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JUDICIAL INTERVENTION IN ARBITRAL AWARDS: UNDERSTANDING GAYATRI BALASAMY AND THE BOUNDARIES OF MODIFICATION

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ABSTRACT –

The modification of arbitral awards by Indian courts presents a doctrinal ambiguity in arbitration jurisprudence. While the Arbitration and Conciliation Act, 1996 does not explicitly grant courts the power to modify awards, judicial interpretations have evolved to accommodate limited interventions. Historically, the Arbitration Act of 1940 provided express statutory grounds for modification, but this provision was omitted in the 1996 Act, aligning India's arbitration framework with the UNCITRAL Model Law. However, the Supreme Court, in *Gayatri Balasamy v. Novasoft Technologies Ltd.*, established that courts can exercise a limited power to modify awards, particularly when correcting computational, clerical, or procedural errors. This paper critically examines the status quo of judicial reasoning on arbitral award modification, addressing the implications of *Gayatri Balasamy* and contrasting India's approach with the legislative frameworks of Singapore and the United Kingdom, which explicitly allow judicial modification. The paper further analyses the role of Article 142 of the Constitution in enabling judicial interventions, the challenges posed to finality and party autonomy, and the broader consequences for India's arbitration landscape.

INTRODUCTION

I **Historical Foundations of Arbitration and Award Modification in India**

In the recent times arbitration and mediation emerged as the prominent and preferred methods for resolutions of disputes widely known the methods for alternate dispute resolution (ADR).

Before examining the recent developments in the modification of arbitral awards, it is essential to first understand the evolution of arbitration law in India. This includes tracing its historical progression and analysing key provisions of the UNCITRAL Model Law, which has served as the foundation for arbitration statutes in various countries, including India.

Arbitration functions within a well-defined legal framework, providing parties with a structured alternative to conventional litigation. When disputes arise, those involved formalize their commitment to arbitration through an arbitration clause—a deliberate choice that goes beyond mere procedure. This clause embodies the parties' intent to resolve conflicts outside the courtroom, relying instead on a specialized mechanism governed by distinct statutory provisions.

Section 28 of Indian contracts act 1872 declares agreements in restraints of legal proceedings to be void, but saves arbitration under exemption 1 [26].

Exception 1. — This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration,

[26] The Indian Contract Act, 1872, §28 (India).

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and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Therefore, arbitration clauses in contracts are entered into by the parties, thereby agreeing to refer disputes to arbitration. By doing so, they voluntarily step outside the normal court proceedings, and such disputes are protected under the above-mentioned exception.

The contracts referring parties to Arbitration were regulated by Arbitration statutes. Parties contracting with open eyes were aware that once they opt for Arbitration the parameters for arbitration were to be governed by the statute governing the same and the normal remedy available to a litigant who is resorting to the existing court could not be applicable and a different procedure would govern the same.

The earliest statute which exhaustively dealt with Arbitration was the Indian Arbitration Act 1899[27] thereafter Arbitration Act of 1940 [28] was based on the English Arbitration Act,1934. Arbitration and Conciliation act of 1996 was enacted to update the law of arbitration in India and make it more responsive to contemporary requirements[29]. It is modelled in line with the UNICTRAL Model on International Commercial Arbitration, 1985, and while seeking to restrict the intervention of courts, it envisages cooperation between the judicial and arbitral process.[30]

It is important to note that the Arbitration Act of 1940 had a provision to modify the arbitral award under CHAPTER 2 Titled 'Arbitration without the intervention of a court' Section 15 of the act specified the grounds under which an arbitral award can be modified[31]

The Court may, by order, modify or correct an award—Power to Modify—
(a) Where it appears that a part of the award pertains to a matter not referred to arbitration, and such part can be separated from the other part without affecting the decision on the matter referred;

(b) Where the award is imperfect in form or contains any obvious error that can be amended without affecting the decision.

(c) Where the award contains a clerical mistake or an error arising from an accidental slip or omission.

