

Section 34 of the Arbitration and Conciliation Act

Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act and 1996 and is a pivotal legislation in India that governs the process of [arbitration](#) and providing a robust framework for the resolution of disputes outside the traditional court system. Section 34 of arbitration and conciliation act is a crucial provision that deals with the setting aside of arbitral awards. In this article and we will delve into the intricacies of Section 34 and exploring its various facets and interpretations and the impact it has on the arbitration landscape in India.

Background of the Arbitration and Conciliation Act and 1996

Before delving into the specifics of section 34 of arbitration and conciliation act and it is essential to understand the broader context of the Arbitration and Conciliation Act and 1996. The Act was enacted to align India's [arbitration laws](#) with international standards and provide an efficient alternative dispute resolution mechanism. It replaced the Arbitration Act of 1940 and which was outdated and lacked provisions to deal with modern complexities. The Arbitration and Conciliation Act and 1996 and not only recognizes the autonomy of parties in choosing the arbitral process but also establishes a comprehensive legal framework for conducting arbitrations and enforcing arbitral awards. The Act is in consonance with the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration and reflecting a global approach to arbitration.

Understanding Section 34 of the Arbitration and Conciliation Act and 1996

Section 34 of the Arbitration and Conciliation Act and 1996 and outlines the grounds on which a party can challenge and seek to set aside an arbitral award. This section is pivotal as it provides a mechanism for reviewing the validity and enforceability of arbitral awards and ensuring that the arbitration process remains fair and impartial and in adherence to the principles of natural justice.

Key Provisions of Section 34 of the Arbitration and Conciliation Act and 1996

Grounds for Setting Aside an Award: Section 34(2) delineates the grounds on which a party can seek to set aside an arbitral award. These grounds include:

- a) Incapacity of a party.
- b) Arbitration agreement not valid under the law.



- c) Lack of proper notice of the appointment of an arbitrator or proceedings.
- d) The arbitral award deals with disputes not contemplated by or not falling within the terms of the submission to arbitration.
- e) Composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties.
- f) The subject matter of the dispute is not capable of settlement by arbitration under the law.
- g) The arbitral award is in conflict with the public policy of India.

Application for Setting Aside: Section 34(3) prescribes a time limit within which a party must apply to set aside an arbitral award. The application must be made within three months from the date of receipt of the arbitral award and or if there is a request for correction or interpretation of the award and within three months of the disposal of such a request.

Procedure for Setting Aside: The procedure for setting aside an arbitral award is laid down in Section 34(4). The application for setting aside is required to be filed before the court that would have jurisdiction to hear the original dispute.

Court's Power to Suspend Enforcement: Section 34(5) empowers the court to grant a stay on the enforcement of the arbitral award during the pendency of the application to set aside. This provision ensures that a party is not compelled to comply with an award that is subject to challenge.

Judicial Interpretations and Evolving Jurisprudence on section 34 of arbitration and conciliation act

Over the years and Indian courts have interpreted and applied section 34 of arbitration and conciliation act in various cases and contributing to the evolution of jurisprudence surrounding the setting aside of arbitral awards. Some key judicial pronouncements have clarified the scope and application of Section 34 and addressing issues such as the public policy exception and the interpretation of terms like "patent illegality."

- **Public Policy Exception:** The phrase "public policy of India" in Section 34(g) has been a subject of extensive judicial interpretation. Courts have clarified that the term should be given a narrow interpretation and focusing on fundamental principles of justice and morality. In *ONGC Ltd. v. Saw Pipes Ltd.* and the Supreme Court held that a violation of the law of India or the basic notions of justice and fairness would attract the public policy exception.
- **Patent Illegality:** The term "patent illegality" has been a point of contention in Section 34 proceedings. In *Associate Builders v. Delhi Development Authority* and the Supreme Court clarified that the term refers to an illegality that goes to the root of the matter and striking at the foundation of the award. Mere errors in the application of the law or interpretation of facts do not constitute patent illegality.
- **Natural Justice and Fair Play:** Courts have consistently emphasized the importance of natural justice and fair play in arbitration proceedings. Any violation of the principles of natural justice and such as denial of an opportunity to present a case or lack of impartiality in the tribunal and can be grounds for setting aside an award under Section 34.

