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ARBITRATION AND CONCILIATION

Arbitration At The Guillotine: Inside The Supreme Court’s 269 Page Judgement, UNCITRAL’s Evolution, SIAC-LCIA-HKIAC Perspectives, And The Road To The Arbitration And Conciliation Bill, 2024

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This article uses Harshbir Singh Pannu v. Jaswinder Singh[1] as a courtroom thriller in slow motion, showing how a seemingly dry question about "termination of arbitral proceedings" becomes the battleground on which arbitration either delivers justice or quietly self?destructs. Following the judgment's journey from the drafting table of the UNCITRAL Model Law to the sleek architectures of the SIAC 2025[3], LCIA 2020[4] and HKIAC 2024[5] Rules, it exposes how India's scattered provisions in Sections 25, 30, 32 and 38 of the Arbitration and Conciliation Act, 1996 have turned termination into a procedural weapon rather than a neutral case?management tool, and argues that the Arbitration and Conciliation Bill, 2024 is the system's last, best chance to rewrite the script, by folding termination into one razor?sharp provision, hard?coding a transparent, terms?of?reference?driven fee and deposit regime, and opening a clean statutory path to challenge capricious termination orders, so that Indian arbitration can finally share the same stage as SIAC, LCIA and HKIAC.

Introduction

Arbitration in India was never supposed to die on the battlefield of deposits and procedural skirmishes, yet Harshbir Singh Pannu v. Jaswinder Singh (2025 INSC 1400)[1] shows precisely how "termination of proceedings" can be weaponized to ensure that no one ever reaches the merits. In this landmark judgment, the Supreme Court walks from the drafting rooms of the UNCITRAL Model Law to the rulebooks of SIAC, LCIA and HKIAC, and in the process turns what looked like routine fee and termination provisions into a referendum on the soul of Indian arbitration.

The Story: How a Hospital Partnership Unravels into a Jurisdictional Crisis

The narrative begins not with abstract doctrine but with a partnership hospital venture in Amritsar that unravels into a high-stakes arbitral dispute worth nearly 96.5 crores. What should have been a straightforward resolution before a sole arbitrator instead morphs into a procedural spiral: fees fixed under the Fourth Schedule, a counter-claim that inflates the "sum in dispute", repeated defaults in payment, and, eventually, a termination order under Section 38 that slams the door on adjudication.

The real drama lies in what follows: a constitutional challenge to the Fourth Schedule, an attack on the arbitrator's power to revise fees, and a broader anxiety over how far a tribunal may go in punishing non-payment before arbitration itself becomes collateral damage. By the time the case reaches the Supreme Court, the narrow fight over an arbitrator's fees has become a vehicle to interrogate the entire statutory architecture governing termination under Sections 25, 30, 32 and 38 of the Arbitration and Conciliation Act, 1996.

The UNCITRAL Backstory: How Did We Get Here?

The Court does not start with Indian text; it starts with genealogy. It reconstructs the history of the UNCITRAL Working Group on the Model Law, showing how the drafters struggled to balance party autonomy, tribunal efficiency and finality in designing provisions that allow an arbitral tribunal to say, "enough, this case goes no further".

Crucially, the Court's excavation of UNCITRAL materials highlights two points that haunt the Indian statute. First, "termination of proceedings" was never meant to be a free-floating discretionary nuke; it was tied to carefully delimited scenarios, withdrawal, settlement, impossibility or futility. Second, the "mandate" of the tribunal was always understood as the lifeline of the arbitral process; to terminate proceedings without clarity on whether the mandate survives is to leave parties in a jurisdictional limbo.

Sections 25, 30, 32 and 38: A Fragmented Battlefield

Once the UNCITRAL backdrop is in place, the Court turns a harsh light on the Indian Act. Section 25 (default of a party), Section 30 (settlement), Section 32 (termination of proceedings) and Section 38 (deposits) appear, at first glance, to form a coherent grid; in practice, they operate like four different scripts written by four different authors.