Apart from the court's power to modify the award, Section 16 of the Arbitration Act, 1940 set grounds for the court to remit the arbitral award, while Section 30 provided the criteria for courts to set aside an arbitral award.

The 1996 Act does not contain any explicit provision for the modification of an arbitral award by the courts. The arbitration statutes of India and various other countries, such as Singapore and the United Kingdom, are modelled in line with the UNCITRAL Model Law on International Commercial Arbitration, 1985.

The UNCITRAL Convention establishes a comprehensive and harmonized framework for arbitration, facilitating the resolution of disputes in international commercial transactions. Its primary objective is to streamline and enhance the efficiency of cross-border trade by providing a reliable and consistent mechanism for dispute resolution, thereby fostering confidence and stability in global commerce.

The UNCITRAL Convention not only provides a framework for international commercial arbitration but also allows its principles to be adapted for domestic arbitration. This flexibility ensures that national legal systems can model their arbitration laws based on UNCITRAL's provisions, promoting consistency and efficiency in dispute resolution at both international and domestic levels.

Article 34 of the *Arbitration and Conciliation Act, 1996* establishes a standardized framework in line with Article 34 of the Model Law.[32] Article 34

[27] The Indian Arbitration Act, 1899, (India).
[28] Arbitration Act 1940,1940, (India).
[29] Arbitration and Conciliation Act ,1996, (India).
[30] UNCITRAL Model Law on International Commercial Arbitration, 1985, U.N. Doc. A/40/17, Annex I
[31] Arbitration Act, 1940, § 15, No. 10, Acts of Parliament, 1940 (India).
[32] *Arbitration and Conciliation Act, 1996, § 34 (India).*

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of the Model Law is under Chapter VII – Recourse Against Arbitral Award clearly states that an *application for setting aside is the exclusive recourse against an arbitral award*. Therefore, an application for setting aside can be made in compliance with the procedure stated in Section 34(1) of the Act and the grounds for setting aside the award as stated in Section 34(2).[33]

Section 34(4) is particularly important, as it empowers the court to suspend the proceedings for setting aside the award for a specified period and allows the arbitral tribunal to resume the proceedings to eliminate the grounds for setting aside the award.

What Is important to note is that post the UNCITRAL Convention Countries like Singapore and UK positively legislated upon the provision to vary or modify the arbitral award in their Arbitration statutes this divergence for allowing modification by courts upon appeal was unique creation of countries like Singapore, UK etc it is important to note that this provision of modification came from the legislature of the respective countries

For instance, the provision of Singapore Arbitration Act 2001 with respect to modification under *Part 9 Section 47- No judicial review of award*

Section47. The Court does not have jurisdiction to confirm, vary, set aside or remit an award on an arbitration agreement except where so provided in this Act.[34]

Section49(8) On an appeal under this section, the Court may by order —

(a) confirm the award;
(b) vary the award;
(c) remit the award to the arbitral tribunal, in or in part, for reconsideration in light of the court's determination or;
(d) set aside the award in whole or in part[35]

However, India did not legislate upon courts power to modify or vary the Arbitral award and restricted the scope to the remedies provided in the UNCITRAL Convention. Based on this very textual ground the supreme court in the judgement of NHAI v. M. Hakeem, (2021) 9 SCC 1(India) Section 34 of the Act does not authorize modification of arbitral awards. Instead, courts are limited to either setting aside the award on narrowly defined grounds or remitting it under Section 34(4). The Court emphasized that the provision is not appellate in nature and reaffirmed that judicial review is to be exercised in a supervisory, not corrective, capacity. The Court treated the absence of modification provision in India as a deliberate legislative choice.[36] Importantly, the Court relied on international arbitration principles and scholarly commentaries, notably Redfern and Hunter, to support its conclusion that courts must not intrude into the merits of the award.[37]