Landmark cases on Section 34 of arbitration and conciliation act of Arbitration And Conciliation Act

Several landmark cases in India have shaped the jurisprudence surrounding Section 34 of the Arbitration and Conciliation Act and 1996:

1. **ONGC Ltd. v. Saw Pipes Ltd.** (2003): In this landmark case and the Supreme Court clarified the scope of the term "public policy of India" as mentioned in Section 34(g) of the Act. The court held that an award could be set aside if it contravenes the fundamental policy of Indian law or the principles of justice and morality. This case helped narrow down the interpretation of public policy and emphasizing that it should be reserved for cases where the violation is of a fundamental nature.
2. **Associate Builders v. Delhi Development Authority** (2015): This case is notable for its clarification on the term "patent illegality" as a ground for setting aside an arbitral award under section 34 of arbitration and conciliation act. The Supreme Court held that an award can only be set aside on the ground of patent illegality if it goes to the root of the matter and affecting the very foundation of the award. Mere errors in the application of the law or interpretation of facts would not qualify as patent illegality.
3. **Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India** (2019): In this case and the Supreme Court reiterated the limited scope of interference under section 34 of arbitration and conciliation act. The court held that the grounds for setting aside an award are exhaustive and that the court cannot re appreciate the evidence to substitute its view for that of the arbitrator. This decision reaffirms the principle of minimal judicial intervention in arbitration matters.
4. **Bharat Aluminium Co. v. Kaiser Aluminium Technical Service** (2016): Commonly known as the "BALCO case and" this judgment clarified the distinction between domestic and international arbitrations. The Supreme Court held that the provisions of Part I of the Arbitration Act and including section 34 of arbitration and conciliation act and would apply to international commercial arbitrations unless the parties expressly or impliedly exclude them. This decision had a significant impact on the interpretation of the Act concerning international arbitration.

Challenges and Criticisms to section 34 of arbitration and conciliation act

- **Delay in Adjudication:** One of the significant challenges is the delay in the adjudication of applications under section 34 of arbitration and conciliation act. The three month time limit for filing an application is often stretched due to procedural delays and resulting in a prolonged resolution process.
- **Overreach by Courts:** There have been instances where courts and in their zeal to set aside awards on substantive grounds and have encroached upon the merits of the arbitral award.



This overreach has been a subject of concern as it dilutes the finality and binding nature of arbitral awards.

- **Inconsistency in Judicial Pronouncements:** The interpretation of section 34 of arbitration and conciliation act has not been uniform across various High Courts and the Supreme Court. Inconsistencies in judicial pronouncements can lead to confusion and uncertainty in the application of the provision.
- **Need for Legislative Reforms:** Some legal scholars and practitioners argue that certain aspects of Section 34 need legislative reforms to address emerging challenges and streamline the process. This includes addressing the issue of delay and ensuring a more efficient and expeditious resolution of applications.

Conclusion

Section 34 of the Arbitration and Conciliation Act and 1996 and stands as a critical safeguard to maintain the integrity and fairness of the arbitral process. While it provides a mechanism for parties to challenge arbitral awards on specified grounds and its application has been subject to evolving judicial interpretation. The jurisprudence surrounding Section 34 reflects a delicate balance between upholding the sanctity of arbitral awards and ensuring that parties have recourse in cases of genuine injustice. As India continues to position itself as a hub for international arbitration and it becomes imperative to address the challenges associated with Section 34. Efforts to streamline the process and ensure timely adjudication and provide clarity on contentious issues will contribute to the effectiveness and credibility of [arbitration in India](#). Ultimately and a robust and predictable arbitration regime is essential for fostering confidence among businesses and encouraging the use of alternative dispute resolution mechanisms.