

LAWWORLD

Setting Aside the Award: Section 34 Challenges under the Arbitration Act

Limited grounds, tight timelines, and courtroom-ready drafting for
domestic and foreign awards

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Preface

Section 34 is the narrow gate through which an arbitral award can be undone. It is not an appeal, not a rehearing, and not a second chance to re-argue the contract. For advocates and in-house counsel, the practical question is almost always the same: does this award cross one of the few statutory lines that still justify interference, and can that crossing be shown from the tribunal's own record within the unforgiving limitation clock?

This handbook is built for that question. It walks through every ground in Section 34(2) and 34(2A), separates what survived the 2015 amendments from what did not, and converts the leading Supreme Court guidance on public policy and patent illegality into short, usable propositions. It then turns to the mechanics that decide real petitions-limitation and condonation, the Section 34(5) prior notice, the changed Section 36 stay position, petition structure, model grounds, and annexures.

Equal weight is given to the award-holder's defensive playbook, the constrained role of a Section 37 appeal, and the distinct regime for resisting enforcement of foreign awards under Part II. The closing chapter collates grounds against likely interference outcomes and drafting tips so that a busy practitioner can triage a file before the first conference.

The register is plain and practitioner-facing. Statutory text and courtroom method come first; theory is kept only where it changes how a ground is pleaded or resisted.

01

The Narrow Gate: Why Section 34 Is Not an Appeal

Orientation for counsel assessing a fresh award

Finality and the exclusive gate

When a fresh award lands on the desk, the first discipline is architectural, not tactical. Under Part I, an arbitral award is final and binding on the parties unless set aside on an application under Section 34. That finality is not absolute for all purposes-party autonomy may still provide for a contractual second-tier review-but statutory court recourse is channelled through one gate. **Centrestage authority** confirms the combined reading: finality under the Act yields only to competent set-aside under Section 34, or to any agreed appellate arbitration.

Finality of award and party autonomy

LAWWORLD 2016 SC 1215

On a combined reading of Section 34(1) and Section 35, an award is final and binding unless set aside under Section 34; that finality does not bar agreed two-tier arbitration, but court interference remains confined to the statutory path.

LawWorld ID: LAWWORLD 2016 SC 1215

Counsel must therefore treat Section 34 as the exclusive enumerated-grounds remedy against a domestic award. There is no residual inherent power to reopen the dispute because the result seems wrong, harsh, or commercially imperfect. Later chapters map the grounds; this chapter fixes the posture: you are not filing an appeal.

Minimal intervention: the Section 5 policy

The Act's design rests on a non-obstante bar against judicial intervention except where Part I itself so provides. Section 5 expresses the object of the 1996 statute-expeditious, less expensive resolution and respect for the arbitration agreement-by confining courts to the interventions the Part expressly allows. Recourse against an award is one such allowed intervention, and only in the form Section 34 prescribes.

Object of Section 5 - minimal judicial intervention

LAWWORLD 2000 SC 0351

Section 5 provides that, notwithstanding anything in any other law, in matters governed by Part I no judicial authority shall intervene except where so provided; it brings out the object of encouraging expeditious, inexpensive resolution with minimal court intervention.

LawWorld ID: LAWWORLD 2000 SC 0351

Strict confines of Section 34

LAWWORLD 2021 SC 092

The Act, based on the UNCITRAL Model Law, aims at minimal judicial interference; Section 5 bars intervention except as provided, and courts on Section 34 applications must strictly act within that provision's confines-no appreciation or re-appreciation of facts or law, and no sitting in appeal over the award.

LawWorld ID: LAWWORLD 2021 SC 092

WARNING

Do not plead as if in first appeal

Framing a Section 34 petition as a wholesale merits attack invites dismissal at the threshold of jurisdiction. The court is not authorised to substitute its view merely because another interpretation of the contract or evidence is possible.

Not an appeal: burden and the record

Supreme Court guidance is uniform: Section 34 differs in approach from normal appellate jurisdiction. The court does not act as an appellate forum. Interference is structured by the provision; awards are not to be disturbed in a casual or cavalier manner; where two views are possible, the tribunal's plausible view stands. Perversity must go to the root before the narrow gate opens.

Limited, non-appellate scope under Section 34

LAWWORLD 2019 SC 1245

Section 34 permits recourse only on specified grounds and cannot be equated with normal appellate jurisdiction; courts must respect finality and party autonomy; interference is justified only where perversity goes to the root and no sustaining alternative interpretation is reasonably open.

LawWorld ID: LAWWORLD 2019 SC 1245

Court does not act as appellate forum

LAWWORLD 2021 SC 1127

In Section 34 proceedings the court does not act as an appellate forum; on Section 37 review of a Section 34 order, the High Court likewise cannot proceed as in a regular first appeal or decree the claim in entirety.

LawWorld ID: LAWWORLD 2021 SC 1127

No casual interference; plausible view prevails

LAWWORLD 2020 SC 054

An award may be set aside only on Section 34 grounds; interference requires perversity going to the root with no alternative sustaining interpretation; where two views are possible, courts defer to the tribunal's plausible view.

LawWorld ID: LAWWORLD 2020 SC 054

The practical consequence is burden. The applicant must bring the case within an enumerated ground and prove it from the tribunal record. Re-appreciation of evidence, substitution of contractual construction, and correction of mere legal error are outside

the jurisdiction. *Settled limits* and *contract-construction restraint* underline that once the arbitrator has applied his mind, a possible view prevails.

Domestic set-aside versus foreign-award paths

Part I governs where the place of arbitration is in India. Challenges to such awards travel through Section 34, with a further confined appeal under Section 37(1)(c) from orders setting aside or refusing to set aside. Foreign awards follow a different architecture: recognition and enforcement under Part II, with resistance grounds and appeals structured separately. Patent-illegality review available for certain domestic awards has no mirror in the foreign-award path. Later chapters develop each track; the orientation point is simple-do not conflate them.

THE ARBITRATION AND CONCILIATION ACT, 1996 - Section s.2

Section 2(2) provides that Part I shall apply where the place of arbitration is in India, with a limited proviso extending specified provisions to international commercial arbitration even when the place is outside India for awards enforceable under Part II. This place-of-arbitration rule is the threshold that sorts domestic set-aside from foreign-award enforcement.

THE ARBITRATION AND CONCILIATION ACT, 1996 - Section s.37

Section 37(1)(c) allows an appeal from orders setting aside or refusing to set aside an arbitral award under Section 34; Section 37(3) bars a second appeal while preserving any right to approach the Supreme Court. The appeal is itself narrowly confined and does not enlarge the Section 34 cage.

TIP

Expectation setting for the brief

Open every internal note with three lines: (1) Part I or Part II track; (2) why this is not an appeal; (3) which record facts could conceivably meet an enumerated ground. That discipline prevents over-pleading and wasted cost before limitation and drafting chapters are applied.

The narrow gate is deliberate. Minimal intervention, finality subject only to enumerated set-aside, and a non-appellate court define the field. The chapters that follow supply the statutory map, ground-wise proof, limitation and notice mechanics, enforcement and stay practice, drafting and defence playbooks, Section 37 limits, and the distinct Part II foreign-award route. Enter them knowing what Section 34 is-and what it is not.

02

Statutory Map of Section 34

Sub-sections, 2015 redesign, and what changed

Section 34(1): Who may apply and the exclusive gate

Section 34(1) opens the only statutory door for undoing an arbitral award governed by Part I. Recourse to a court against an arbitral award **may be made only by an application for setting aside** such award in accordance with sub-sections (2) and (3). The applicant is a **party** to the arbitration-or a person claiming under that party. The provision does not create an appeal, a revision, or a power to rewrite the award.

No power to modify under Section 34

LAWWORLD 2021 SC 073

Section 34 confers limited recourse only to set aside on the grounds in sub-sections (2), (2A) and (3). Unlike the 1940 Act, the 1996 Act deliberately omits any power to modify, correct, or substitute an award; at most the court may adjourn under Section 34(4) to let the tribunal cure a defect.

LawWorld ID: LAWWORLD 2021 SC 073

NOTE

Exclusive character

Read with the minimal-interference policy in Section 5 (Chapter 1), Section 34 is the sole enumerated-grounds path. If a challenge does not fit 34(2)/34(2A) and is out of time under 34(3), the award stands for enforcement under Section 36.

The grounds split: 34(2)(a) and 34(2)(b)

Section 34(2) divides the set-aside grounds into two proof tracks. Under **Section 34(2)(a)**, the applicant must **establish** specified defects-incapacity, invalid arbitration agreement, want of proper notice or inability to present the case, excess of mandate (with a severability proviso), and improper composition or procedure. Under **Section 34(2)(b)**, the court may set aside if it **finds** that the subject-matter was not arbitrable under Indian law, or that the award conflicts with the **public policy of India**.

Limb	Who carries the load	Subject-matter (map only)
34(2)(a)	Party must establish	Incapacity; invalid agreement; notice/fair hearing; excess of mandate; composition/procedure

34(2)(b)(i)	Court finds	Dispute not capable of settlement by arbitration under the law for the time being in force
34(2)(b)(ii)	Court finds	Award in conflict with the public policy of India (narrowed by Explanations after 2015)
34(2A)	Court finds	Patent illegality on the face of the award - domestic awards only

The drafting difference matters in practice. Grounds under 34(2)(a) turn on what the challenger proves from the tribunal record. Grounds under 34(2)(b) and 34(2A) are framed so the court itself must be satisfied the statutory condition exists. Later chapters treat each ground on its own terms; this map only fixes the architecture.

