Section 34 Arbitration and Conciliation Act

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I. INTRODUCTION & LEGISLATIVE BACKGROUND

The Arbitration and Conciliation Act, 1996 ("the Act") was enacted to consolidate the law relating to domestic arbitration, international commercial arbitration, and enforcement of foreign arbitral awards. Section 34 is one of the narrow windows through which courts may supervise the arbitral process.
Section 34, forming Chapter VII (Part I) of the Act, provides the sole and exclusive mechanism by which a party may challenge a domestic arbitral award before a court. The grounds are deliberately limited, reflecting the legislative intent to preserve the finality of arbitral awards and to discourage courts from sitting in appeal over the merits of an arbitral decision.
The provision has been amended three times by the Arbitration and Conciliation (Amendment) Acts of 2015, 2019, and 2021 each amendment progressively narrowing the scope for judicial intervention.

II. STATUTORY TEXT OF SECTION 34

Section 34 reads as under (as amended up to 2021):
34(1): Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

34(2): An arbitral award may be set aside by the Court only if — (a) the party making the application establishes on the basis of the record of the arbitral tribunal that [grounds (i)–(v) listed]; or (b) the Court finds that — (i) subject-matter is non-arbitrable; or (ii) award is in conflict with the public policy of India [with Explanations 1 & 2].

34(2A): An arbitral award arising out of arbitrations other than international commercial arbitrations may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award. Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.

34(3): An application for setting aside may not be made after three months have elapsed from the date on which the party received the arbitral award. Proviso: If the Court is satisfied that the applicant was prevented by sufficient cause, it may entertain the application within a further period of thirty days, but not thereafter.

34(4): The Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings to give the arbitral tribunal an opportunity to resume the proceedings or to take such other action as will eliminate the grounds for setting aside.

34(5) [2019 Amendment]: An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

34(6) [2019 Amendment]: An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.

III. NATURE AND SCOPE OF SECTION 34

Section 34 is the exclusive, self-contained remedy for challenging a domestic arbitral award. It is not an appeal. The following foundational principles define its nature:
- Exclusivity: Recourse against an award 'may be made only' by an application under Section 34. No other remedy is available against a domestic award.
- Non-Appellate Character: The court cannot

reappreciate evidence, substitute its own view, or correct errors of fact or law. This is clearly stated in Explanation 2 to Section 34(2)(b)(ii), and repeatedly affirmed by the Supreme Court in cases from ONGC v. Saw Pipes (2003) to NHAI v. M. Hakeem (2021).

- Supervisory Jurisdiction Only: The court exercises a curial supervisory role, checking for procedural fairness, without entering the merits of the dispute.
- UNCITRAL Model Law Basis: Section 34 is modelled on Article 34 of the UNCITRAL Model Law on International Commercial Arbitration, bringing India in line with international arbitration norms.

IV. GROUNDS UNDER SECTION 34(2)(a) : PARTY-BASED GROUNDS

These grounds must be established by the applying party 'on the basis of the record of the arbitral tribunal' (amended by the 2019 Act, which replaced the earlier phrase 'furnishes proof that'). The change is significant: the court may not receive fresh evidence; it is limited to the record before the tribunal.

The five party-based grounds are:

Ground	Section	Description / Key Principle
Incapacity of a Party	34(2)(a)(i)	A party to the arbitration agreement was under some legal incapacity (e.g., minor, person of unsound mind) at the time the agreement was made.
Invalid Arbitration Agreement	34(2)(a)(ii)	The agreement is not valid under the governing law, either the law chosen by the parties or the law in force. Covers issues of consent, form, and legality of subject-matter.
Absence of Proper Notice / Inability to Present Case	34(2)(a)(iii)	The party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present its case. This ground encapsulates the principle of audi alteram partem (natural justice).
Award Beyond Scope of Submission	34(2)(a)(iv)	The award deals with disputes not contemplated by or falling outside the submission to arbitration, or contains decisions on matters beyond its scope. Severability applies: if the out-of-scope portion can be separated, only that portion is set aside.
Improper Composition or Procedure	34(2)(a)(v)	The composition of the tribunal or the arbitral procedure was not in accordance with the parties' agreement (unless that agreement conflicted with a mandatory provision of Part I), or, absent agreement, was not in accordance with Part I of the Act.

