it comes to enforcing foreign awards, there are additional concerns about jurisdiction, public policy, natural justice, limitations, and how the supervisory authority of the

seat interacts with the enforcing court. Enforcement against government and public-sector entities adds another layer of complexity to the mix.

This paper dives into these issues by exploring the statutory framework and key rulings from the Supreme Court of India. It charts the journey from a broad interpretation of public policy in landmark cases like *ONGC Ltd. v. Saw Pipes Ltd.* to a more measured approach seen in *Shri Lal Mahal Ltd. v. Progetto Grano S.p.A.*, *Ssangyong Engineering & Construction Co. v. National Highways Authority of India*, and *Vijay Karia v. Prysmian Cavi E Sistemi SRL*. Additionally, it looks at the territorial approach set forth in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services, Inc.*, along with the recent Constitution Bench ruling in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, which addresses the limited authority of courts to alter arbitral awards. The paper contends that while Indian arbitration law has made significant strides toward finality and reduced judicial interference, ongoing procedural and institutional challenges still hinder effective recovery. Therefore, the next phase of reform should not only aim to tighten the grounds for challenges but also enhance stay, execution, judicial case management, and accountability mechanisms.

Keywords: Arbitration, Arbitral Awards, Enforcement, Section 34, Section 36, Section 48, Foreign Awards, Public Policy, Execution, Judicial Intervention.

INTRODUCTION

Arbitration is built on the principles of party autonomy, procedural flexibility, expertise, and finality. Typically, commercial parties opt for arbitration not just because they need an alternative way to resolve disputes, but because they anticipate that their issues will be settled in a relatively predictable and efficient manner. If a winning party has to endure lengthy litigation before they can enjoy the benefits of their award, the value of that expectation diminishes significantly.

In India, the main legislation that governs arbitration is the Arbitration and Conciliation Act of 1996 (referred to as the “Arbitration Act”). This law was created to consolidate and update the regulations surrounding domestic arbitration, international commercial arbitration, the enforcement of foreign arbitral awards, and conciliation, all while considering the UNCITRAL

Model Law on International Commercial Arbitration and the framework of the New York Convention.¹

Section 35 of the Arbitration Act lays down the fundamental principle of finality, stating that an arbitral award is final and binding on the parties involved and those claiming under them, subject to the provisions of Part I.² This principle is backed by limited statutory options for challenge and enforcement. A domestic award can be contested under Section 34, while a foreign award can be challenged under Section 48.

The enforcement process for domestic awards saw significant changes with the Arbitration and Conciliation (Amendment) Act of 2015. Prior to this amendment, Section 36 was interpreted to prevent enforcement while a Section 34 challenge was still pending. The revised provision clearly states that simply filing a Section 34 application does not make an award unenforceable; a separate stay order is necessary.³ The Supreme Court later confirmed this interpretation in the cases of *Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd.* and *Hindustan Construction Co. v. Union of India*.⁴

The statutory goal is pretty straightforward: an arbitral award shouldn't lose its practical impact just because the losing party decides to challenge it. However, having a supportive legal framework for enforcement doesn't mean that recovery will happen quickly. The award-holder might still find themselves stuck in lengthy Section 34 proceedings, dealing with stay applications, appeals under Section 37, execution processes as per the Code of Civil Procedure, 1908 ("CPC"), jurisdictional disputes, and questions about the legal validity of the award itself.

When it comes to foreign awards, the situation gets even trickier. Sections 44-49 lay out the enforcement mechanism under the New York Convention, where Indian courts mainly focus on whether the limited reasons for refusing enforcement have been met. The Supreme Court has consistently stressed that enforcement proceedings shouldn't turn into disguised appeals regarding the merits of the case.⁵

This paper aims to tackle two key questions:

¹ Arbitration and Conciliation Act, No. 26 of 1996, Statement of Objects and Reasons, Acts of Parliament, 1996 (India)

² Arbitration and Conciliation Act § 35.

³ Arbitration and Conciliation Act § 36(2)-(3), as substituted by the Arbitration and Conciliation (Amendment) Act, No. 3 of 2016, § 19, Acts of Parliament, 2016 (India).

⁴ *Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd.*, (2018) 6 SCC 287 (India); *Hindustan Construction Co. v. Union of India*, (2020) 17 SCC 324 (India).

⁵ *Vijay Karia v. Prysmian Cavi E Sistemi SRL*, (2020) 11 SCC 1 (India).

1. What are the main procedural hurdles to effectively enforcing domestic and foreign arbitral awards in India?
2. How has the Indian judiciary worked to strike a balance between respecting the finality of arbitration and ensuring necessary judicial oversight?