The 2015 redesign: public policy narrowed; patent illegality added

The Arbitration and Conciliation (Amendment) Act, 2015 rewrote the interference landscape in two linked moves. First, **Explanations** to Section 34(2)(b)(ii) confined "public policy of India" to inducement by fraud or corruption, contravention of the **fundamental policy of Indian law**, and conflict with the **most basic notions of morality or justice**, and expressly barred review on the merits of the dispute. Second, a new **Section 34(2A)** added **patent illegality appearing on the face of the award** as a ground available only against awards other than those arising from international commercial arbitration.

Temporal reach of the 2015 Section 34 redesign

LAWWORLD 2019 SC 0533

The 2015 changes removed the earlier expanded reading of public policy and introduced patent illegality with in-built limits. Amended Section 34 applies to Section 34 applications made to the court on or after 23-10-2015, irrespective of when the arbitration commenced.

LawWorld ID: LAWWORLD 2019 SC 0533

Patent illegality unavailable for ICA awards

LAWWORLD 2021 SC 1152

Even where the seat is in India, an award from an international commercial arbitration under Section 2(1)(f) cannot be attacked under Section 34(2A); patent illegality is confined to purely domestic awards. Recourse still lies under Section 34 on the other grounds.

LawWorld ID: LAWWORLD 2021 SC 1152

TIP

High-level flag for later chapters

Chapters 5 and 6 unpack public policy and patent illegality. Chapter 8 covers the hard limitation clock in 34(3). For files straddling 23-10-2015, check which Section 34 text applies before pleading 34(2A) or the narrowed Explanations- **the 2019 temporal ruling** is the starting point.

Section 34(5)-34(6): prior notice and disposal scheme

The 2015 redesign also added a process layer. **Section 34(5)** requires that an application under Section 34 be filed only after issuing **prior notice** to the other party, and that the applicant file an **affidavit** endorsing compliance. **Section 34(6)** directs that the application shall be disposed of expeditiously and in any event within a period of **one year** from the date on which the notice under sub-section (5) is served upon the other party.

This chapter stops at the map. Individual 34(2)(a) grounds, the narrowed public-policy Explanations, patent illegality, limitation under 34(3), notice practice under 34(5), and the Section 36 stay regime each receive dedicated treatment in the chapters that follow.

03

Party-Established Grounds: Incapacity, Invalid Agreement, Notice, and Fair Hearing

Section 34(2)(a)(i)-(iii) in practice

Incapacity and invalidity of the agreement

The first two party-established grounds attack the very foundation of the reference. The applicant must show either that a party was under some incapacity, or that the arbitration agreement is not valid under the law to which the parties subjected it (or, failing any indication, under the applicable law). Both are jurisdictional in character. Neither invites a merits re-hearing. Proof must come from the record and admissible material; a bare assertion of incapacity or invalidity will not do.

Mental capacity objection to award

LAWWORLD 1987 SC 024

On medical and arbitral-record evidence the Court held the party, though of borderline intellectual retardation, managed her affairs, knew good from bad, participated and signed of her own free will; the incapacity objection failed. Demonstrates that incapacity is a fact-intensive plea that must be made good on evidence, not assumed from a diagnosis label.

LawWorld ID: LAWWORLD 1987 SC 024

Invalidity turns on the **proper law of the arbitration agreement**. That law may differ from the proper law of the main contract. Where parties choose a foreign law to govern the arbitration agreement, Part I supervisory remedies may stand excluded; the Section 34 court then has no jurisdiction to test validity under Indian law alone. Counsel must therefore plead and prove the chosen law and the consequence for validity, rather than assuming Indian contract rules apply by default.

Proper law of the arbitration agreement

LAWWORLD 2016 SC 0132

Where the clause fixed English law as the law applicable to the arbitration agreement, Part I stood impliedly excluded and a Section 34 petition was not maintainable. Proper-law choice is decisive for which court may test validity.

LawWorld ID: LAWWORLD 2016 SC 0132

WARNING

Pleading trap

Do not collapse incapacity or invalidity into a general attack on the award's reasoning. State the disability or the invalidating rule of the proper law, and annex the record extracts or expert proof that support it.

Proper notice and inability to present the case

*The next limb covers failure of proper notice of the appointment of an arbitrator or of the arbitral proceedings, and the residual phrase that the party was **otherwise unable to present his case**. These are natural-justice minima. They do not reopen public-policy review, which later chapters address. The court asks whether the party had a real opportunity to know the case against it and to meet it-not whether the tribunal's conclusions were correct.*

Undisclosed material and Section 34(2)(a)(iii)

LAWWORLD 2019 SC 0533

Sections 18, 24(3) and 26 illuminate the ground: each party must have full opportunity; statements, documents and expert material on which the tribunal relies must be communicated. Government guidelines sourced from a website and never disclosed left the appellant unable to comment-breach of audi alteram partem warranting interference.

LawWorld ID: LAWWORLD 2019 SC 0533

Fair hearing minima under Section 34(2)(a)(iii)

LAWWORLD 2005 KAR 0343

Minimum requirements include notice, opportunity to participate and adduce evidence, receipt of the opponent's material, and cross-examination. Receiving adverse material without disclosure or cross-examination in an adversarial dispute violated natural justice.

LawWorld ID: LAWWORLD 2005 KAR 0343

Narrow reading of 'unable to present his case'

LAWWORLD 2020 SC 0262

Read noscitur a sociis with the notice requirement; applies to the hearing stage, not post-award nit-picking of reasons. Breach must be clearly made out-no opportunity to meet a root argument, evidence behind the back, or new evidence founding the award without rebuttal. Mere failure to consider an issue is not enough.

LawWorld ID: LAWWORLD 2020 SC 0262

LAWWORLD 2011 KAR 0214 confirms that want of proper notice or inability to present the case sits among the limited enumerated grounds, and that interference is warranted for violation of natural justice, not for re-appreciation of evidence. LAWWORLD 2014 SC 1126 adds that none of the Section 34(2)(a) grounds concern the merits of the decision.

Record-based proof and common failures

Every plea under this cluster is tried on the tribunal record. Fresh evidence is exceptional. If the complaint is non-service, produce the service trail from the file. If the

complaint is undisclosed material, identify the document, show it was never communicated, and show the tribunal relied on it. If the complaint is denial of hearing, point to the procedural order or transcript that closed the door.

TIP

Drafting discipline

*Frame each ground as a **process failure** proved from the record. Reserve public-policy and patent-illegality language for the chapters that deal with those distinct heads. Mixing them dilutes the party-established case and invites a merits objection from the award-holder.*

04

Excess of Mandate and Tribunal Composition

Section 34(2)(a)(iv)-(v) and the severability proviso

Excess of mandate: Section 34(2)(a)(iv)

Section 34(2)(a)(iv) lets a party set aside an award that deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or that contains decisions on matters beyond the scope of that submission. The ground is jurisdictional, not appellate. It asks whether the tribunal decided something never referred-not whether it decided a referred dispute wrongly.

Narrow construction of Section 34(2)(a)(iv)

LAWWORLD 2019 SC 0533

Section 34(2)(a)(iv) is confined to awards deciding matters beyond the arbitration agreement or beyond the disputes actually referred. It cannot re-characterise alleged misinterpretation of contract or Section 28(3) errors as excess of submission. A strong presumption exists that the tribunal acted within its mandate; the ground is construed narrowly.

LawWorld ID: LAWWORLD 2019 SC 0533

Classic excess is illustrated where the reference covered damages for destruction of houses, crops and a mango garden and a direction to reclaim unfit land, yet the award granted a large sum for "loss of potential of land"-a head never claimed or referred. That portion fell outside the submission and was set aside. By contrast, mere consideration of an escalation claim in a non-speaking consolidated award, without proof that any sum was actually granted on that head, does not establish excess.

Award beyond scope of reference

LAWWORLD 1998 SC 1011

Damages for loss of potential of land were neither claimed nor referred; the award on that head dealt with a dispute outside the submission and was set aside. Moulding of relief cannot expand the reference.

LawWorld ID: LAWWORLD 1998 SC 1011

Escalation in non-speaking award-no excess shown

LAWWORLD 1990 SC 018

For excess to appear on the face of a non-speaking award, it must be evident that an item beyond jurisdiction was in fact granted; mere consideration of such a claim does not vitiate the award.

LawWorld ID: LAWWORLD 1990 SC 018

Awards on **excepted matters** expressly carved out of the arbitration clause also attract Section 34(2)(a)(iv). Proof must come from the arbitral record. Omnibus requests for fresh oral evidence and unspecified documents are ordinarily refused; the court may, at most, permit limited affidavits on the jurisdictional point.

WARNING

Do not plead contract misreading as excess

Alleging that the tribunal misconstrued a clause, applied the wrong measure of damages, or ignored Section 28(3) does **not** convert the complaint into excess of mandate. Those grievances belong elsewhere-if at all. Frame (iv) only where the subject-matter itself was never submitted.

The severability proviso

The proviso to Section 34(2)(a)(iv) saves the award to the extent decisions on matters submitted can be separated from those not submitted. Only the offending portion is set aside; the valid residue stands. Severance fails when the bad and good parts are inextricably mixed-especially in a non-speaking award where the tribunal's state of mind taints the whole, or where arbitrable and non-arbitrable claims are rolled into one undifferentiated sum.

Severability and tainted non-speaking awards

LAWWORLD 1994 SC 0422

Generally, if the bad portion is severable from the good, only the invalid part is set aside. Where non-application of mind taints a non-speaking award so that unaffected parts cannot be discerned, the offending portion must be wholly set aside.

LawWorld ID: LAWWORLD 1994 SC 0422

Consolidated award mixing arbitrable and non-arbitrable claims

LAWWORLD 1997 SC 0271

A non-speaking consolidated monetary award covering both arbitrable and non-arbitrable items, without any recorded decision on arbitrability, makes it impossible to sever; the award cannot stand to the extent jurisdiction is unascertainable.