But the Supreme courts constitutional bench in the recent judgement of Gayatri Balasamy v. Novasoft technology ltd. Examined the constitutional validity of the question whether courts have power to modify arbitral award upon appeal and held that

The Indian statute not having a provision of modification is only linguistically correct and the supreme court has held that it is not convincing jurisprudentially. The Limited power under section 34 allows the court to modify the award and the result is the award would be read as modified by judgement/order.[38]

This paper supports such a recalibration. It argues in favor of a narrow and principled power of modification under Section 34, applicable in exceptional and clearly defined situations. It does not advocate judicial

[33] UNCITRAL Model Law on International Commercial Arbitration art. 34, Dec. 11, 1985.
[34] Singapore Arbitration Act, 2001, §47 (Sing.).
[35] Singapore Arbitration Act, 2001, §49 (Sing.).
[36] NHAI v. M. Hakeem, (2021) 9 SCC 1(India)
[37] Redfern and Hunter, Law and Practice of International Commercial Arbitration, 6th ed., Oxford University Press (2015), p. 580.
[38] Gayatri Balasamy v. ISG Novasoft Techs. Ltd., (2025) INSC 605, 29 (India).

overreach or a reopening of merits but calls for a contextual and purposive interpretation one that harmonizes procedural rigor with substantive justice.

II **Issues related to challenges to arbitral awards**

Challenges to arbitral awards under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 ("the Act") have often brought courts into interpretive conflict, especially in terms of the scope of judicial power to modify, rather than set aside, arbitral awards.

34. Application for setting aside arbitral award. — (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3). 20 (2) An arbitral award may be set aside by the Court only if— (a) the party making the application furnishes proof that— (i) a party was under some incapacity, or (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or (b) the Court finds that— (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or (ii) the arbitral award is in conflict with the public policy of India. 1 [Explanation 1.—For the avoidance of any doubt, it is clarified that an 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.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.] 2 [(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.] (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter. (4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award

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(i) a party was under some incapacity, or (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or (b) the Court finds that— (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or (ii) the arbitral award is in conflict with the public policy of India. 1 [Explanation 1.—For the avoidance of any doubt, it is clarified that an 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.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.] 2 [(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.] (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter. (4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award [39]

37. Appealable orders.—(1) An appeal shall lie from the following orders (and from no others) to the Court authorized by law to hear appeals from original decrees of the Court passing the order, namely:— 3 [(a) refusing to refer the parties to arbitration under section 8; (b) granting or refusing to grant any measure under section 9; (c) setting aside or refusing to set aside an arbitral award under section 34.] (2) Appeal shall also lie to a court from an

[39] The Arbitration and Conciliation Act, 1996, §34 (India).

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 5 AND ISSUE 9 OF 2025

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

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order of the arbitral tribunal— (a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or (b) granting or refusing to grant an interim measure under section 17. (3) No second appeal shall lie from an order passed in appeal under this section,

but nothing in this section shall affect or take away any right to appeal to the Supreme Court. [40]

The issue reading the modification of arbitral award dwells into subject matter of arbitration at its very core. A three-judges bench of this court, vide order dated 20th February 2024 directed that the Special leave petition in Gayatri Balasamy vs ISG Novasoft Technologies Limited be placed before the Chief Justice of India for an appropriate order. The matter was further referred to larger bench of five-judges.

The fulcrum of the legal controversy rest on the following question(s): Are Indian courts jurisdictionally empowered to modify an arbitral award? And if so to what extent it can do that? the controversy arises because,

The section 34 of the arbitration and conciliation act 1996 does not explicitly mentioned that the courts can modify or vary an arbitral award, the scope of section 34 is not widely defined, although several times the courts have compelled to modify arbitral awards, seeking to minimize the protracted litigation and foster the ends of justice.

The process of arbitration is an evolving process and there are diversified judicial opinions on the modification question. Contrast in these opinions provides an explanation to legal controversies and arguments.