The argument here is that Indian arbitration law has significantly shifted towards less judicial interference, especially following the 2015 amendments. The ongoing challenge lies not so much in the formal scope of the grounds for challenge but rather in the procedural and institutional frameworks that actually facilitate enforcement.

STATUTORY FRAMEWORK FOR ENFORCEMENT

I. Domestic Awards: Sections 34, 35, and 36

Understanding the enforcement of a domestic arbitral award goes hand in hand with the rules surrounding challenges and finality.

Section 35 states that an award is final and binding for the parties involved.⁶ On the other hand, Section 34 lays out the legal framework for setting aside the award. The reasons for doing so include issues like incapacity, invalidity of the arbitration agreement, lack of proper notice, inability to present one's case, exceeding jurisdiction, improper tribunal composition, non-arbitrability, and conflicts with public policy in India.⁷ Additionally, for domestic awards, Section 34(2A) allows for intervention if there's a clear patent illegality evident in the award.⁸

Section 34(3) sets a strict three-month deadline from when the award is received, with an extra thirty days granted if there's a valid reason, but that's it, no extensions after that.⁹ The Supreme Court has been firm on this point. In the case of *Union of India v. Popular Construction Co.*, the Court ruled that Section 5 of the Limitation Act, 1963 cannot be used to push the deadline beyond what Section 34(3) explicitly states.¹⁰

⁶ Arbitration and Conciliation Act § 35.

⁷ Id. § 34(2).

⁸ Id. § 34(2A).

⁹ Id. § 34(3).

¹⁰ *Union of India v. Popular Construction Co.*, (2001) 8 SCC 470 (India).

After exhausting the Section 34 process, enforcement falls under Section 36. Here, the award is enforced according to the Civil Procedure Code (CPC), just like it would be if it were a court decree.¹¹

This creates a crucial distinction: The Arbitration Act specifies when the award can be enforced, while the CPC mainly outlines how that enforceable award is carried out. Therefore, the award-holder can utilize mechanisms under Order XXI of the CPC, which includes options like property attachment and sale, along with other recognized execution methods.

II. The 2015 Transformation of Section 36

The 2015 Amendment really changed the game when it comes to how challenges and enforcement interact.

Before this change, a Section 34 challenge could act as a significant roadblock to enforcement. This opened up a clear tactical avenue: a judgment-debtor could simply start challenge proceedings to stall the winning party.

However, the revised Section 36(2) clearly states that just filing a Section 34 application doesn't automatically make the award unenforceable. Instead, a separate application for a stay is required.¹² Section 36(3) allows the court to grant a stay but with conditions it deems fit, keeping in mind the rules for staying money decrees under the CPC.¹³

In the case of *BCCI v. Kochi Cricket*, the Supreme Court ruled that the updated Section 36 rules regarding enforcement also apply to ongoing Section 34 proceedings, as they pertain to enforcement rather than the core right to challenge an award.¹⁴

The constitutional challenge regarding the retroactive effect of these amendments was later tackled in *Hindustan Construction Co. v. Union of India*. The Supreme Court invalidated Section 87 of the Arbitration Act, which had tried to revert to the pre-2015 situation, and confirmed that filing a Section 34 petition does not automatically lead to a stay.¹⁵

This shift is quite significant. The legal presumption has moved from:

Challenge: practical suspension of enforcement
to:

¹¹ Arbitration and Conciliation Act § 36(1).

¹² Arbitration and Conciliation Act § 36(2).

¹³ Id. § 36(3).

¹⁴ *Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd.*, (2018) 6 SCC 287.

¹⁵ *Hindustan Construction Co. v. Union of India*, (2020) 17 SCC 324

Challenge: enforcement continues unless a stay is granted separately.

The 2021 amendment added a new clause regarding fraud or corruption. If the court finds prima facie evidence that the arbitration agreement or the contract behind the award, or the award itself, was influenced by fraud or corruption, it must grant an unconditional stay.¹⁶

This provision aims to safeguard the integrity of the arbitral process, but it also means that the criteria for triggering the fraud-and-corruption exception becomes a crucial aspect of stay jurisprudence.

PROCEDURAL CHALLENGES IN DOMESTIC AWARD ENFORCEMENT

I. Delay in Section 34 proceedings

One of the biggest hurdles we face is the time it takes to wrap up Section 34 proceedings.

Section 34(5) suggests that these applications should be dealt with quickly, and Section 34(6) even states that the court should aim to resolve them within a year of the notice being served.¹⁷ These rules clearly show a legislative push for a speedy resolution.

However, just having these timelines in place doesn't guarantee that things will move along swiftly. Section 34 applications can get complicated, often involving lengthy pleadings, a mountain of documents, jurisdictional challenges, and various procedural issues.