LawWorld ID: LAWWORLD 1997 SC 0271

Tribunal composition and procedure: Section 34(2)(a)(v)

Section 34(2)(a)(v) reaches awards where the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless that agreement itself conflicts with a non-derogable provision of Part I; or, failing such agreement, was not in accordance with Part I.

Architecture of Section 34(2)(a)(v)

LAWWORLD 2002 SC 0234

If composition or procedure matches the parties' agreement, no challenge lies under (v) merely because it is said to conflict with Part I. If it departs from the agreement, the award is vulnerable only where the agreement conflicts with a non-derogable Part I provision;

conversely, departure from the agreement is cured if composition or procedure still accords with the Act. 'Failing such agreement' refers only to absence of agreement on composition or procedure.

LawWorld ID: LAWWORLD 2002 SC 0234

Truncated tribunal after resignations

LAWWORLD 2005 KAR 0343

When two of five arbitrators resigned and did not sign the award, and substitutes were not appointed under Section 11 despite request, the remaining three could not validly make the award. Improper composition under Section 34(2)(a)(v) vitiated the award.

LawWorld ID: LAWWORLD 2005 KAR 0343

Non-joinder is not composition defect

LAWWORLD 2022 KAR 092

'Arbitral tribunal' means the arbitrator(s), not the parties. Non-joinder of a third party cannot be characterised as improper composition. Where the party consented to appointment of the sole arbitrator, and no breach of agreed or Chapter V procedure was shown, Section 34(2)(a)(v) did not apply.

LawWorld ID: LAWWORLD 2022 KAR 092

TIP

Record the appointment trail

On a (v) challenge, annex the arbitration clause, appointment notices, any Section 11 order, resignation letters, and the award's signature page. The court decides composition from that paper trail, not from a re-trial of the merits.

Sections 13 and 16: preserving the point for Section 34

THE ARBITRATION AND CONCILIATION ACT, 1996 - Section s.16

A plea that the tribunal lacks jurisdiction must be raised not later than the statement of defence; a plea that the tribunal is exceeding the scope of its authority must be raised as soon as the matter alleged to be beyond scope is raised. The tribunal decides the plea; if it rejects the plea it continues and makes an award. A party aggrieved by that award may apply under Section 34. Participation in appointment does not bar the jurisdictional plea.

Competence-competence under Section 16 channels jurisdictional objections-including excess of authority-first to the tribunal. Rejection of the plea is not immediately appealable; the remedy is the eventual Section 34 petition. The same postponement logic governs bias and eligibility challenges under Section 13: an unsuccessful challenge before the tribunal is carried forward into the Section 34 application after the award, not pursued by intermediate revision or writ.

Section 13 challenge postponed to Section 34

LAWWORLD 1999 KAR 1044

Sections 13(4) and 13(5) do not deny a remedy; they postpone it. Where the tribunal rejects a bias challenge and makes an award, the adverse finding can be questioned in the Section 34

petition. There is no vested right to an immediate appeal.

LawWorld ID: LAWWORLD 1999 KAR 1044

Procedural grievances only under Section 34

LAWWORLD 2013 KAR 1118

The 1996 Act is a complete code. Objections that composition or procedure departed from the parties' agreement must be raised in the Section 34 petition after the award, not through civil revision or Article 227 during the reference.

LawWorld ID: LAWWORLD 2013 KAR 1118

NOTE

Burden and timing

The applicant under Section 34(2)(a) carries the burden of proof. Silence before the tribunal on a known excess or composition defect invites a waiver finding. Raise the point early, keep it clean on the record, and restate it with precision in the Section 34 petition.

05

Public Policy of India After 2015

Fundamental policy, fraud and corruption, basic notions of justice or morality

The statutory cage after the 2015 Amendment

Section 34 allows the court to set aside an award if it is in conflict with the public policy of India. The 2015 Amendment did not leave that phrase open-ended. Explanation 1 supplies an exhaustive list of three limbs. Explanation 2 then locks the door against merits review dressed up as fundamental-policy analysis. The result is a deliberately narrow gate.

THE ARBITRATION AND CONCILIATION ACT, 1996 - Section 34

An arbitral award is in conflict with the public policy of India only if: (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or (ii) it is in contravention with the fundamental policy of Indian law; or (iii) it is in conflict with the most basic notions of morality or justice. Explanation 2 clarifies that the test whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

Post-amendment meaning of public policy under Sections 34 and 48

Supreme Court, 2019

After the 2015 Amendment, public policy of India is confined to (i) fundamental policy of Indian law in the limited *Renusagar* sense as explained in *Associate Builders*, and (ii) conflict with the most basic notions of morality or justice. The *Western Geco* expansion (judicial approach and perversity as a form of merits review) is done away with; the interest-of-India limb is deleted; and Explanation 2 bars review on the merits under the guise of fundamental policy.

LawWorld ID: LAWWORLD 2019 SC 0533

Later Supreme Court authority and *companion holdings* reiterate the same confinement: public policy now means fundamental policy of Indian law and the most basic notions of justice or morality. Re-appreciation of evidence and mere erroneous application of law do not travel through this gate.

The three limbs: fraud, fundamental policy, basic notions

Fraud or corruption

The first limb reaches awards whose making was induced or affected by fraud or corruption, and awards that violate the confidentiality and settlement-privilege protections in sections 75 and 81. The challenge must show inducement or effect on the

making of the award itself-not a freestanding allegation of commercial misconduct unconnected to how the award came to be made. Plead particulars from the tribunal record; bald fraud labels fail.

Fundamental policy of Indian law

The leading post-amendment decision restores fundamental policy to the limited *Renusagar* sense explained in *Associate Builders* and expressly discards the *Western Geco* expansion. Explanation 2 is the operative restraint: testing fundamental policy **shall not** entail a review on the merits of the dispute. An award that merely applies the wrong statute, misreads a precedent, or prefers one available construction of the contract over another is not, for that reason alone, contrary to fundamental policy.

WARNING

Do not smuggle merits through fundamental policy

Pleadings that re-argue quantum, re-weigh evidence, or invite the court to substitute its view of the contract under the label fundamental policy invite dismissal. Explanation 2 was enacted to stop exactly that manoeuvre.

Public policy of India refers to law in force in India, whether Central or State. *The Supreme Court* has rejected the view that the phrase is limited to all-India or Union policy alone. That holding widens the source of norms that can count as fundamental policy; it does not widen the intensity of review. The norm must still be fundamental, and the court still may not re-try the dispute.

Most basic notions of morality or justice

This limb is not a roving fairness jurisdiction. *Post-amendment authority* ties it to the *Associate Builders* understanding of the most basic notions of morality or justice. Disappointment with result, imbalance in quantum, or a hard bargain the parties struck does not shock the judicial conscience in the statutory sense. Natural-justice failures that prevent a party from presenting its case remain primarily channelled through the party-established grounds already covered; they are not a free-standing invitation to re-open merits under public policy.

Public policy and alleged natural-justice breach on impleadment

High Court of Karnataka, 2022

A party that recommended impleadment, participated fully knowing the application would be decided with the final award, and argued on merits could not later convert deferred impleadment into a fundamental-policy or natural-justice ground under Explanation 1. No prejudice to the right to present the case was shown.

LawWorld ID: LAWWORLD 2022 KAR 092

When interference is available-and when it is not

The court under Section 34 does not sit in appeal. *Supreme Court guidance* and *High Court restatement* confirm that interference on public policy is confined to the statutory limbs. Possible views stand. The following propositions are usable at the drafting table

and at the preliminary hearing.

TIP

Drafting discipline

Map every public-policy paragraph to one Explanation 1 limb. State the fundamental norm allegedly breached, why it is fundamental rather than ordinary, and why Explanation 2 is still satisfied. If the real complaint is face-of-the-award illegality in a domestic matter, keep it out of this chapter's ground and plead it where the statute places it.

Settled Supreme Court doctrine restates the narrow catalogue under Section 34(2)(b): fraud, corruption, violation of sections 75 and 81, contravention of fundamental policy of Indian law, or conflict with the most basic notions of morality or justice. That is the whole of the public-policy case after 2015. Everything else either fails or belongs elsewhere in the Section 34 map.

NOTE

What this chapter deliberately leaves out

Patent illegality on the face of a domestic award under Section 34(2A)-including no-evidence findings, ignored vital evidence, unreasoned awards, and contractual wanderings-is the subject of the next chapter. Do not collapse that ground into public policy; the statute separated them for a reason.

06

Patent Illegality on the Face of the Domestic Award

Section 34(2A): root-going error, not appellate correction

Domestic awards only: the Section 34(2A) gate

Patent illegality is a court-found ground inserted for **purely domestic** awards. It does not apply to awards arising from international commercial arbitrations, even when the seat is in India and recourse lies under Section 34. Counsel must therefore classify the arbitration at the threshold before pleading this ground.

THE ARBITRATION AND CONCILIATION ACT, 1996 - Section 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 reappreciation of evidence.

Patent illegality confined to purely domestic awards

LAWWORLD 2021 SC 1152

After the 2015 Amendment, Section 34(2A) patent illegality is unavailable for awards from international commercial arbitrations under Section 2(1)(f), even if seated in India.

LawWorld ID: LAWWORLD 2021 SC 1152

WARNING

Proviso bars merits review

The proviso to Section 34(2A) is the operative filter: **erroneous application of law** and **reappreciation of evidence** never, by themselves, justify setting aside. Plead root-going illegality on the face of the award, or the petition fails at the threshold.

What goes to the root

Interference is confined to illegality that strikes at the award's foundation and is visible on its face. The Supreme Court has crystallised the usable categories. Each must be demonstrated from the award and the tribunal record, not by a fresh trial.