V. GROUNDS UNDER SECTION 34(2)(b): COURT-INVOKED GROUNDS

These grounds may be taken up by the court suo motu, without the party having to raise them specifically. There are two such grounds:

A. Non-Arbitrability: Section 34(2)(b)(i)

The subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force. Examples of non-arbitrable disputes include: criminal matters, matrimonial/divorce proceedings, insolvency/winding-up petitions, testamentary proceedings, and disputes under the Consumer Protection Act where an alternate statutory forum exists. The Supreme Court in Vidya Drolia v. Durga Trading Corporation (2021) 2 SCC 1 significantly clarified the four-fold test for arbitrability: (1) nature of the right (right in rem v. right in personam), (2) public policy, (3) cause of action, and (4) whether the statute expressly or impliedly bars arbitration.

B. Conflict with Public Policy of India: Section 34(2)(b)(ii)

This is the most litigated and judicially evolving ground under Section 34. Following the 2015 Amendment, the term 'public policy of India' is narrowly defined by Explanations 1 and 2:

Explanation 1: An award is in conflict with the public policy of India ONLY if:

1. The making of the award was induced or affected by fraud or corruption, or was in violation of Section 75 (confidentiality of conciliation) or Section 81 (use of conciliation statements in arbitral proceedings);
2. It is in contravention with the fundamental policy of Indian law; or
3. It is in conflict with the most basic notions of morality or justice.

Explanation 2: 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. This explanation effectively overrides and negates the expansion of 'fundamental policy' as elaborated in ONGC v. Western Geco (2014), under which courts were previously permitted to interfere with the merits.

The 2021 Amendment further added a specific provision (discussed in Section X below) allowing a court to stay enforcement where the underlying contract/arbitration agreement is induced by fraud or corruption.

VI. ECTION 34(2A): PATENT ILLEGALITY (DOMESTIC AWARDS ONLY)

Introduced by the 2015 Amendment, Section 34(2A) creates an additional ground for setting aside awards arising from domestic arbitrations (i.e., arbitrations other than international commercial arbitrations):

'An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award.'

Key Proviso: An award shall NOT be set aside merely on the ground of:

- An erroneous application of the law; or
- Re-appreciation of evidence.

Scope and meaning of 'Patent Illegality':

As clarified by the Supreme Court in Ssangyong Engineering v. NHAI (2019) 15 SCC 131, patent illegality means:

- Illegality going to the root of the matter, not merely a peripheral or incidental illegality.
- The illegality must be 'apparent on the face of the award', it must be discernible from the award itself without requiring external enquiry.
- Contravention of a specific contractual provision may amount to patent illegality if it goes to the root of the matter.
- Mere erroneous legal reasoning, factual findings, or adoption of one of two possible interpretations does NOT constitute patent illegality.
- An award which ignores vital evidence or is based on no evidence may amount to patent illegality.

Critical Distinction: Domestic vs. International Commercial Arbitration:

Section 34(2A) expressly applies only to domestic arbitrations. For international commercial arbitrations, the ground of 'patent illegality' as developed under ONGC v. Saw Pipes (2003) has been specifically legislatively abrogated. International awards are only subject to the narrower 'public policy' test under Section 34(2)(b)(ii).