The Supreme Court has consistently described Section 34 as a summary proceeding, not just a typical civil suit. For instance, in the case of *Fiza Developers & Inter-Trade (P) Ltd. v. AMCI (India) (P) Ltd.*, the Court highlighted the limited scope of these proceedings.¹⁸ Similarly, in *Emkay Global Financial Services Ltd. v. Girdhar Sondhi*, it was reiterated that Section 34 isn't meant to turn into a full-blown trial.¹⁹ The Court made this point again in *Canara Nidhi Ltd. v. M. Shashikala*, emphasizing the summary nature of these proceedings.²⁰

¹⁶ Arbitration and Conciliation Act § 36(3), proviso, as inserted by the Arbitration and Conciliation (Amendment) Act, No. 3 of 2021, § 2, Acts of Parliament, 2021 (India).

¹⁷ Arbitration and Conciliation Act § 34(5)-(6).

¹⁸ *Fiza Developers & Inter-Trade (P) Ltd. v. AMCI (India) (P) Ltd.*, (2009) 17 SCC 796 (India).

¹⁹ *Emkay Global Financial Services Ltd. v. Girdhar Sondhi*, (2018) 9 SCC 49 (India).

²⁰ *Canara Nidhi Ltd. v. M. Shashikala*, (2019) 9 SCC 462 (India). The Supreme Court has expressly described Section 34 proceedings as summary proceedings rather than ordinary civil suits.

Still, there's a significant gap between what the law intends and how the courts actually operate, which poses a real challenge for enforcement. So, the issue isn't just about having a Section 34 remedy available; it's really about how much time it takes to get that remedy.

II. Stay Applications

The abolition of the automatic stay was a significant reform, but it didn't completely get rid of delays.

A party that wants to challenge an award can still submit a separate application to seek a stay. When it comes to monetary awards, the court needs to consider the principles that govern the stay of money decrees under Order XLI Rule 5 CPC.²¹ This means the court might require some form of security or deposit, depending on the situation.

The practical implications of stay proceedings are quite substantial. Even if an award-holder has triumphed in arbitration, they might still find it tough to enforce that award while the court deliberates on whether to suspend enforcement.

So, while the post-2015 framework marks an improvement in theory, its real effectiveness hinges on how swiftly and consistently courts handle stay applications. If a stay lingers for a long time, it could end up creating the very delays that the 2015 amendment aimed to eliminate.

III. Execution under CPC

Once an award is deemed enforceable, the award-holder moves into the execution phase.

Section 36 brings in the Civil Procedure Code (CPC), which means that an arbitral award is executed just like a court decree.²² This introduces a significant practical challenge.

Regular civil execution processes can include:

- Identifying assets
- Attachment of those assets
- Challenging the attachment
- Claims from third parties

²¹ Arbitration and Conciliation Act § 36(3); Code of Civil Procedure, 1908, No. 5 of 1908, Order XLI Rule 5 (India).

²² Arbitration and Conciliation Act § 36(1).

- Transferring execution
- Revealing assets
- Objections under Section 47 of the CPC
- Requests for adjournments or stays

The Supreme Court has consistently acknowledged the ongoing issue of delays in execution proceedings. In the case of *Rahul S. Shah v. Jinendra Kumar Gandhi*, the Court provided guidelines aimed at making execution proceedings more efficient and curbing lengthy litigation during the enforcement phase.²³

For arbitral awards, this situation presents a bit of a paradox. Parties often choose arbitration to steer clear of drawn-out litigation, yet once they secure an award, they may find themselves facing many of the same procedural hurdles that come with regular civil decrees.

Thus, while Section 36 addresses the issue of legal enforceability, it doesn't necessarily tackle the practical challenges of recovering what is owed.

IV. Section 47 CPC & Attempts to reopen the award

A judgment-debtor has the option to bring up objections under Section 47 of the CPC, which deals with issues related to the execution, discharge, or satisfaction of a decree. These objections are valid when they pertain to matters that come up during the execution process. However, they typically can't be used to revisit issues that should have been addressed in a Section 34 proceeding.

This distinction is crucial as it upholds the finality of arbitration.

If a party were allowed to first contest an award under Section 34 and then, after either failing or letting the time limit pass, raise the same substantive objections under Section 47, it would undermine the effectiveness of the statutory limitation system.

Consequently, the executing court usually does not function as an appellate body over the arbitral tribunal.

JURISDICTIONAL NULLITY: THE NARROW EXCEPTION

²³ *Rahul S. Shah v. Jinendra Kumar Gandhi*, (2021) 6 SCC 418 (India).