Root-going patent illegality defined

LAWWORLD 2021 SC 092

Patent illegality covers only illegality going to the root: a view that is not even a possible one;

a contract interpretation no fair-minded or reasonable person would adopt; jurisdictional wandering outside the contract; awards without reasons; and findings based on no evidence, ignoring vital evidence, or using documents not supplied to the other party.

LawWorld ID: LAWWORLD 2021 SC 092

- **Impossible view** - the tribunal's conclusion is one no reasonable person could reach on the material.
- **Perverse contract reading** - construction that no fair-minded person would adopt; a possible reading must stand.
- **Wandering outside the contract** - deciding matters not allotted by the contract or the submission.
- **No-evidence / vital-evidence ignored** - findings with no evidentiary base, or that shut out material evidence, are perverse.
- **Unreasoned award** - absence of reasons in breach of Section 31(3) is patent illegality on the face of the award.

Scope of patent illegality and Section 28(3)

LAWWORLD 2019 SC 0533

Patent illegality is confined to face-of-the-award illegality going to the root; bare contravention of substantive law is not an independent ground. Absence of reasons in breach of Section 31(3) remains patent illegality. Under the amended Section 28(3), contract construction is primarily for the arbitrator unless the view is not even a possible view, or the arbitrator wanders outside the contract.

LawWorld ID: LAWWORLD 2019 SC 0533

Perversity as patent illegality

LAWWORLD 2021 SC 074

The Section 34 court cannot act as an appellate court or re-appreciate evidence. A perverse decision-findings based on no evidence or vital evidence ignored-amounts to patent illegality and may be set aside. The same limits bind the Section 37 court.

LawWorld ID: LAWWORLD 2021 SC 074

On contract terms, Section 28(3) keeps primary construction with the tribunal. The court intervenes only when the reading is not a possible view or the tribunal has left the four corners of the bargain. A debatable but plausible construction is final, even if the court would have preferred another.

Irrational contract interpretation set aside

LAWWORLD 2020 SC 051

Affirming *Associate Builders and Ssangyong*, the Court upheld setting aside where, on a holistic reading of the BOQ and conditions, the arbitrator's interpretation was irrational and perverse-no reasonable person could have arrived at it-constituting patent illegality on the face of the domestic award.

LawWorld ID: LAWWORLD 2020 SC 051

What does not qualify

Most Section 34(2A) petitions fail because they re-argue the merits. The following are **not** patent illegality and must be kept out of the pleading.

- Mere **erroneous application of law** - wrong but reasoned legal analysis stays.
- **Re-appreciation of evidence** - quantity and quality of proof are for the tribunal.
- Another **possible view** on facts or contract terms that the court prefers.
- **Trivial or venial** errors that do not go to the root of the award.
- Disagreement with the tribunal's choice among competing constructions inside the contract.

Error within jurisdiction is not patent illegality

LAWWORLD 2025 KAR 0717

Dispute over inclusion and effect of a price-escalation clause lay within the tribunal's jurisdiction; any error in construction was an error within jurisdiction. Under Sections 34 and 34(2A) the court cannot sit in appeal, reappreciate evidence, or interfere for possible errors of law or contract interpretation.

LawWorld ID: LAWWORLD 2025 KAR 0717

Arbitrator is master of the evidence

LAWWORLD 2014 SC 1126

The court does not act as a court of appeal on facts. Once the arbitrator's approach is not arbitrary or capricious, the arbitrator is the last word on the quantity and quality of evidence. Perversity is limited to no evidence, irrelevant material, or ignoring vital evidence.

LawWorld ID: LAWWORLD 2014 SC 1126

TIP

Drafting filter

Before filing, ask: Is the illegality visible on the face of the award, and does it destroy the root? If the answer needs a full re-hearing of evidence or a better reading of a debatable clause, Section 34(2A) is the wrong tool.

Court-found character and practitioner checklist

Section 34(2A) uses the formula "the Court finds that." Patent illegality is therefore a court-found ground. Once properly raised in a Section 37 appeal and noted by the High Court, the appellate court can and should examine it; a waiver objection based on omission from the original petition does not automatically shut the door.

Patent illegality available in Section 37; waiver plea rejected

LAWWORLD 2021 SC 1154

Given the language "the Court finds that" in Section 34(2A), the court may set aside for patent illegality on the face of the award, and that power is equally available in a Section 37 appeal. A plea that the ground was not taken in the Section 34 petition did not establish waiver once the ground was raised and noted on appeal.

LawWorld ID: LAWWORLD 2021 SC 1154

07

Usable Propositions on the Limits of Interference

Working rules distilled from the leading public-policy and patent-illegality authorities

Why propositions, not narratives

Chapters 5 and 6 mapped the post-2015 public-policy ground and patent illegality under Section 34(2A). This chapter does not retell those authorities. It extracts the outer limits of interference into practitioner propositions you can apply when drafting a challenge or resisting one. Every ground pleaded later must survive this filter.

Six working propositions

The following propositions synthesise the settled limits under Sections 34 and 37. Use them as the first screen before any ground is particularised.

1. **No appellate seat.** Under Section 34 the court does not sit in appeal over the award. Merits interference is available only within the enumerated grounds—chiefly conflict with the public policy of India under Section 34(2)(b)(ii) and, for domestic awards, patent illegality under Section 34(2A). *2019 SC guidance ; 2021 SC restatement* .
2. **Possible views stand.** A plausible interpretation of the contract or a possible view on facts must be sustained. The court cannot set aside an award merely because another construction is available or appears better. *2019 SC on s. 37 ; 2021 SC on contract construction* .
3. **Perversity and root-going illegality only.** Interference is confined to findings that are arbitrary, capricious or perverse, that shock the conscience, or where the illegality goes to the root of the matter. Trivial error and mere erroneous application of law do not qualify. *2019 SC guidance ; 2019 SC on s. 34(2A) ; 2021 SC on patent illegality* .
4. **Post-2015 public policy is narrow.** Public policy is not a catch-all. After the 2015 amendments it is confined to fundamental policy of Indian law and the most basic notions of morality or justice (together with fraud or corruption). It does not reopen a wrong application of substantive law. *2021 SC ; 2021 SC* .
5. **No re-appreciation of evidence.** The Section 34 court cannot reweigh evidence, draw fresh inferences, or substitute its own factual preference. Findings based on no evidence, or that ignore vital evidence, may disclose patent illegality; ordinary evidentiary disagreement does not. *2021 SC ; Karnataka HC 2021* .
6. **Section 37 wears the same cage.** An appeal under Section 37 is a continuation of the

Section 34 proceeding. Appellate powers are co-extensive with-and cannot travel beyond-the restrictions in Section 34. The appellate court cannot undertake an independent merits reassessment or enlarge the grounds. *2021 SC ; Karnataka HC 2024 ; Karnataka HC 2023* .

Supreme Court on Ss. 34 and 37 - scope of interference

LAWWORLD 2019 SC 0269

Holds that the court does not sit in appeal; merits interference is limited to public-policy conflict; and interference is confined to arbitrary, capricious or perverse findings, or illegality going to the root. A possible view based on the record must stand.

LawWorld ID: LAWWORLD 2019 SC 0269

Supreme Court on patent illegality and s. 28(3)

LAWWORLD 2019 SC 0533

Section 34(2A) reaches only illegality on the face of the award going to the root-not mere erroneous application of law or re-appreciation of evidence. Contract construction is for the arbitrator unless the view is not even a possible view, or the tribunal wanders outside the contract.

LawWorld ID: LAWWORLD 2019 SC 0533

Supreme Court on the limited character of Ss. 34 and 37

LAWWORLD 2021 SC 1153

Section 34 is a restricted supervisory remedy, not normal appellate jurisdiction. Public policy is not a catch-all; courts must defer to a plausible tribunal view. Section 37 appeals lie only on the same limited grounds and cannot enlarge interference.

LawWorld ID: LAWWORLD 2021 SC 1153

Applying the filter before you draft

These propositions are not abstract. They decide what belongs in a Section 34 petition and what invites dismissal. A ground that asks the court to prefer a different contractual reading, re-balance evidence, or correct a debatable point of law will fail the filter even if attractively pleaded. A ground that shows the tribunal ignored vital evidence, adopted a construction no fair-minded person could hold, or breached a root requirement of the Act (for example Section 31 reasons) may pass.

WARNING

Do not plead 'error' as 'perversity'

Labelling a disagreement 'perverse' or 'patently illegal' does not enlarge jurisdiction. The note under each ground must identify, from the tribunal record, why no reasonable tribunal could have reached the result, or which illegality goes to the root. Bald adjectives are a common pleading failure.

Hold these propositions constant through the limitation, notice, drafting, and award-holder chapters that follow. Section 37 doctrine is developed fully later; the operative rule for now is simple: the appellate court cannot give you what Section 34 refused.

Supreme Court on patent illegality and post-amendment public policy

LAWWORLD 2021 SC 1154

Patent illegality must go to the root, not a trivial or merely erroneous application of law. Post-amendment public policy is confined to fundamental policy of Indian law and basic notions of justice or morality. Re-appreciation of evidence is impermissible; no-evidence findings or ignoring vital evidence may qualify.

LawWorld ID: LAWWORLD 2021 SC 1154

08

Limitation under Section 34(3): The Hard Clock

Three months, thirty-day condonation, and when time starts

Three months, thirty days, and the absolute outer bar

Section 34(3) fixes a hard clock. An application to set aside an arbitral award must be made within **three months** of the date on which the applicant received the award. The proviso allows the court, if **sufficient cause** is shown, to entertain the application within a further period of **thirty days**, but not thereafter. The words "but not thereafter" are mandatory and negative; they leave no residual discretion to condone delay beyond that outer window.