III **Critical Analysis: Judicial Divergence on the Power to Modify Arbitral Awards in India**

The arbitral jurisprudence under the Arbitration and Conciliation Act, 1996 ("the Act") reflects a conscious legislative departure from the scheme of the Arbitration Act, 1940, particularly in eliminating any provision authorizing courts to modify arbitral awards. Section 34 of the 1996 Act restricts judicial review to grounds for setting aside an award and makes no reference to modification, yet the Indian judiciary has often exercised this power—either overtly or implicitly—thereby creating doctrinal inconsistencies.

The critical point of analysis stems from the legislative silence on the court's power to alter or modify arbitral awards. Unlike the erstwhile Arbitration Act, 1940, which permitted courts under Section 15 to modify an award, the 1996 Act consciously excluded such a provision, aligning itself with the UNCITRAL Model Law and promoting finality and party autonomy. However, Indian courts, in a series of judgments, have often circumvented this legislative limitation either by invoking Article 142 of the Constitution or relying on broad equitable principles, thereby creating an undesirable jurisprudential anomaly.

In McDermott International Inc. v. Burn Standard Co. Ltd, the Supreme Court explicitly stated that courts have no jurisdiction to alter or modify arbitral awards under the 1996 Act. Nevertheless, invoking Article 142 of the Constitution, the Court proceeded to reduce the rate of interest awarded by the arbitral tribunal. This judgment reveals a tension between the express limitations imposed by the statute and the Court's equitable desire to do complete justice. While Article 142 remains a constitutional safeguard, its use in arbitral matters risks weakening the integrity of the arbitral process and suggests an unsatisfactory doctrinal workaround.[41]

A similar expansionist judicial attitude is evident in Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd. The Supreme Court, in a Section 34 application, unilaterally reduced the interest awarded in the arbitral award without invoking Article 142, thereby departing from both the statutory text and the ratio in McDermott.

[40] The Arbitration and Conciliation Act, 1996, §37 (India).

[41] McDermott Int'l Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181 (India).

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The judgment presents a paradox: while reiterating the limits on judicial intervention, the Court simultaneously exercises a power it disclaims, pointing out a serious jurisprudential inconsistency.[42]

The case of ONGC Ltd. v. Western Geco International Ltd., significantly broadened the interpretation of "public policy of India" by incorporating the requirement of a "judicial approach." This expansion introduced a merit-based review in Section 34 proceedings, undercutting the principle of finality in arbitration. Though this judgment was partially overruled in Associate Builders v. DDA, (2015) 3 SCC 49, its lasting impact continues to invite judicial examination of arbitral reasoning, indirectly facilitating modification or substitution of awards under the guise of public policy review.[43]

In Tata Hydro-Electric Power Supply Co. Ltd. v. Union of India, the Court altered the commencement date for the calculation of interest in the arbitral award. No statutory justification was provided for such modification. This unreasoned interference, even if minimal, is normatively incompatible with Section 34's narrow remedial scope and sends the wrong signal about India's adherence to arbitral finality.[44]

These cases collectively underscore an elemental contradiction in Indian arbitral jurisprudence, where the absence of a statutory power to modify awards is often overridden by perceived notions of fairness or convenience. Through the constitutional exception (Article 142) exercised by the Supreme Court and the High Court's modify awards without recourse to constitutional power, it exposes the ambiguous positioning to arbitral finality and fortifies future challenges.

This judicial divergence compromises two fundamental objectives of the Act: (a) minimization of court intervention; and (b) respect for the finality of arbitral award. On one hand, the Supreme Court reaffirms that courts lack the power to modify awards under Section 34; on the other, it regularly invokes either Article 142 or equitable discretion to interfere with awards' content. This results in a blurring of legislative boundaries.[45]

The principle of minimal judicial interference, which is essential to the Arbitration and Conciliation Act, 1996, and the UNCITRAL Model Law, faces serious challenges when courts substitute their own reasoning for that of arbitral tribunals. This judicial overreach not only threatens the predictability of arbitral outcomes but also diminishes investor confidence and extends the resolution timeline, thereby undermining the core objectives of arbitration—namely, finality, efficiency, and procedural economy. It is crucial to establish clear doctrinal guidelines, whether through decisive constitutional rulings or legislative action, to define the limits of judicial review. Without a consistent and measured approach to interpretation, the integrity and effectiveness of arbitration in India may be significantly compromised.