The idea that a court executing an award shouldn't look beyond it isn't set in stone.

It's important to differentiate between an award that's simply wrong and one that's actually void.

Usually, if there's a misinterpretation of a contract, that falls under the Section 34 framework. Similarly, if a tribunal misjudges evidence, that's typically not something to be dealt with at the execution stage.

However, when it comes to an award that lacks jurisdiction altogether, a different scenario comes up.

The real question is whether a court can be compelled to enforce something that doesn't legally exist or is void due to a lack of jurisdiction.

This issue has gained traction, especially regarding how arbitrators are appointed. Section 12(5), along with the Seventh Schedule, limits who can be eligible based on their relationships with the parties involved.²⁴ The Supreme Court has consistently highlighted the need for independence and impartiality in these appointments.

Still, the exception to jurisdiction at the execution stage should be kept narrow. If every legal error were treated as a jurisdictional flaw, parties could easily bypass Section 34, turning execution proceedings into a way to challenge decisions a second time.

So, the guiding principle is:

Execution courts can tackle genuine questions about the legal existence or fundamental jurisdiction of an award, but they shouldn't rehash the merits of a valid arbitral decision.

This distinction is crucial for maintaining both legality and finality.

PROCEDURAL CHALLENGES IN FOREIGN AWARD ENFORCEMENT

I. Statutory Framework: Sections 44-49

Foreign awards in India are mainly governed by Part II, Chapter I of the Arbitration Act, which aligns with the country's commitments under the New York Convention.²⁵

²⁴ Arbitration and Conciliation Act § 12(5) & sched. VII.

²⁵ Id. §§ 44-52.

Section 44 lays out what constitutes a foreign award within this framework. Meanwhile, Section 47 specifies the documents that the applicant must present for enforcement. Section 48 outlines the reasons that could lead to a refusal of enforcement, and Section 49 states that once the court is convinced that the foreign award can be enforced, it will be treated as a decree of that court.²⁶

So, the overall structure looks like this:

Foreign award- Section 47 requirements- Section 48 objections- Section 49 decree status.

It's important to note that, unlike domestic awards, Indian courts don't hold primary supervisory authority over the arbitration process for foreign awards; that responsibility typically lies with the courts at the seat of arbitration.

II. Fuerst Day Lawson & the Integrated Enforcement Mechanism

In the case of *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.*, the Supreme Court took a stand against unnecessary procedural formalities when it comes to enforcing foreign awards.²⁷

The Court acknowledged that Part II creates a cohesive system for enforcement, making a separate lawsuit for recognition before execution redundant. This ruling is significant because insisting on multiple steps for recognition and execution would undermine the efficiency that the Convention framework aims to achieve. This principle has played a key role in India's shift towards a more streamlined process for enforcing foreign awards.

III. Jurisdiction & the Seat of Arbitration

The relationship between the courts at the seat of arbitration and Indian courts got a significant update, is to the case of *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services, Inc.* (“BALCO”).²⁸

Before this landmark decision, the ruling in *Bhatia International v. Bulk Trading S.A.* had opened the door for Part I of the Arbitration Act to apply to foreign-seated

²⁶ Arbitration and Conciliation Act §§ 47–49.

²⁷ *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.*, (2001) 6 SCC 356 (India). The Supreme Court's decision recognised the integrated statutory mechanism for enforcement of foreign awards.

²⁸ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services, Inc.*, (2012) 9 SCC 552 (India).

arbitrations, unless the parties specifically opted out.²⁹ This meant that Indian courts could potentially oversee arbitrations taking place outside of India.

However, the Constitution Bench in *BALCO* took a different approach by embracing the territorial principle. According to this principle, Part I of the Arbitration Act is applicable only to arbitrations held in India, while those seated abroad are primarily under the jurisdiction of the courts at the seat of arbitration.³⁰

That said, the 2015 Amendment introduced some flexibility, allowing certain provisions, like Section 9 for interim relief, to apply to international commercial arbitrations taking place outside India, unless the parties decide otherwise and meet the necessary statutory conditions.

When it comes to enforcement, this distinction is crucial:

Indian courts typically do not act as the court of the seat. Instead, they focus on whether a foreign award should be recognized and enforced under Part II of the Act.

JUDICIAL APPROACH TO PUBLIC POLICY

I. Renusagar: Narrow Public Policy

Understanding foreign-award enforcement really hinges on the development of public policy.

In the case of *Renusagar Power Co. v. General Electric Co.*, the Supreme Court took a rather narrow view of public policy when it came to foreign awards.³¹ The Court pinpointed a few specific categories that relate to the core principles of Indian law, the interests of India, and notions of justice or morality.