Section 34(3) limitation and restricted power of condonation

Supreme Court, 2018

The court's power to condone is confined to the further thirty days alone; applications filed beyond three months plus thirty days are barred.

LawWorld ID: LAWWORLD 2018 SC 0337

Interplay of Section 34(3) with the Limitation Act

Supreme Court, 2018

Section 5 of the Limitation Act has no application to a Section 34 application. Section 14 may apply to exclude time spent bona fide before a court without jurisdiction, but it cannot stretch the statutory outer limit itself.

LawWorld ID: LAWWORLD 2018 SC 1230

WARNING

No residual condonation

Do not file a bare Section 5 application hoping for equitable extension past three months plus thirty days. Courts treat the outer limit as absolute. If Section 14 exclusion is claimed, plead it with particulars and still check that the residual period falls inside the statutory cap.

When the clock starts: signed receipt and Section 33

Limitation runs from the date the party **received** the arbitral award. That expression is read with Section 31(5): a signed copy of the award made under Section 31(1) must be delivered to each party. Receipt of an unsigned copy, a photocopy from another source, or mere knowledge of the award does not start time.

Starting point under ss. 31(5) and 34(3)

Supreme Court, 2011

Limitation commences only when a signed copy is delivered to or received by the party by or on behalf of the tribunal, not from any other sourced copy.

LawWorld ID: LAWWORLD 2011 SC 0263

Only one legally relevant date: receipt of signed award

Supreme Court, 2021

Making and delivery are distinct; the single relevant date for the three-month-plus-thirty-day clock (and for the Section 33 window) is receipt of the signed award.

LawWorld ID: LAWWORLD 2021 SC 032

Where a party makes a request under Section 33 for correction, interpretation, or an additional award, Section 34(3) expressly shifts the start date to the date on which that request is disposed of. The request must itself be maintainable under Section 33-confined to computation, clerical or typographical errors, agreed interpretation, or omitted claims. A belated letter seeking review or payment clarification after the Section 34 window has already closed does not restart time.

Limitation when a Section 33 order is passed

High Court of Karnataka, 2022

Where a Section 33 request is disposed of, three months plus thirty days run from that disposal date; filings within that recomputed window are in time.

LawWorld ID: LAWWORLD 2022 KAR 0737

Section 33 request must be maintainable

High Court of Karnataka, 2024

Only a request falling within the scope of Section 33 yields the shifted start date under Section 34(3); a non-qualifying request does not.

LawWorld ID: LAWWORLD 2024 KAR 0153

Post-expiry review request gives no fresh cause

Supreme Court, 2007

There is no power of review under the Act; a clarification letter outside Section 33, sent after the limitation period, cannot reopen the clock.

LawWorld ID: LAWWORLD 2007 SC 02147

TIP

Identify the receiving officer

In government and corporate matters, pin the date to the officer who represented the party in the arbitration and actually received the signed award-not an earlier internal routing date.

Union receipt date illustrates how that factual finding can bring a filing inside the condonable thirty days.

Service issues and counsel diary control

Because delivery of the signed award is the trigger, counsel must treat service proof as a limitation exhibit. Track the mode of delivery, the addressee, and the physical or electronic acknowledgement. Deemed-receipt rules under Section 3 of the Act can fix the date when a written communication is delivered to the last-known address; do not assume informal knowledge or office gossip starts or stops the clock.

NOTE

What this chapter does not cover

Prior notice under Section 34(5) and the one-year disposal aspiration under Section 34(6) are treated in the next chapter. Limitation is independent of that notice regime and must be secured first.

09

Section 34(5) Prior Notice and the One-Year Disposal Mandate

Affidavit, service discipline, and Section 34(6)

Prior notice and the compliance affidavit

Before filing a Section 34 application, the applicant must issue prior notice to the other party. The petition should be accompanied by an affidavit stating that this notice has been given. The object is simple: the award-holder should not be ambushed, and the court should see, on day one, that service discipline has been observed.

Serve by a method that yields proof: registered post with acknowledgment due, courier with tracking, or hand delivery against acknowledgment. Keep copies of the notice, proof of dispatch, and any acknowledgment as annexures. Vague averments without documents invite a preliminary objection on maintainability.

Non-compliance and the one-year disposal aspiration

Courts have treated Section 34(5) as directory, not a jurisdictional bar that automatically kills the petition. Defective or missing notice does not, by itself, require rejection if the opposite party has effective notice and no real prejudice is shown. Still, poor service practice wastes the first hearing and hands the award-holder a free preliminary point.

LAWWORLD 2018 SC 0740

Supreme Court, 2018

Held Section 34(5) directory, yet directed every court dealing with a Section 34 application to endeavour to dispose of it within one year. Where notice is served within the Section 34(3) period, the year runs from service; where notice issues later, from filing-aligned with commercial-court disposal timelines.

LawWorld ID: LAWWORLD 2018 SC 0740

*Section 34(6) expresses the legislature's aspiration that the application be disposed of expeditiously, and in any event within one year from the date on which the notice referred to in Section 34(5) is served. **LAWWORLD 2018 SC 0740** converted that aspiration into a firm judicial direction: courts must strive for one-year disposal, timed from service when notice falls inside the limitation window, or from filing when service is later.*

WARNING

Common defects

No affidavit; notice issued after filing; service only on counsel without party particulars; undated or unsigned notice; and bare assertion of service without postal or courier proof. Cure early-do not wait for the award-holder to weaponise the defect.

TIP

Practice point

Diary the one-year mark from proven service (or filing, if service is delayed). Press for early case management; the directory character of Section 34(5) is not a licence for sloppy notice.

10

Section 36: Enforcement, Automatic Stay Unwound, and Stay Practice

From filing a challenge to executable decree

When the award becomes executable

Finality under Section 35 is only half the story. Enforceability turns on Section 36. Once the time for a Section 34 application has expired, or such an application has been made and refused, the award is enforced under the Code of Civil Procedure in the same manner as if it were a decree. No separate civil-court judgment is needed; the statute supplies the fiction that converts the award into an executable instrument.

Nature of arbitral award vis-à-vis civil court decree

Supreme Court, 2018

Section 36 creates an enforcement mechanism only: the award is enforced as if it were a decree, but the fiction does not convert it into a decree of any particular civil court. The tribunal has no power of execution.

LawWorld ID: LAWWORLD 2018 SC 0210

Domestic award as deemed decree

Supreme Court, 2006

A domestic award not set aside under Section 34 becomes final and binding under Section 35 and, by the Section 36 fiction, enforceable as a decree; mere filing of an appeal does not stay its operation.

LawWorld ID: LAWWORLD 2006 SC 0540

Execution therefore proceeds under Order XXI CPC. The award-holder files an execution petition in the competent court once the Section 34 clock has run or the challenge has failed. Until then, as clarified in [the 2006 SICA interplay ruling](#), the award is not yet a decree for collateral statutory purposes that turn on decree status.

Automatic stay unwound

Before the 2015 redesign, practice treated pendency of a Section 34 petition as an automatic stay. That reading is gone. Filing a Section 34 application does not by itself render the award unenforceable. Unenforceability arises only if the court, on a separate application, grants stay under Section 36(2)-(3).

No automatic stay; amended Section 36 clarificatory

Supreme Court, 2019

Section 36 read with Section 35 only provides that a final award is enforced as a decree. It does not imply that filing Section 34 makes the award inexecutable. Earlier decisions treating mere pendency as automatic stay are per incuriam. Amended Section 36 is clarificatory: stay of a money award follows CPC money-decree principles on a separate reasoned application.

LawWorld ID: LAWWORLD 2019 SC 1173

Amended Section 36 is procedural

Supreme Court, 2018

Enforcement in Section 36 means execution attracting Order XXI and Order XLI Rule 5 CPC. Pre-amendment Section 36 was only a clog on the decree-holder's right, not a vested right of automatic stay in the judgment-debtor. Being procedural, substituted Section 36 applies even to Section 34 applications filed before 23-10-2015.

LawWorld ID: LAWWORLD 2018 SC 031

WARNING

No stay by default

Do not assume the award is frozen because you filed Section 34. Without a separate stay order, the award-holder may proceed to execution. Diary the stay application with the petition or immediately after.

Separate stay application, conditions, and security

Stay is a matter of judicial discretion under Section 36(3), exercisable subject to such conditions as the court deems fit, with reasons recorded in writing. The court must have due regard to CPC principles for stay of a money decree, including Order XLI Rule 5. Conditional stay is the default; unconditional stay is mandated only where a prima facie case of fraud or corruption in the arbitration agreement, the contract, or the making of the award is made out.

Enforcement and conditional stay of award

Supreme Court, 2022

Under Section 36(1) the award is enforceable like a decree once Section 34 limitation expires. Filing Section 34 does not itself stay enforcement. On a separate Section 36(2) application the court may grant stay under Section 36(3) subject to conditions and reasons, and may require security covering the entire award with interest. The proviso mandates due regard to CPC money-decree stay principles and unconditional stay where prima facie fraud or corruption is shown.

LawWorld ID: LAWWORLD 2022 SC 0933

No automatic stay; conditional stay as default

High Court of Karnataka, 2025

Stay under Section 36(3) is discretionary, subject to conditions, with due regard to Order 41 Rule 5 CPC. Unconditional stay is confined to a prima facie fraud or corruption case; otherwise conditional stay is the default.

LawWorld ID: LAWWORLD 2025 KAR 0820

CPC reference in Section 36(3) is directory

Supreme Court, 2019

"Have due regard to" CPC stay provisions is directory, not mandatory. CPC is a guideline; it cannot cut down the power under the Arbitration Act as a self-contained statute. CPC applies only insofar as it is consistent with the Act.