The judgment painstakingly catalogues the conflicting lines of authority that have tried to stitch these provisions together: some decisions yoke terminations under Sections 25, 30 and 38 to the formal grounds in Section 32(2), while others treat each route as self-standing, producing a fog of uncertainty around when proceedings truly end and what happens to the tribunal's mandate. The result is an environment where a payment default, a failed settlement attempt, or a procedural no-show can be repackaged into "termination", often without a clear answer on whether the parties can revive claims or seek fresh arbitration.

In this landscape, Section 38 becomes especially combustible. A provision designed to secure costs turns into a lever: if one party refuses to pay its share and the other also declines to shoulder the burden, the tribunal may suspend or terminate the proceedings, an apparently neutral power that, as Pannu reveals, can derail the entire process even where serious claims are at stake.

The Fee Saga and Afcons: When Money Becomes Destiny

The Court's treatment of the fee controversy is where the story starts to feel almost noir. The sole arbitrator first fixes fees under the Fourth Schedule based on the claim; once an enormous counter-claim is filed, he recalibrates the fees upward, still relying on the same statutory matrix. The claimants protest that they cannot afford the enhanced fees, the respondent insists on paying only his half, and what began as a contractual mechanism for remuneration turns into a choke point for access to justice.

Enter Afcons Gunanusa JV[2], a prior decision whose shadow looms large over Pannu[1]. Afcons had already held that while the Fourth Schedule is constitutionally valid, its fee model is not mandatory, and arbitrators cannot unilaterally fix or revise their own fees without party consent; fees must be settled upfront, preferably through a "terms of reference" adopted in preliminary hearings. Pannu seizes this template but refuses to accept the narrative that the sole arbitrator here acted in defiance of Afcons: the Court reads the record to conclude that the basic fee matrix (the Fourth Schedule) was consented to, and the later "revision" is merely an arithmetic recalculation triggered by the counter-claim, not a fresh unilateral bargain.

This is an important doctrinal move. By distinguishing between revising the basis of fees and adjusting the quantum within an agreed matrix, the Court tries to preserve both Afcons' insistence on consent and the practical reality that claims and counter-claims will often alter the economics of the arbitration.

Termination Under Section 38: Necessary Discipline or Procedural Guillotine?

The heart of the judgment is the Court's treatment of the arbitrator's decision to terminate for non-payment under Section 38. The provision allows the tribunal to fix deposits for claims and counter-claims and, if one party refuses to pay and the other declines to cover that share, to suspend or terminate proceedings in respect of the relevant claim or counter-claim.

Pannu uses the factual matrix to expose the brutal edge of this mechanism: a claimant facing genuine liquidity constraints sees its multi-crore claim effectively extinguished, not by a merits award, but by a termination order grounded in inability to keep up with the financial demands of the process. The Court recognizes the danger that Section 38 can become a "procedural guillotine", yet it stops short of disarming the tribunal; instead, it insists that the power to terminate is real but must be exercised with sensitivity to party autonomy, proportionality and the overall integrity of the arbitral process.

In doing so, the Court explicitly ties Section 38 back to the wider architecture of Sections 25, 30 and 32, highlighting that each route to termination cannot operate as a separate fiefdom. The question is no longer just "Can the tribunal terminate?" but "What precisely terminates, what happens to the mandate, and what recourse survives?".

Looking Outward: SIAC, LCIA and HKIAC as Alternate Universes

At this point, the judgment pivots from introspection to comparison. It surveys the SIAC Rules 2025[3], the LCIA Rules 2020[4] and the HKIAC Rules 2024[5] to show how leading institutions architect the same problems India is struggling with.

SIAC's framework, for instance, is built around a clear, centralized power to manage deposits and suspend or terminate proceedings, with express consequences and procedural safeguards that leave minimal room for ambiguity. LCIA situates termination within a broader case-management logic, tying default, settlement and inactivity to specific, articulated triggers for bringing proceedings to an end. HKIAC adds its own precision, especially in delineating the effect of non-payment and in preserving the tribunal's authority to proceed on certain issues even where deposits are outstanding.