This approach highlights the global nature of enforcing foreign awards. Essentially, a foreign award shouldn't be dismissed just because it offers a different interpretation than what an Indian court might choose.

II. Saw Pipes: Expansion for Domestic Awards

²⁹ *Bhatia International v. Bulk Trading S.A.*, (2002) 4 SCC 105 (India).

³⁰ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services, Inc.*, (2012) 9 SCC 552 (India).

³¹ *Renusagar Power Co. v. General Electric Co.*, 1994 Supp. (1) SCC 644 (India).

In the case of *ONGC Ltd. v. Saw Pipes Ltd.*, the Supreme Court took a new direction by broadening the public-policy doctrine within the realm of domestic awards to encompass patent illegality.³²

This ruling allowed for a more in-depth examination of domestic awards, especially when the tribunal's findings were seen as conflicting with substantive Indian law or the contract's stipulations.

Although the judgment aimed to block the enforcement of awards that had legal flaws, the expanded view of public policy raised concerns that Section 34 proceedings might turn into a sort of appellate review.

III. Venture Global & Phulchand

In the case of *Venture Global Engineering v. Satyam Computer Services Ltd.*, the Supreme Court broadened the scope of Part I to include foreign-seated arbitrations, following the then-current *Bhatia International* approach.³³

Similarly, in *Phulchand Exports Ltd. v. O.O.O. Patriot*, the Court took a wider view of public policy, applying the *Saw Pipes* interpretation to the enforcement of foreign awards.³⁴

These rulings have led to significant confusion regarding the difference between the supervisory authority of the arbitration seat and the power of an enforcing court.

IV. Shri Lal Mahal: Restoration of the Narrow Foreign-Award Standard

The Supreme Court later took another look at the matter in *Shri Lal Mahal Ltd. v. Progetto Grano S.p.A.*³⁵ The Court determined that the specific *Renusagar* standard applied to Section 48(2)(b). It clarified that the more expansive domestic-award standard from *Saw Pipes* couldn't just be applied to the enforcement of foreign awards.

This ruling was significant because it restored the important difference between:

- Overturning a domestic award, and
- Denying enforcement of a foreign award.

³² *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705 (India).

³³ *Venture Global Engineering v. Satyam Computer Services Ltd.*, (2008) 4 SCC 190 (India).

³⁴ *Phulchand Exports Ltd. v. O.O.O. Patriot*, (2011) 10 SCC 300 (India).

³⁵ *Shri Lal Mahal Ltd. v. Progetto Grano S.p.A.*, (2014) 2 SCC 433 (India). The Supreme Court reaffirmed the narrower *Renusagar* conception of public policy for foreign-award enforcement.

This distinction aligns well with the pro-enforcement framework of the New York Convention.

THE 2015 AMENDMENTS & RESTRICTION OF JUDICIAL REVIEW

The Arbitration and Conciliation (Amendment) Act, 2015 made significant strides in tightening the public-policy review process.

The clarifications in Sections 34(2)(b)(ii) and 48(2)(b) outline specific categories and emphasize that the fundamental-policy inquiry shouldn't involve a merits review.³⁶

Additionally, Section 34(2A) introduced the concept of patent illegality as a valid reason to set aside domestic awards, while clearly ruling out the mere incorrect application of law or a re-evaluation of evidence.³⁷

The main goal of this legislation was to ensure that the public-policy doctrine doesn't morph into a broad appellate jurisdiction.

SSANGYONG & THE POST-2015 APPROACH

In the case of *Ssangyong Engineering & Construction Co. v. National Highways Authority of India*, the Supreme Court took a close look at how the 2015 amendments affected public policy and the concept of patent illegality.³⁸

The Court pointed out that previous rulings, like those in *Western Geco and Associate Builders*, had broadened the review scope beyond what Parliament had intended following the 2015 changes. They made it clear that judicial intervention shouldn't be seen as a chance to re-evaluate the merits of the case. However, the Court did acknowledge that if a decision was made without any evidence or if an award overlooked crucial evidence, it could, in certain situations, be considered a case of patent illegality.

³⁶ Arbitration and Conciliation Act §§ 34(2)(b)(ii), 48(2)(b), Explanations 1-2.

³⁷ Id. § 34(2A).

³⁸ *Ssangyong Engineering & Construction Co. v. National Highways Authority of India*, (2019) 15 SCC 131 (India). Supreme Court materials continue to identify *Ssangyong* as a leading authority on the restricted post-2015 scope of Section 34 review.

This judgment highlights the ongoing balance between keeping judicial intervention to a minimum and ensuring that fundamentally flawed awards can be corrected.