IV Legislative Scheme and Judicial Limits

Section 5 of the Act establishes that judicial intervention in arbitral proceedings is limited to what is provided under Part I. Section 34 permits recourse to a court solely by means of an application for setting aside the arbitral award, outlining specific and exhaustive grounds under sub-sections (2), (2A), and (3). The text is silent on the power of modification, which has led to divergent interpretations.

Opponents of modification argue that importing such power into Section 34 contradicts the Model Law framework and may undermine the enforceability of awards under international instruments like the New York Convention. Further, they posit that judicial modification risks the transformation of arbitral awards into court

[42] Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Constr. Co. Ltd., (2019) 11 SCC 465 (India).
[43] ONGC Ltd. v. Western Geco Int'l Ltd., (2014) 9 SCC 263 (India).
[44] Tata Hydro-Electric Power Supply Co. Ltd. v. Union of India, (2003) 4 SCC 172 (India).
[45] India Const. art. 142.

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decrees, thereby distorting the arbitration process.[46]

V **Conceptual Distinction: Setting Aside vs. Modification**

The power to set aside an award and the power to modify it are distinct in both effect and character. Annulment nullifies the award in toto, whereas modification entails altering or varying specific components of the award. The Supreme Court has clarified that although both powers are fundamentally different, they need not be treated as mutually exclusive, provided the latter does not involve a review of the award on merits.

The application of the maxim mne majus continent in se minus—that the greater includes the lesser—has been cautiously endorsed in this context. It has been affirmed that the power to set aside an award may, in appropriate cases, include the power to partially annul or modify the award, so long as the invalid and valid portions are severable.[47]

VI **Severability of Awards**

Section 34(2)(a)(iv), read with its proviso, recognizes the doctrine of severability, allowing courts to excise non-arbitrable or invalid portions of an award while preserving the remainder. This facilitates a middle path where courts can avoid setting aside entire awards for defects in a specific part.

Such partial annulment—when conceptually and practically distinct from full modification—has the effect of achieving justice without disturbing unaffected portions of the arbitral determination. However, severability cannot be invoked where the valid and invalid portions are interdependent or where liability and quantum are inextricably linked.[48]

VII **Limited Power of Courts to Modify Arbitral Awards under Sections 33 and 34**

Section 33 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") empowers the arbitral tribunal to correct or interpret an award upon a party's request. Specifically, Section 33(1)(a) allows for the correction of any computational, clerical, or typographical errors, while Section 33(1)(b) permits the tribunal to provide an interpretation of a specific point or part of the award, provided the request is made within thirty days of the award's receipt. Additionally, Section 33(3) authorises the tribunal to correct such errors on its own initiative within thirty days of the award's date. Section 33(4) further enables the tribunal to make an additional award concerning claims presented during the arbitral proceedings but omitted from the award, upon a party's request made within thirty days of the award's receipt.[49]

An order issued by the arbitral tribunal under Section 33 is deemed an arbitral award, as per Section 33(7), which mandates the application of Section 31 to such orders. Consequently, the limitation period for challenging the award under Section 34(3) commences only after the tribunal has addressed the Section 33 request.