Read against this backdrop, India's statutory patchwork looks dated. Where SIAC, LCIA and HKIAC compress termination into a small set of well-drafted rules that executives and counsel can navigate, the Indian Act disperses equivalent content across four sections (Sections 25, 30, 32 and 38), couched in language that invites litigation rather than closure.

The Court's "Meaningful Suggestions": A Blueprint Hiding in Plain Sight

Recognizing the stakes, the Supreme Court steps out of the traditional adjudicatory role and, under the heading "Few Meaningful Suggestions", effectively drafts a mini-reform agenda. It recommends borrowing not only from UNCITRAL's evolution, but from

institutional rules to rationalize the framework on termination, with particular focus on deposits under Section 38 and the need for a coherent remedy structure.

The judgment emphasizes that claims and counter-claims should be treated as distinct for fee and deposit purposes, echoing Afcons' insistence that the "sum in dispute" must be calculated separately rather than cumulatively. It also urges a re-examination of fee-setting processes, pushing for greater transparency, earlier consensus and stronger safeguards against mid-stream surprises that can destabilize the proceedings.

In these suggestions lies the seed of a legislative blueprint: consolidation of termination powers, recalibration of fee and deposit mechanisms, and explicit recognition of the tribunal's mandate and the parties' remedial pathways in cases of termination.

The Court's Final Order: A Partial Vindication

In its conclusion, the Supreme Court partly allowed the appeal, effectively granting the appellant a final opportunity to pursue a fresh round of arbitration, by remanding the matter to the High Court for appointment of a substitute arbitrator. While the Court upheld the constitutional validity of the Fourth Schedule and the arbitrator's power to determine fees in accordance with it, it found merit in the appellants' contention that the arbitrator's termination order under Section 38 could not be read in isolation from the broader principles of party autonomy and the tribunal's mandate as articulated in Afcons.

The Court's order recognized that although the sole arbitrator had correctly applied the Fourth Schedule to recalculate fees in light of the counter-claim, the manner in which the termination was executed raised concerns about procedural fairness and the absence of a coherent statutory framework governing the consequences of such termination. The judgment thereby validated the appellants' grievance, not by striking down the termination power itself, but by acknowledging systemic shortcomings in how that power is embedded within the Act, 1996.

This partial allowance is itself a narrative: the Court is saying, "Your arbitration is not resurrected, but your constitutional anxiety about the process is vindicated, and that vindication becomes the mandate for legislative reform". The judgment thus transforms a technical dispute over fees into a catalyst for systemic change.

From Judgment to Statute: What the Arbitration and Conciliation Bill, 2024 Must Do

If Pannu is the courtroom thriller, the Arbitration and Conciliation Bill, 2024 is the sequel that will decide whether the franchise survives. The article argues that the Bill must convert the judgment's scattered insights into hard statutory text in three moves.

First: Consolidation of Termination Powers

The Bill should collapse the current fragmentation by enacting a single, comprehensive provision on "termination of arbitral proceedings" that integrates the grounds now scattered across Sections 25, 30, 32 and 38, while clearly specifying what happens to the tribunal's mandate under each scenario. In particular, it should distinguish between: (i) terminations that extinguish the mandate completely; (ii) terminations that operate only in respect of particular claims or counter-claims; and (iii) procedural suspensions that can be lifted upon curing the default.

Second: Transparent Fee and Deposit Regime

The Bill must hard-wire a transparent fee and deposit regime built around mandatory preliminary "terms of reference", in line with Afcons and the institutional practices of SIAC, LCIA and HKIAC. This would mean: (a) fixing the fee matrix, whether Fourth-Schedule-based or otherwise, upfront, with clear room for consensual, pre-agreed revisions after specified sittings; (b) mandating separate deposit streams for claims and counter-claims; and (c) ensuring that parties know, from day one, the financial contours of the process they are entering.