VIJAY KARIA & THE PRO-ENFORCEMENT APPROACH TO FOREIGN AWARDS

One of the landmark cases in foreign-award decisions is *Vijay Karia v. Prysmian Cavi E Sistemi SRL*.³⁹

The Supreme Court highlighted several key principles regarding Section 48:

1. The reasons for refusal are limited.
2. The party opposing enforcement carries the burden of proof for the relevant grounds.
3. Enforcement proceedings shouldn't turn into appeals on the merits.
4. The court should take a narrow view when it comes to public policy.
5. Minor procedural hiccups shouldn't automatically block enforcement.

Additionally, the Court pointed out that Section 48 states “may be refused,” which indicates that the enforcing court has some discretion in suitable cases.⁴⁰

This judgment thus embodies the contemporary Indian stance on enforcing foreign awards: the court upholds essential legal principles without rehashing the tribunal's resolution of the commercial dispute.

The Supreme Court's later rulings have consistently adhered to this measured approach.⁴¹

ARBITRABILITY & ENFORCEMENT

Arbitrability presents yet another challenge when it comes to enforcement.

In the case of *Vidya Drolia v. Durga Trading Corp.*, the Supreme Court laid out a four-part framework for understanding non-arbitrability. This framework includes disputes related to

³⁹ *Vijay Karia v. Prysmian Cavi E Sistemi SRL*, (2020) 11 SCC 1 (India).

⁴⁰ *Id.* The Supreme Court explained that the language “may be refused” in Section 48 confers a limited residual discretion and that the statutory grounds for refusal are exhaustive.

⁴¹ Subsequent Supreme Court applications of the *Vijay Karia* approach to Section 48 and foreign-award enforcement.

rights in rem, those that impact third parties, sovereign functions, and disputes that are deemed non-arbitrable by law.⁴²

The question of whether a matter is arbitrable can pop up at various points: before arbitration begins, during a challenge, or at the enforcement stage.

According to Section 48(2)(a), an Indian court has the authority to refuse enforcement of a foreign award if the subject matter isn't something that can be settled through arbitration under Indian law. The real challenge lies in making sure that the concept of arbitrability doesn't turn into a tool for second-guessing the tribunal's substantive decisions. Therefore, the enforcement court should focus on whether the subject matter can legally be arbitrated, rather than on whether the tribunal made the right call on an arbitrable dispute.

NATURAL JUSTICE & PROCEDURAL FAIRNESS

Section 48(1) allows a party to refuse enforcement if they can show that they didn't receive proper notice about the arbitrator's appointment or the proceedings, or if they were otherwise unable to present their case.⁴³

This provision is rooted in a fundamental principle of procedural fairness. However, it's important to note that not every procedural hiccup is serious enough to undermine enforcement. The key question here is whether the issue falls under one of the specific statutory reasons for refusal and whether it significantly impacted the party's ability to present their case.

This distinction matters because if we interpret procedural fairness too broadly, it could lead parties to turn minor procedural disputes into reasons to challenge internationally binding awards.

MODIFICATION OF AWARDS: GAYATRI BALASAMY

The ability of Indian courts to modify arbitral awards has always sparked debate.

⁴² Vidya Drolia v. Durga Trading Corp., (2021) 2 SCC 1 (India).

⁴³ Arbitration and Conciliation Act § 48(1)(b).

In the case of *Project Director, National Highways Authority of India v. M. Hakeem*, the Supreme Court clarified that Section 34 doesn't typically give courts a broad power to alter an arbitral award.⁴⁴

Later, this issue was revisited by a Constitution Bench in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*⁴⁵ Here, the Constitution Bench acknowledged a limited power to make modifications. The majority pointed out specific situations where this could apply, such as separating invalid parts from valid ones, fixing clerical or typographical mistakes, addressing certain obvious errors, adjusting post-award interest when appropriate, and using the Supreme Court's Article 142 authority in exceptional cases.⁴⁶

Importantly, this ruling didn't turn Section 34 into a standard appellate jurisdiction. This distinction is crucial for enforcement, as it means that completely nullifying an award isn't always necessary if a flawed part can be removed without affecting the rest. This limited power to modify can help avoid unnecessary remands or re-arbitrations.

However, it's essential to apply this doctrine with care. If courts start using modification as a way to replace the tribunal's judgment with their own, it could blur the lines between arbitration and litigation.

The Supreme Court has since leaned on the *Gayatri Balasamy* case to reinforce that while limited modifications and severance are allowed, changing the merits of the case is not.⁴⁷

ENFORCEMENT AGAINST GOVERNMENT & PUBLIC-SECTOR ENTITIES

Government departments and public-sector undertakings play a crucial role in Indian arbitration, especially when it comes to disputes in areas like infrastructure, construction, procurement, transportation, and public works.