LawWorld ID: LAWWORLD 2019 SC 07159

In practice, expect deposit of the awarded sum, a bank guarantee, or other security for the award plus interest. The court balances the award-holder's right to fruits of the award against the challenger's risk of irreversible recovery if the award is later set aside. Recorded reasons are mandatory; a bare stay order is vulnerable.

Strategic timing for both sides

For the challenger, delay in seeking stay is costly: execution may attach assets before the court is moved. Pair the stay application with the Section 34 filing and be ready with security proposals. For the award-holder, watch the limitation diary. The day the Section 34 window closes without a filing-or the day stay is refused-move execution. Oppose open-ended stays; press for full security and sunset clauses. In a Section 37 appeal against refusal to set aside, enforceability has already gained ground; any stay must be of the award itself and still answers money-decree principles, as noted in [the 2014 Supreme Court ruling on stay in Section 37 appeals](#) .

TIP

Award-holder playbook snapshot

Calendar the last date for Section 34. If no petition is filed, execute immediately. If a petition is filed without a stay application, proceed to execution and force the challenger to move urgently. If stay is sought, demand security for the full award with interest and resist unconditional stay unless fraud or corruption is truly pleaded and shown prima facie.

Section 36 is procedural. The substituted regime applies to pending Section 34 petitions as well. There is no vested right in the award-debtor to an automatic freeze. Treat enforcement readiness and stay strategy as first-order tasks from the day the award is received-not as afterthoughts once execution notice arrives.

11

Drafting the Section 34 Petition

Structure, model grounds, and annexure checklist

Court-ready skeleton

Draft the petition as a commercial application under Section 34 of the Arbitration and Conciliation Act, 1996, not as a plaint seeking appellate relief. The cause title must name the correct court under Section 2(1)(e)-the principal civil court of original jurisdiction, or the High Court where it exercises ordinary original civil jurisdiction-and, where the dispute is a commercial dispute of Specified Value, the Commercial Court or Commercial Division under the Commercial Courts Act, 2015. Jurisdiction mistakes are fatal: a petition filed in a court that is not a "court" under Section 2(1)(e) fails at the threshold, and Section 42 channels subsequent applications only when the first application was made to a competent court.

Jurisdiction under Section 2(1)(e) for Section 34

LAWWORLD 2009 SC 05167

A Section 34 application must be filed before a court empowered under Section 2(1)(e). Dismissal for want of jurisdiction is not a refusal to set aside the award for Section 37 purposes-get the forum right at filing.

LawWorld ID: LAWWORLD 2009 SC 05167

Section 2(1)(e) and Section 42 - proper court

LAWWORLD 2014 SC 0946

"Court" is exhaustive: principal civil court of original jurisdiction or High Court with original civil jurisdiction. Section 42 covers Sections 9 and 34 only when the first application is to such a court with subject-matter jurisdiction.

LawWorld ID: LAWWORLD 2014 SC 0946

THE COMMERCIAL COURTS ACT, 2015 - Section s.10

Applications and appeals under the Arbitration and Conciliation Act arising from arbitrations other than international commercial arbitration that would ordinarily lie before a principal civil court shall be filed in and heard by the Commercial Court exercising territorial jurisdiction; where filed on the original side of a High Court with a Commercial Division, they are heard by that Division.

Limitation and Section 34(5) averments

*Plead the **date of receipt** of the signed award with specificity (mode, courier/email proof, person who received). If a Section 33 request was made, plead the disposal date*

and compute three months plus the further thirty days from that date. State whether the petition is within three months or seeks condonation for sufficient cause within the outer thirty-day window-and never beyond. For Section 34(5), plead the date and mode of prior notice to the other party, attach proof, and file the supporting affidavit endorsing compliance.

Limitation when Section 33 order is passed

LAWWORLD 2022 KAR 0737

Where a Section 33 request is made, Section 34(3) runs from the date that request is disposed of. Plead and annex the Section 33 order so the clock is correctly stated on the face of the petition.

LawWorld ID: LAWWORLD 2022 KAR 0737

Facts and ground-wise pleadings

Keep the narrative short. Identify the arbitration agreement, the disputes referred, composition of the tribunal, key procedural milestones, and the operative directions of the award. Do not re-argue the merits. Map each challenge to a statutory head and support it with **particulars from the record** -page or exhibit references to the award, pleadings before the tribunal, and hearing minutes. Courts deciding Section 34 petitions must examine whether each ground falls within Section 34(2) or 34(2A) and then decide each available ground with reasons; draft so that task is easy.

Duty to record submissions and decide ground-wise

LAWWORLD 2021 KAR 043

The Section 34 court must record submissions in gist, test whether each ground is available under 34(2)/34(2A), and decide each available ground separately with reasons. Structure your petition ground-wise to match that duty.

LawWorld ID: LAWWORLD 2021 KAR 043

WARNING

No merits appeal in disguise

Section 34 is not appellate review. Bald allegations of "erroneous law," "wrong appreciation of evidence," or "inadequate damages" without a statutory hook invite dismissal. Tie every plea to 34(2)(a), 34(2)(b), or 34(2A) and to the face of the record.

Model ground formulations

Use short, particularised formulations. Adapt the bracketed inserts to the record. Do not paste abstract doctrine without facts.

- **Invalid agreement - s.34(2)(a)(ii):** The arbitration agreement dated [date] is invalid under [proper law] because [particulars: lack of authority / non-compliance with form / discharge]. The tribunal proceeded despite the objection recorded at [record ref.].
- **No proper notice / inability to present case - s.34(2)(a)(iii):** The applicant received no proper notice of [appointment / hearing on date]. Alternatively, the tribunal

refused [document production / cross-examination / adjournment] sought by application dated [date], disabling the applicant from presenting its case on [issue], as appears from [minutes/order ref.].

- **Excess of mandate - s.34(2)(a)(iv):** Claim [X] / relief [Y] was never submitted to arbitration under clause [] / terms of reference dated []. Paragraph [] of the award decides that matter. The valid portion on [severable claims] may be severed under the proviso.
- **Composition / procedure - s.34(2)(a)(v):** The tribunal was constituted contrary to clause [] / Part I in that [unilateral appointment / wrong number of arbitrators]. Procedure agreed in clause [] was departed from at [record ref.] without party consent.
- **Public policy - s.34(2)(b)(ii):** The award conflicts with the public policy of India in that it was induced by [fraud/corruption particulars], or contravenes the fundamental policy of Indian law by [judicial-approach / natural-justice breach tied to record], or shocks the most basic notions of morality or justice by [specific operative effect].
- **Patent illegality - s.34(2A) (domestic awards only):** The award is patently illegal on its face: [no-evidence finding at para ... / vital evidence at exhibit ... ignored / contractual construction no fair-minded person would adopt of clause ... / unreasoned on claim ... in breach of s.31 / decision outside the contract on ...].

Patent illegality and narrowed public policy - pleading anchors

LAWWORLD 2021 SC 092

Patent illegality covers root-going illegality, impossible views, unfair contractual readings, wandering outside the contract, no-evidence or ignored vital evidence, and unreasoned awards. Public policy is confined to fraud/corruption, fundamental policy of Indian law, and basic notions of morality or justice. Draft particulars to those boxes only.

LawWorld ID: LAWWORLD 2021 SC 092

Limits on patent illegality and public policy

LAWWORLD 2021 SC 1154

Illegality must go to the root; mere erroneous application of law and re-appreciation of evidence are impermissible. Use this boundary when pruning weak grounds before filing.

LawWorld ID: LAWWORLD 2021 SC 1154

TIP

One ground, one bundle of particulars

For each ground, annex a short schedule: award paragraphs, related tribunal orders, and the exact contract clauses. Judges and opposite counsel should be able to verify the point without hunting the entire record.

Prayer, stay under Section 36, and annexures

Pray that the award dated [date] be set aside. Where only part of the award is vulnerable under the excess-of-mandate proviso or is otherwise severable, pray in the alternative

that paragraphs [] / claims [] be set aside and the remainder sustained. Seek costs. Do not bury a stay request inside a vague omnibus clause: after the 2015 redesign, filing Section 34 does not automatically stay enforcement. Move a separate application under Section 36 for stay of operation/enforcement, supported by affidavit, addressing balance of convenience and readiness to offer security as the court may direct.

Full document disclosure in commercial filings

LAWWORLD 2021 SC 0930

In commercial disputes, amended Order XI CPC requires disclosure of all documents in the party's power, possession, control or custody with the pleading, supported by a Statement of Truth. Do not hold back record extracts you intend to rely on.

LawWorld ID: LAWWORLD 2021 SC 0930

NOTE

Severance discipline

Ask for partial set-aside only when the bad portion is conceptually and operatively separable. A prayer that invites the court to rewrite quantum or re-mould contractual rights will be read as an appeal in disguise.

Before presentation, re-read the petition against the narrow gate: every ground must fit Section 34(2) or 34(2A), every particular must appear on the tribunal record, and limitation plus Section 34(5) must be clean on the face of the papers. A disciplined skeleton shortens hearing time and preserves the challenge for the only questions the court may lawfully decide.

12

For the Award-Holder: Resisting the Challenge

Preliminary objections, record discipline, and stay counter-strategy

Preliminary bars: limitation and prior notice

The award-holder's first move is to test whether the challenge is even maintainable. Attack limitation under Section 34(3) from the face of the petition and the delivery facts. The outer clock is rigid: three months from receipt of the signed award, plus at most thirty days on sufficient cause-nothing beyond.