Third: Express Remedy Against Termination Orders

Most critically, the Bill should create an express, structured remedy against termination orders, especially those grounded in deposit defaults. Instead of forcing parties into awkward constitutional detours or uncertain Section 34 challenges, the statute should provide a targeted recourse, time-bound, limited in scope but robust enough to prevent arbitrary or disproportionate use of termination powers.

Reframing Termination: From Weapon to Safeguard

At its core, Pannu invites a re-imagining of “termination” from a blunt weapon into a calibrated safeguard. When placed within a consolidated provision, surrounded by clear fee rules and coupled with a tailored remedy, termination ceases to be an easy exit for difficult cases and becomes a last-resort tool to protect the integrity of the process against abuse and inertia.

By reading UNCITRAL history, institutional rules and Indian statutory text through a single case, the judgment provides a rare, panoramic view of how small drafting choices shape the lived experience of arbitration. The Arbitration and Conciliation Bill, 2024 now holds the pen; whether Indian arbitration remains a conference platitude or becomes a genuinely competitive forum may depend on how faithfully it translates the lessons of Pannu into law.

Complementary Judgments: Joinder, Jurisdiction and Post?Award Control After ASF Buildtech and Gayatri Balasamy”

Alongside Harshbir Singh Pannu, the decisions in ASF Buildtech Pvt. Ltd. v. Shapoorji Pallonji & Co. Pvt. Ltd.[6] and Gayatri Balasamy v. ISG Novasoft Technologies Ltd.[7] operate as complementary pillars that stress?test other stages of the arbitral life?cycle. Where Pannu focuses on how defective design of termination and deposit provisions can derail proceedings mid?stream, ASF Buildtech exposes equivalent under?design at the jurisdictional and party?status stage, showing that questions of joinder and non?signatories have had to be managed almost entirely through judge?made doctrines such as the group of companies doctrine, Kompetenz?Kompetenz and the “veritable party” test, rather than through clear statutory criteria and an express division of labour between referral courts and tribunals. ?

Gayatri Balasamy then picks up the thread at the post?award control phase, demonstrating that Sections 34 and 37 are textually limited to “setting aside” and provide no explicit, narrowly tailored power to modify or vary awards, even in severable situations where a calibrated correction could avert total annulment and re?arbitration. The judgment catalogues conflicting lines of Supreme Court authority on modification and highlights how the current binary design, uphold or set aside, with a vague remand under Section 34(4) has forced courts into creative, sometimes extra?textual workarounds, thereby mirroring the same structural fragility that Pannu and ASF Buildtech identify at earlier stages. Taken together, the two judgments reinforce and extend Pannu’s critique by showing that similar problems of fragmentation, under?specified remedies and over?reliance on judicial patchwork recur at jurisdiction, termination and enforcement alike, strengthening the case for a comprehensive statutory rewrite.

Conclusion: The Unfinished Story

Harshbir Singh Pannu v. Jaswinder Singh is not an ending but a beginning. The partial allowance of the appeal, coupled with the “meaningful suggestions” for legislative reform, sends a signal that arbitration’s evolution in India is not over, it is only now gathering pace. The judgment’s comparative gaze towards SIAC, LCIA and HKIAC, its historical excavation of UNCITRAL intent, and its unflinching analysis of the fragmented state of Sections 25, 30, 32 and 38 together amount to a detailed brief for reform.

The next chapter rests with the legislature. If the Arbitration and Conciliation Bill, 2025 absorbs the lessons of Pannu along with similar other judgments and consolidates termination powers, recalibrates fee and deposit mechanics, and opens a clear statutory remedy against termination orders, Indian arbitration can shake off its reputation as a process that works beautifully in theory but collapses in practice. If it does not, Pannu will remain a magnificent dissent in a system that refuses to hear it.

For more details, write to us at: contact@indialaw.in

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