However, enforcing decisions against these entities can come with its own set of challenges. Issues like administrative procedures, the need for financial approvals, audit concerns, and the

⁴⁴ *Project Director, National Highways Authority of India v. M. Hakeem*, (2021) 9 SCC 1 (India).

⁴⁵ *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, (2025) 7 SCC 1 (India).

⁴⁶ *Id.* The Constitution Bench recognised limited modification powers, including severability and correction of certain errors, while restricting merits-based modification. The Supreme Court has subsequently described these as limited powers under *Gayatri Balasamy*.

⁴⁷ *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, (2025) 7 SCC 1; subsequent Supreme Court discussion confirming that modification is confined to the limited circumstances identified by the Constitution Bench.

complexities of institutional decision-making can all lead to delays in compliance, even after an award is deemed enforceable.

Legally, there's no blanket exemption for public entities when it comes to compliance. The issue at hand is more about institutional practices than legal principles. While a government entity can contest an award within the established legal framework, frequent challenges that lack proper scrutiny can lead to significant delays in both public spending and private recovery efforts.

To improve the situation, there's a need of more effective system that can differentiate between:

- A legally substantial challenge;
- An arguable but weak challenge; and
- A challenge aimed mainly at delaying payment.

This differentiation is especially vital in infrastructure arbitration, where extended delays in payment can have serious repercussions for contractors, subcontractors, and project financing.

MULTIPLE LEVELS OF JUDICIAL REVIEW

One major challenge in the process is the potential for multiple layers of proceedings.

A domestic dispute can wind its way through various stages:

Arbitration- Section 34- Section 37- Supreme Court proceedings- Execution- Execution objections.

While having several statutory stages isn't inherently a problem, since each one serves a unique purpose, the real issue comes when the same substantive matter is revisited time and again.

It's important to note that Section 34 isn't about appealing the merits of a case, and Section 37 is even more limited. Typically, the executing court can't reopen the award, and the constitutional powers of higher courts shouldn't be used to sidestep the established statutory framework.

The Supreme Court has consistently highlighted these boundaries. In *MMTC Ltd. v. Vedanta Ltd.*, the Court underscored the limited scope of review under Sections 34 and 37.⁴⁸

⁴⁸ *MMTC Ltd. v. Vedanta Ltd.*, (2019) 4 SCC 163 (India).

Similarly, in *UHL Power Co. v. State of Himachal Pradesh*, the Court pointed out that an appellate court shouldn't impose its own interpretation when the arbitrator's view is a valid one.⁴⁹

Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd. also reinforced that Section 34 doesn't grant ordinary appellate jurisdiction.⁵⁰

These principles are crucial to ensuring that the various procedural stages don't turn arbitration into a drawn-out litigation process.

CRITICAL ANALYSIS: DOCTRINAL CONVERGENCE & INSTITUTIONAL LAG

The evolution of Indian arbitration law shows a significant shift towards achieving finality.

There are three key changes that stand out.

First off, the automatic stay has been eliminated. In the 2015 amendment, Section 36 has shifted from being an automatic roadblock to enforcement to a system that now requires a separate judicial order for a stay.

Secondly, the concept of public policy has been narrowed down. The journey from cases like *Saw Pipes* and *Western Geco* to *Shri Lal Mahal*, *Ssangyong*, and *Vijay Karia* clearly illustrates an effort to ensure that public policy doesn't serve as a stand-in for appellate review.

Lastly, courts are increasingly acknowledging the limited scope of their supervisory jurisdiction. The Supreme Court has consistently emphasized that courts shouldn't re-evaluate evidence or impose their own interpretation of contracts just because another interpretation exists.

However, these doctrinal advancements don't automatically lead to quick recoveries.

The main issue lies in institutional lag. A narrow legal basis for challenges doesn't guarantee a swift resolution. Likewise, an award recognized as a decree under Section 36 might still involve lengthy execution processes.

⁴⁹ *UHL Power Co. v. State of Himachal Pradesh*, (2022) 4 SCC 116 (India).

⁵⁰ *Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.*, (2019) 20 SCC 1 (India).

This leads to a crucial distinction between legal finality and economic finality. An award can be legally final, yet the winning party may still struggle to collect the money or property awarded to them. This distinction should be at the forefront of future arbitration reforms.

REFORM PROPOSALS

I. Dedicated Enforcement & Execution Tracks

Commercial courts might consider implementing specialized procedures for enforcing arbitral awards, especially in cases where the award has already withstood Section 34 and Section 37 challenges. The goal here would be to set apart the execution of arbitration-related awards from the typical execution of civil decrees.