THE ARBITRATION AND CONCILIATION ACT, 1996 - Section 34

Recourse against an arbitral award lies only by an application under this section. Sub-section (3) fixes the filing window from receipt of the award (or disposal of a Section 33 request). Sub-section (5) requires prior notice to the other party and an accompanying affidavit endorsing compliance. Sub-section (6) directs expeditious disposal, ordinarily within one year of service of that notice.

Delivery under Section 31(5) is to the party, not counsel alone; where the challenger received the signed award earlier than pleaded, press that start date. Deemed service on refusal at the business address can also start the clock. Delay beyond the statutory outer limit cannot be saved by administrative excuses or by misreading Section 5 of the Limitation Act as a general extender-though true Section 14 exclusion for a bona fide wrong-forum prosecution may still be tested on its narrow facts.

Delay beyond Section 34(3) outer limit

LAWWORLD 2018 SC 1230

Even after Section 14 exclusion, residual delay past the Section 34(3) maximum cannot be condoned; administrative approval difficulties are not sufficient cause beyond that outer limit.

LawWorld ID: LAWWORLD 2018 SC 1230

Service on counsel and Section 31(5)

LAWWORLD 2023 KAR 0957

'Party' in Sections 31(5) and 34(3) means the party itself; service only on advocate does not start limitation until a signed copy is delivered to the party.

LawWorld ID: LAWWORLD 2023 KAR 0957

TIP

Order 7 Rule 11 caution

On a pure limitation rejection, the court looks at plaint averments, not the award-holder's contrary correspondence. If the petition's own dates keep it inside time, reserve the delivery fight for evidence rather than a premature rejection application-see [LAWWORLD 2023 KAR 051](#) .

In parallel, scrutinise Section 34(5) compliance: prior notice, proof of service, and the mandatory affidavit. Defective notice or a missing endorsement affidavit is a clean preliminary objection and should be taken at the first listing.

Record discipline and the 'possible view' defence

Force every ground back onto the tribunal record. No fresh affidavits on merits, no re-opening of oral evidence, and no documents never put to the tribunal. Your reply should map each pleaded ground to the award pages and hearing record that answer it, and flag bare allegations unsupported by that record.

Limited scope under Section 34

LAWWORLD 2020 SC 054

Section 34 is not appellate review. Interference is justified only where perversity goes to the root and no alternative interpretation sustains the award; where two views are possible, the tribunal's plausible view stands.

LawWorld ID: LAWWORLD 2020 SC 054

Demonstrate that the tribunal's reading of the contract is a **possible view** and that reasons exist under Section 31. Erroneous application of law, re-appreciation of evidence, or a mere alternative interpretation do not open the award. Courts must not interfere in a casual manner or because they prefer another outcome- [LAWWORLD 2019 SC 1245](#) ; [LAWWORLD 2014 SC 0813](#) ; [LAWWORLD 2025 KAR 0818](#) .

Stay counter-strategy, enforcement, and exit postures

THE ARBITRATION AND CONCILIATION ACT, 1996 - Section 36

Once the time for a Section 34 application has expired, the award is enforced under the CPC as if it were a decree. Filing a Section 34 application does not by itself stay enforcement; a separate stay application is required, and the court may impose conditions including security.

Oppose any stay as a matter of course. If stay is granted, press for full security, deposit of the awarded sum, or tightly framed conditions and a short returnable date. Where no stay operates, move immediate execution. Keep certified copies, computation of interest, and bank details execution-ready from day one.

Keep two commercial exits open. First, **partial severance** : where only a discrete head is vulnerable, consent to setting aside that slice and preserve the rest-cheaper than risking the whole award. Second, calibrated settlement: use the pending challenge and stay leverage to lock a discounted cash recovery with a drop of all objections and a consent

decree or undertaking against further recourse.

WARNING

Do not re-try the arbitration

Never answer a merits-heavy petition with your own merits re-argument. That invites the court into forbidden territory. Stay inside the record, the enumerated grounds, and the deference standard- [LAWWORLD 2023 KAR 103](#) ; [LAWWORLD 2021 KAR 043](#) .

Treated this way, the award-holder's posture is disciplined and offensive: kill untimely or defective petitions early, confine the rest to the narrow gate, tighten or vacate stay, and convert survival of the award into cash through enforcement or a hard-edged settlement.

13

Section 37 Appeals: Same Cage, Narrower Still

Appealable orders, no second appeal, and appellate restraint

What is appealable under Section 37(1)(c)

THE ARBITRATION AND CONCILIATION ACT, 1996 - Section s.37

Section 37(1) provides that, notwithstanding anything in any other law, an appeal shall lie from the listed orders (and from no others) to the court authorised to hear appeals from original decrees of the court passing the order. Clause (c) covers orders setting aside or refusing to set aside an arbitral award under Section 34. Section 37(3) bars any second appeal from an order passed in appeal under the section, while saving any right to appeal to the Supreme Court.

The appealable order is the disposal of the Section 34 proceeding itself-whether the award is set aside or the challenge is refused. The phrase "setting aside or refusing to set aside ... under section 34" is read to cover the entirety of Section 34. A refusal to condone delay under Section 34(3) finally disposes of the challenge on limitation and is therefore appealable under Section 37(1)(c).

Appeal against refusal to condone delay under Section 34(3)

LAWWORLD 2021 SC 0228

Holds that "setting aside or refusing to set aside an arbitral award under section 34" covers the whole of Section 34, including sub-section (3). Refusal to condone delay has the effect of refusing to set aside the award and is maintainable under Section 37(1)(c).

LawWorld ID: LAWWORLD 2021 SC 0228

Same cage, narrower still: appellate restraint

Section 37 does not open a fresh merits lane. The appellate court is bound by the same outer limits that bind the Section 34 court and cannot enlarge the grounds, re-appreciate evidence, or substitute its view for a plausible tribunal view. Interference remains available only where a recognised Section 34 ground is made out-public policy as narrowed post-2015, or patent illegality on the face of a domestic award going to the root.

Section 37 is not a regular first appeal

LAWWORLD 2021 SC 1127

The High Court exercising Section 37 jurisdiction cannot proceed as in a regular first appeal from a civil decree, nor decree the claim in entirety. Jurisdiction under Section 37 arising from disposal of a Section 34 petition is distinct from ordinary appellate jurisdiction.

LawWorld ID: LAWWORLD 2021 SC 1127

No merits re-entry under Section 37

LAWWORLD 2022 SC 0144

Under Section 37 the High Court has no jurisdiction to enter the merits as if deciding a first appeal against a trial decree. Scope is confined to the limited grounds for setting aside an award; reappreciation of merits is jurisdiction not vested.

LawWorld ID: LAWWORLD 2022 SC 0144

Appellate jurisdiction even more circumscribed

LAWWORLD 2025 KAR 0317

In a Section 37 appeal the appellate court's jurisdiction is even more circumscribed and cannot travel beyond the confines of Section 34.

LawWorld ID: LAWWORLD 2025 KAR 0317

Same limitations constrain Section 37

LAWWORLD 2021 SC 074

The court under Section 34 cannot act as an appellate court or re-appreciate evidence; the same limitations constrain appellate interference under Section 37.

LawWorld ID: LAWWORLD 2021 SC 074

WARNING

Do not plead a wider case on appeal

An appeal that invites re-finding of facts, contractual re-interpretation, or substitution of a "better" view will fail even if the Section 34 court itself overreached. Frame the appeal as correction of a Section 34 error within the statutory cage-not as a second run at the award.

No second appeal; Supreme Court path preserved

Section 37(3) is categorical: no second appeal lies from an order passed in appeal under the section. Once the statutory first appeal is decided, the same provision cannot be invoked again in a higher court of the State hierarchy. The only route left open by the statute is any right of appeal to the Supreme Court.

Bar on second appeals under Section 37(3)

LAWWORLD 2009 KAR 1135

From Section 37(3) it is clear that no second appeal shall lie from an order passed in appeal under Section 37; only the right to appeal to the Supreme Court is saved. After exhausting the District Court remedy under Section 37, a further appeal under the same provision before the High Court is not maintainable.

LawWorld ID: LAWWORLD 2009 KAR 1135

Express bar and Section 5

LAWWORLD 2006 SC 1160

Characterises the Section 37 appeal as statutory and notes that the express bar on second appeals in Section 37(3) is enacted by way of abundant caution given the blanket restriction on judicial intervention in Section 5, while saving the Supreme Court route.

LawWorld ID: LAWWORLD 2006 SC 1160

Strategy: appeal, cross-appeal, and SC preservation

TIP

When not to appeal

If the Section 34 court correctly applied the possible-view rule and no root-going illegality or public-policy breach is identifiable on the face of the record, an appeal rarely improves the position and may harden concurrent findings against you before the Supreme Court.

Preserve SLP powder for clear jurisdictional overreach.

Cross-appeals matter when both sides are partly aggrieved-e.g., severance of one claim head, or partial set-aside. File within the appeal limitation applicable to the forum; do not assume oral reservation at the Section 34 hearing preserves a later challenge. On an adverse Section 37 order, move promptly to the Supreme Court if the appellate court itself re-entered merits or enlarged grounds, as that is the classic pattern of excess corrected in [LAWWORLD 2021 SC 1127](#) and [LAWWORLD 2022 SC 0144](#) .

14

Foreign Awards: Part II Enforcement and Resistance

Section 48 grounds, security, and contrast with Section 34

Enforcement path: Sections 47 to 49

Part II, Chapter I governs New York Convention awards. The award-holder applies for enforcement and, at filing, produces the materials in Section 47: the authenticated award (or copy), the arbitration agreement (or certified copy), and evidence that the award is a foreign award, plus an English translation if needed. Once the court is satisfied the award is enforceable, Section 49 deems it a decree of that court. Recognition and execution proceed in a single proceeding; a separate 'rule of court' stage is not required.