Notwithstanding the provisions of Section 33, courts exercising jurisdiction under Section 34 of the Act possess inherent powers to correct manifest errors apparent on the face of the record, such as computational, clerical, or typographical mistakes, provided such corrections do not necessitate a re-evaluation of the merits of the case. This principle was elucidated by the Supreme Court in Grindlays Bank Ltd. v. Central Government Industrial Tribunal & Ors., wherein it was held that tribunals possess inherent powers to rectify procedural defects to prevent the abuse of their process. The Court observed:

"When a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to

[46] Gayatri Balasamy v. ISG Novasoft Techs. Ltd., (2025) INSC 605, 18 (India).
[47] Gayatri Balasamy v. ISG Novasoft Techs. Ltd., (2025) INSC 605, 17 (India).
[48] Gayatri Balasamy v. ISG Novasoft Techs. Ltd., (2025) INSC 605, 15 (India).
[49] *Arbitration and Conciliation Act, § 33(4), No. 26, Acts of Parliament, 1996 (India).*

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 5 AND ISSUE 9 OF 2025

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prevent the abuse of its process, and such power inheres in every court or Tribunal."[50]

Further, in Budhia Swain & Ors. v. Gopinath Deb & Ors., the Supreme Court emphasized the distinction between procedural review and review on merits, underscoring that courts have the authority to rectify procedural errors to uphold justice:

"The expression 'review' is used in two distinct senses, namely, (i) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (ii) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record."[51]

In the context of arbitral awards, the Supreme Court in Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies Pvt. Ltd. reaffirmed that courts have limited powers under Section 34 to correct errors that are evident and do not require re-assessment of the case's merits. The Court stated:

"Inadvertent errors, including typographical and clerical errors, can be modified by the court in an application under Section 34. However, such a power must not be conflated with the appellate jurisdiction of a higher court or the power to review a judgment of a lower court."[52]

The Court further clarified that if the proposed modification under Section 34 involves any uncertainty or debatable issues, the court must refrain from intervening. In such cases, it would be more appropriate for the party to seek recourse under Section 33 before the tribunal or under Section 34(4) of the Act.

Moreover, Section 152 of the Code of Civil Procedure, 1908, provides that clerical or arithmetical mistakes in judgments, decrees, or orders, or errors arising therein from any accidental slip or omission, may be corrected by the court at any time, either on its own motion or on the application of any of the parties. While Section 34 of the Act does not explicitly mirror this provision, its underlying principle may be invoked to the extent consistent with the limited and non-appellate role assigned to courts under the Act.[53]

In conclusion, while the arbitral tribunal is primarily responsible for correcting errors in its award under Section 33 of the Act, courts exercising jurisdiction under Section 34 possess inherent powers to rectify manifest errors apparent on the face of the record, provided such corrections do not entail a re-evaluation of the case's merits. This approach ensures the objectives of arbitration—efficiency, cost-effectiveness, and finality—are upheld, while also preventing the perpetuation of inadvertent and obvious mistakes in arbitral awards.

VIII **Purposive Interpretation and Judicial Review**

A purposive interpretation of Section 34 reveals that the objectives of arbitration—namely efficiency, cost-effectiveness, and finality—may be thwarted if courts are denied the authority to modify manifest errors that do not require re-evaluation of merits.

The jurisprudence, as advanced in recent judicial dicta, suggests that a limited and narrowly tailored power of modification can be located within the court's inherent powers under Section 34, especially where correction of computational, clerical, or typographical errors is warranted. The distinction between procedural and merits-based review, as elucidated in Grindlays Bank v. CGIT and Budhia Swain v. Gopinath Deb, affirms the legitimacy of such ancillary powers.[54]

IX **Distinction between remand power and power of modification**

The supreme court in the judgement of Gayatri Balsamy v. ISG Novasoft Techs. Ltd. Has held

[50] Grindlays Bank Ltd. v. Central Government Industrial Tribunal & Ors., (1981) 1 SCC 419.

[51] Budhia Swain & Ors. v. Gopinath Deb & Ors., (1999) 4 SCC 396

[52] Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies Pvt. Ltd., (2021) 7 SCC 657.

[53] Indian Code of Civil Procedure, § 152 (1908).

[54] Gayatri Balasamy v. ISG Novasoft Techs. Ltd., (2025) INSC 605, 21 (India).