II. Structured Stay Mechanisms

Courts have the opportunity to create more uniform standards regarding security and deposits when it comes to staying monetary awards. The goal here should be to strike a balance between the right to challenge and the protection of the award-holder. It's important that a stay doesn't leave the award-holder in a significantly worse situation just because the award-debtor has decided to pursue litigation.

III. Stronger Costs for Dilatory Challenges

Costs should really mirror the outcomes of unnecessary challenges. When a party keeps throwing out repetitive or obviously baseless objections without success, courts can impose costs to deter that kind of behavior. This approach would help steer the financial motivation away from causing delays.

IV. Clearer Rules Concerning Execution-Stage Objections

The law needs to make a clearer distinction between jurisdictional nullity and substantive error. A true nullity should still be open to judicial review when the law allows it. On the other hand, a regular legal or factual disagreement shouldn't be revived, just for the sake of execution.

V. Special Attention to Foreign Awards

One should keep adhering to the pro-enforcement mindset of the New York Convention when it comes to enforcing foreign awards. It's crucial that the grounds laid out in Section 48 aren't stretched by overly broad interpretations of public policy, natural justice, or arbitrability. The Supreme Court's reasoning in *Vijay Karia* serves as a solid basis for upholding this principle.

VI. Government Litigation Policy

Government departments and public-sector organizations need to implement more robust internal processes to determine if an award should be contested. Ideally, the choice to challenge should hinge on the legal merits of the case, rather than just the fact that the award didn't go in their favor. This kind of strategy could significantly cut down on unnecessary litigation after the award has been made.

VII. Judicial Data & Case Management

High Courts ought to keep track of several data points, including:

- Number of pending Section 34 cases
- Average time it takes to resolve these cases
- Stay applications
- Execution proceedings
- Enforcement of foreign awards
- Duration between the award and the actual recovery

Without solid data, it becomes quite challenging to assess whether the legislative reforms are hitting their targets.

CONCLUSION

Enforcing arbitral awards is a true test of India's dedication to arbitration.

The Arbitration and Conciliation Act of 1996 lays out a fairly advanced legal framework. For instance, Section 35 ensures that awards are final, while Section 34 offers a limited way to challenge domestic awards. Section 36 allows for enforcement through the Civil Procedure Code (CPC), and Sections 47 to 49 outline how foreign awards can be enforced.

The 2015 amendment to Section 36 was an important reform, which eliminated the automatic suspension of an award just because a Section 34 application was filed. The cases of *BCCI v. Kochi Cricket* and *Hindustan Construction Co.* highlighted this shift, steering the system towards enforceability instead of automatic delays.

The way courts handle public policy has also evolved. Initially, the broad interpretation seen in *Saw Pipes* and similar cases was gradually narrowed down through statutory changes and later court rulings. Cases like *Shri Lal Mahal*, *Ssangyong*, and *Vijay Karia* show the Supreme Court's more cautious stance, especially regarding the enforcement of foreign awards.

The territorial principle established in *BALCO* further clarified how the supervisory court at the seat interacts with the enforcing court. Generally, Indian courts don't act as appellate courts over foreign arbitral tribunals.

However, there are still significant procedural hurdles to overcome. Section 34 proceedings can take a long time, stay applications can delay recovery, and executing awards through the CPC can lead to the usual civil litigation delays. Additionally, objections during the execution stage can spark further procedural disputes. Foreign awards might also face challenges related to jurisdiction, public policy, arbitrability, and procedural fairness, with government and public-sector respondents potentially adding more institutional complications.

The recent ruling in *Gayatri Balasamy* brings a fresh perspective by acknowledging that while courts have limited powers to modify awards, these powers shouldn't turn into a full-blown merits-based appellate jurisdiction.⁵¹ This decision highlights the ongoing struggle to balance two key goals: upholding the finality of arbitration while also preventing unnecessary annulments or re-arbitrations when a limited judicial correction is legally allowed.

In essence, India's arbitration framework has made significant strides toward a pro-enforcement model. The main challenge now isn't just about defining the acceptable grounds for judicial interference; it's about ensuring that courts and enforcement mechanisms apply these principles swiftly and consistently.

Looking ahead, the future of arbitration enforcement in India should prioritize procedural efficiency, a disciplined approach to stays, specialized execution processes, curbing repetitive litigation, and accountability in case management. Ultimately, the success of arbitration should

⁵¹ *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, (2025) 7 SCC 1. The Supreme Court has continued to treat the judgment as establishing only limited modification powers rather than a general appellate jurisdiction.

be gauged not just by how often courts choose not to interfere with awards, but by how effectively and promptly a winning party can turn an award into actual recovery.