VII. LIMITATION PERIOD: SECTION 34(3)

Parameter	Rule
Primary Limitation Period	3 months (90 days) from the date of receipt of the signed arbitral award by the party.
Extended Period	A further 30 days may be allowed by the court if the applicant demonstrates 'sufficient cause' for the delay. The total maximum period is therefore 120 days.
Absolute Bar	The words 'but not thereafter' in Section 34(3) create an absolute bar. No extension beyond 120 days is permissible under any circumstances.
Section 5, Limitation Act	Not applicable to Section 34 petitions. Confirmed in Simplex Infrastructure v. Union of India (2019) 2 SCC 455.
Trigger Date	From the date of receipt of the signed award by the party (not the lawyer/agent). Confirmed in Dakshin Haryana Bijli v. Navigant Technologies (2021) SCC OnLine SC 157.
Section 33 Impact	Where a party makes a timely Section 33 application (correction/ interpretation), the limitation under Section 34(3) runs from the date of disposal of that Section 33 request, not from the original date of receipt. Confirmed in Geojit Financial Services v. Sandeep Gurav (2025).
Condonation on Court Holiday	If the 90-day prescribed period ends on a court holiday, the next working day applies. However, this benefit is not available if one is already in the 30-day extended period.

VIII. SECTION 34(4): REMAND TO ARBITRAL TRIBUNAL

Upon receipt of a Section 34 application, the Court may where it is appropriate and a party so requests, adjourn the proceedings for a period it determines, to give the arbitral tribunal an opportunity to:

- Resume the arbitral proceedings; or
- Take such other action as, in the opinion of the arbitral tribunal, will eliminate the grounds for setting aside the award.

This is a remedial provision designed to avoid outright setting aside where the defect can be cured by the same tribunal. It reflects the Model Law's approach of preserving the arbitral process. Note: The remand under Section 34(4) is to the same tribunal that passed the award, unlike a fresh reference after setting aside under Section 34 where parties return to a new tribunal.

IX. XSECTIONS 34(5) & 34(6): PROCEDURAL REQUIREMENTS (2019 AMENDMENT)

Inserted by the Arbitration and Conciliation (Amendment) Act, 2019 (Act No. 33 of 2019): Section 34(5) : Prior Notice Requirement:
An application under Section 34 shall be filed only after issuing prior notice to the other party. The application must be accompanied by an affidavit by the applicant endorsing compliance with this notice requirement. This prevents ambush challenges and ensures the opposing party is forewarned.

Section 34(6): Disposal Timeline:
The application shall be disposed of expeditiously, and in any event within one year from the date on which the notice under Section 34(5) is served upon the other party. This is a directory rather than mandatory provision but signals legislative intent for speedy resolution.

X. THE 2021 AMENDMENT: FRAUD AND CORRUPTION

The Arbitration and Conciliation (Amendment) Act, 2021 inserted an important safeguard in Section 36 (enforcement), linked directly to the public policy ground under Section 34(2)(b)(ii). Under the 2021 Amendment:

- Where an application for setting aside under Section 34 has been filed and the court is satisfied on a prima facie basis that the arbitration agreement or contract is induced or effected by fraud or corruption, the court shall stay the award unconditionally, pending disposal of the Section 34 application.
- This is a mandatory unconditional stay, unlike the general discretionary stay under Section 36 where fraud or corruption in the underlying contract is prima facie established.
- This amendment overruled the Supreme Court's decision in Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd. (2018) and addressed concerns that parties were being forced to comply with awards arising from tainted contracts.

XI. POWERS OF THE COURT UNDER SECTION 34: CAN DO vs. CANNOT DO

Court CAN Do	Court CANNOT Do
Set aside the entire arbitral award.	Modify, vary, or revise an arbitral award (NHAI v. M. Hakeem).
Partially set aside a severable portion of the award.	Re-appreciate evidence or re-examine factual findings.
Remand the matter to the same tribunal under Section 34(4).	Sit as an appellate court and review the merits of the dispute.
Examine whether the arbitration agreement is valid.	Substitute its own interpretation of a contract for the arbitrator's plausible interpretation.
Review procedural compliance (notice, composition, scope).	Set aside an award for mere errors of law (erroneous application of law is not enough).
Stay enforcement of the award pending disposal (Section 36).	Condone delay beyond the absolute maximum of 120 days (90+30).
Grant unconditional stay where fraud in contract is prima facie shown (2021 Amendment).	Receive fresh evidence not on the record of the arbitral tribunal.