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 5 AND ISSUE 9 OF 2025

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that courts should not have any doubt or uncertainty when modifying the award i.e. If the error is not apparent on the face of the record, then the court will unable to proceed, its hands bound by uncertainty therefore, with the fog of uncertainty obscures the exercise of modification the courts shall not modify the award instead the court shall exercise the remedial power available under section 34(4) of the act [55]. Under the sub-section either party may request the court to adjourn the proceeding for a specified period. It is upon the discretion of the court whether to grant an adjournment giving arbitral tribunal a chance to resume proceeding and adopt corrective measures to eliminate the grounds of setting aside. Upon remand the arbitral tribunal may proceed with matter as the situation demands depending upon the facts of the case, the arbitral tribunal may consider new evidences, giving a chance to a party present its case if previously denied or take any other corrective measure which the tribunal deems fit for curing its defects. But the power of modification does not allow such flexibility. *'The courts must act with certainty when modifying an arbitral award – like a sculptor working with chisel, needing precision with exactitude'*. [56]

X **Exercise of power under section 34(4)**

The supreme court in the case of I PAY CLEARING SERVICE PRIVATE LIMITED.V ICICI PRIVATE LIMITED [57] held that section 34(4) does not grant the authority to court to review or reconsider previous finding or conclusions of the award. While doing so the court need not record the final finding on contentious issue at hand. The court must be prima facie satisfied that the illegality and wrong are curable. This section does not compel the arbitral tribunal to amend the award the arbitral tribunal can refuse to amend the award.

The supreme court in the case of Kinnari Mullick and Another v Ghanshyam das Damani laid down preconditions for courts exercising power under section 34(4)[58]. It held that supreme court cannot exercise power Suo moto under section 34(4) without a written application by one of the parties. After setting aside the award under section 34(1) application the Courts becomes fanctus officio and cannot transfer the award to the arbitral tribunal.

However, the supreme court in the judgement of Gayatri Balsamy v. ISG Novasoft Techs. Ltd. had differed from the judgement of kinnari (supra) and held that the request under section 34(4) can be made orally the only pre-condition is that it should be recorded by the court. Section 37 permits appeal against order of setting aside or refusal to setting aside [59]. The Supreme court held that the appellate jurisdiction under section 37 is coterminous as section 34. Therefore, the contention that After setting aside the award under section 34(1) application the Courts becomes fanctus officio is misplaced and the section 37 court still possess the power of remand stipulated under section 34(4).[60]

XI **Understanding the enforcement of court modified award under the New York Convention**

The supreme court in the judgement of Gayatri Balasamy v. ISG Novasoft Technologies Ltd has held that the argument advanced by the parties opposing modification that power to modify the award will render the arbitral award under New York convention un-enforceable, must be rejected. Section 48(1)(e) of the New York convention the award must become 'binding on parties' before enforcement as per the laws of the seat of the arbitration[61]. Therefore, the court's interpretation of reading the arbitral award under section 34 would not

[55] Arbitration and Conciliation Act, No. 26 of 1996, § 34(4), Acts of Parliament, 1996 (India)

[56] Gayatri Balasamy v. ISG Novasoft Techs. Ltd., (2025) INSC 605, 24 (India).

[57] I pay clearing service private ltd v ICICI private limited (2022) 3 SCC 2021.

[58] Kinnari Mullick and Another v Ghanshyam das Damani (2018) 11 SCC 328.

[59] Arbitration and Conciliation Act, 1996, § 37, No. 26, Acts of Parliament, 1996 (India).

[60] Gayatri Balasamy v. ISG Novasoft Techs. Ltd., (2025) INSC 605, 27 (India).

[61] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art. 48(1)(e), June 10, 1958, 330 U.N.T.S. 38

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 5 AND ISSUE 9 OF 2025

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be in contravention with New York convention. Countries like Singapore and United Kingdom although following model have included power of modification under their respective statutes.