THE ARBITRATION AND CONCILIATION ACT, 1996 - Section s.47

The party applying for enforcement shall produce at the time of the application: (a) the original award or a duly authenticated copy; (b) the original arbitration agreement or a duly certified copy; and (c) such evidence as may be necessary to prove that the award is a foreign award. A foreign-language award or agreement must be accompanied by a certified English translation.

Section 47 filing requirements directory at the threshold

LAWWORLD 2018 SC 1112

'Shall' in Section 47 is read as directory at initial filing in light of the Convention's pro-enforcement object; non-filing of the agreement at the outset is not fatal if the court can later be satisfied on the Section 48 inquiry.

LawWorld ID: LAWWORLD 2018 SC 1112

Single proceeding for enforceability and execution

LAWWORLD 2001 SC 0520

Once the court is satisfied under Sections 47 and 48 that the foreign award is enforceable, Section 49 deems it a decree and the same court proceeds to execution; bifurcated enforceability-then-execution suits defeat the Act's object.

LawWorld ID: LAWWORLD 2001 SC 0520

Under Section 46, an enforceable foreign award is binding for all purposes on the persons between whom it was made and may be relied on by way of defence, set-off, or otherwise in Indian proceedings. Geneva Convention awards follow a separate track in Part II, Chapter II (Sections 53-60) with their own conditions of enforcement under

Section 57; that path is not interchangeable with the New York Convention scheme and is noted only to keep the two chapters distinct.

Section 48 refusal grounds and public policy

Enforcement 'may be refused' only if the resisting party brings the case clearly within Section 48(1) or (2). The posture is discretionary and pro-enforcement. Grounds under Section 48(1) track the Convention: incapacity or invalid agreement under the applicable law; lack of proper notice or inability to present the case; award beyond the submission (with severance of the excess where separable); improper composition or procedure; and the award not yet binding or set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.

THE ARBITRATION AND CONCILIATION ACT, 1996 - Section s.48

Enforcement may be refused if the opposing party proves the conventional grounds in sub-section (1) (incapacity/invalid agreement; notice/inability to present case; excess of submission; composition/procedure; award not binding or set aside/suspended). Under sub-section (2), refusal is also available if the subject-matter is not arbitrable under Indian law, or enforcement would be contrary to the public policy of India. Explanation 1 confines public policy to fraud/corruption (or violation of ss. 75/81), contravention of the fundamental policy of Indian law, or conflict with the most basic notions of morality or justice. Explanation 2 bars merits review when testing fundamental policy. Sub-section (3) permits adjournment and security where foreign set-aside or suspension proceedings are pending.

Proof under Section 48 and exclusion of perversity

LAWWORLD 2021 SC 088

'Proof' in Section 48(1) means establishment from the tribunal record and limited material relevant to the ground-not a full oral trial. Grounds are construed narrowly; there is no warrant to review merits or correctness, and post-2015 'perversity' does not travel into Section 48.

LawWorld ID: LAWWORLD 2021 SC 088

Post-2015 public policy under Sections 34 and 48

LAWWORLD 2019 SC 0533

Public policy in Section 48 is confined to fundamental policy of Indian law in the narrow *Renusagar* sense and the most basic notions of morality or justice. The 'interest of India' limb is deleted; Explanation 2 bars merits review under the guise of fundamental policy.

LawWorld ID: LAWWORLD 2019 SC 0533

No second look on merits at enforcement

LAWWORLD 2019 SC 02102

Section 48 is consciously constricted. Allegations that the award is contrary to contract, unsupported by reasons, or that documents were ignored are merits invitations and fall outside the section; any tribunal error is for the primary jurisdiction, not the Indian enforcement court.

LawWorld ID: LAWWORLD 2019 SC 02102

WARNING

No patent-illegality ground in Part II

Unlike domestic awards under Section 34(2A), foreign-award enforcement has **no patent-illegality mirror**. Parties who choose a foreign seat relinquish that additional domestic ground. Erroneous application of law, re-appreciation of evidence, and 'views no reasonable person would take' are not freestanding Section 48 objections. See **LAWWORLD 2021 SC 0434** and **LAWWORLD 2025 KAR 1217**.

Feature	Part I - Section 34	Part II - Section 48
Nature of proceeding	Set-aside of India-seated award	Refusal of enforcement of foreign award
Patent illegality (34(2A))	Available for non-ICA domestic awards	Not available
Public policy Explanations	Fraud; fundamental policy; basic morality/justice; no merits review	Same wording and Explanations
Proof focus	Tribunal record; enumerated grounds	Tribunal record; narrow Convention grounds
Outcome if successful	Award set aside (in whole or part)	Enforcement refused; award not deemed decree

Adjournment, security, and Section 50 appeals

Where an application to set aside or suspend the award is pending before a competent authority of the primary jurisdiction (Section 48(1)(e)), Section 48(3) lets the Indian court adjourn the enforcement decision if it considers that proper, and-on the award-holder's application-order the resisting party to give suitable security. Adjournment is discretionary, not automatic; bare filing abroad does not freeze Indian enforcement.

THE ARBITRATION AND CONCILIATION ACT, 1996 - Section s.50

An appeal lies from an order refusing to refer parties to arbitration under Section 45, or refusing to enforce a foreign award under Section 48, to the court authorised to hear appeals from such order. No second appeal lies from an order passed in that appeal, without affecting any right to appeal to the Supreme Court.

One bite at the cherry - appeal only when enforcement refused

LAWWORLD 2020 SC 0262

Legislative policy gives the award-debtor only one bite: appeal lies where enforcement is refused, not where it is granted. Section 48 does not permit a second look on merits; Article 136 interference with a judgment enforcing a foreign award is reserved for very exceptional cases of blatant disregard of Section 48.

LawWorld ID: LAWWORLD 2020 SC 0262

TIP

Drafting discipline for the award-debtor

*Lead with the precise Section 48 clause, pin every fact to the tribunal record, and disclaim any invitation to re-decide the dispute. Courts treat contract-misapplication, adequacy-of-reasons, and evidence-weight arguments as prohibited second looks-
LAWWORLD 2019 SC 02102 ; LAWWORLD 2020 SC 0934 .*

15

Closing Toolkit: Ground, Likelihood, and Drafting Tips

Synthesis table and practice outlook

Ground-by-ground triage table

Use this table at first file review. Likelihood bands are practice estimates under the post-2015 regime: courts do not sit in appeal, possible views stand, and interference remains highly constricted. Map every pleaded ground to record extracts before filing or resisting.

Scope under Sections 34 and 37

Supreme Court, 2022

Jurisdiction under Section 34 is highly constricted; Section 37 is narrower still.

Re-appreciation of evidence and substitution of contractual views are impermissible.

LawWorld ID: LAWWORLD 2022 SC 011

Ground	Core proposition	Likelihood	Drafting / defence tip
Incapacity / invalid agreement	Party must prove incapacity or invalidity under the proper law from the record; merits of the dispute are irrelevant.	Low-medium	Annex governing-law materials and contemporaneous capacity documents; bald assertions fail.
No proper notice / inability to present case	Natural-justice breach must appear from tribunal process; opportunity afforded defeats the ground.	Medium (fact-specific)	Chronology of notices, hearing dates, and refused adjournments; quote the award's process narrative.
Excess of mandate / composition	Decisions beyond submission may be severed; composition/procedure challenges usually require a prior Section 13 path.	Medium if pure excess; low if waived	Identify ultra vires paragraphs for severance; show challenge was raised (or explain why not).
Public policy - fraud / corruption	Award induced or affected by fraud or corruption, or violation of ss. 75/81; merits review barred by Explanation 2.	Low without hard proof	Particularise the inducing act with documents; never re-argue quantum as 'fraud'.

Public policy - fundamental policy / basic morality	Narrow post-2015 meaning only; no review on merits of the dispute.	Low	Plead the specific fundamental norm breached; avoid Wednesbury-style merits language.
Patent illegality (domestic only)	Illegality on the face going to the root: no possible view, contract reading no fair-minded person would adopt, no evidence / ignored vital evidence, or unreasoned award contrary to s. 31(3). Erroneous law or re-appreciation is not enough.	Context-specific	Pin the face-of-award passage; for defence, show reasons and a possible view under the contract.
Non-arbitrability (court-found)	Subject-matter not capable of settlement by arbitration under Indian law.	Low-medium	Cite the statutory bar cleanly; do not smuggle merits under this head.

Patent illegality and public-policy limits

Supreme Court, 2021

Patent illegality covers root-going errors, impossible contractual readings, and perverse no-evidence findings; public policy is confined to fraud/corruption, fundamental policy, and most basic notions of morality or justice.

LawWorld ID: LAWWORLD 2021 SC 092

TIP

One-line triage rule

If the complaint needs re-weighing evidence or choosing a 'better' contract reading, likelihood is **low** -reframe or settle. If the award ignores a vital clause, gives no reasons, or decides outside the submission, likelihood rises and pleadings should quote the face of the award.

Outlook and closing habits

Judicial restraint continues. Commercial courts routinely dismiss petitions that re-argue facts or law under a Section 34 label. Section 37 does not enlarge the cage. Award-holders should press limitation, Section 34(5) notice defects, and 'possible view' early; challengers should plead particulars mapped to 34(2)/34(2A) and seek severance only where clean.

Same limits on Sections 34 and 37

Supreme Court, 2021

No appellate re-appreciation; perversity (no evidence / ignored vital evidence) is patent illegality; the same outer limits bind the Section 37 court.

LawWorld ID: LAWWORLD 2021 SC 074

This toolkit ends the book where practice begins: enumerate the ground, test it against the face of the award and the post-2015 explanations, assign a honest likelihood band,

and draft or defend with record-tied particulars. Restraint is the default; precision is the only path through the narrow gate.

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