The Indian statute not having a provision of modification is only linguistically correct and the supreme court has held that it is not convincing jurisprudentially. The Limited power under section 34 allows the court to modify the award and the result is the award would be read as modified by judgement/order. [62]

XII Courts power to modify post award interest rates

Section 31 sub section (7)(a) and (7)(b) deal with interest rate in the arbitration and conciliation act 1996[63]. 7(a) unless the parties have agreed otherwise, the arbitral tribunal may award interest on the award sum at the rate it deems reasonable for the whole or part from the period of on which the cause of action arose and the date on which the award is made and 7 (b) states that unless an interest sum is provided in the award the award shall carry a interest rate 2% higher than the interest rate prevalent on the date of award ,from the date of award till the date of payment of interest rate .The supreme court in the case of Gayatri Balasamy v. ISG Novasoft Techs. Ltd has held the instance when interest rate awarded is contrary to section 31 sub section 7(a) courts of appeal under section 34 will have 2 options 1st would be to set aside the award and second would be to exercise the power to remand under section34(4). [64]

For the post award interest rate under section 31 sub section (7)(b) the courts have power to modify the interest rate where the facts suggest for such modification. This is why standard rate of interest applies when post award interest is not specified in the award. The supreme court further clarified that the courts have the power to grant post award interest rates if the arbitral award does not grant the same.

The reasoning behind this contemplation is that as per the legislative intent it is not the sole prerogative of the arbitrator to grant post award interest rate because the arbitral tribunal cannot foresee the issues that may unfold after deciding the post award interest rate and therefore it is justified that courts under section 34 have the authority to intervene and modify the post award interest rate if the facts and circumstances of the time justify such an action.

It was held that courts exercising this power are not appellate authority rather a limited authority since the act has stipulated a benchmark for post award interest rates, unless there are compelling specific reasons, rate of interest stipulated by the statute should be applied.[65]

The supreme court before converging at the above reasoning compared section 31 of the model law with section 31 of the arbitration and conciliation act 1996 [66]. *The statutes share the same title, "Form and Contents of Award," but unlike the Indian Arbitration Act's Section 31(7), the Model Law does not establish a standardized framework for interest rate determination. It is a unique creation of Indian legislature and has not been borrowed from the Model law*. Further as there is a standard prescribed by the legislature in the statute, courts can scrutinize the post award interest rates against the standard prescribed by the statute.[67]

The supreme court has recognized this limited power of the court as significant as it there avoids further rounds of litigation because this exercise of simply adjusting the interest rate would avoid the process of avoid being set

[62] Gayatri Balasamy v. ISG Novasoft Techs. Ltd., (2025) INSC 605, 29 (India).
[63] The Arbitration and Conciliation Act, 1996, §31(7) (India).
[64] Gayatri Balasamy v. ISG Novasoft Techs. Ltd., (2025) INSC 605, 31 (India).
[65] Gayatri Balasamy v. ISG Novasoft Techs. Ltd., (2025) INSC 605, 32 (India).
[66] UNCITRAL Model Law on International Commercial Arbitration, art. 31, June 21, 1985, U.N. Doc. A/40/17, Annex I.
[67] Gayatri Balasamy v. ISG Novasoft Techs. Ltd., (2025) INSC 605, 33 (India).

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aside and start of fresh arbitration because of an erroneous interest rate

Justice Viswanathan in his dissenting judgement has held a different view pertaining to the contention of modification of interest rate by the courts under section 34. He held that if courts are of the view that interest rates needs be relooked then the only option, they have is to remit the award to the arbitral tribunal under section 34(4) and when the matter comes back to the courts and the grounds of contention are not corrected then the only option they have is to set aside the award. [68]

XIII **Article 142 of the constitution**

The supreme court in the Case of Gayatri Balasamy v. ISG Novasoft Technologies Ltd held that power under article 142 should be exercised with great caution [69]. Article 142 enables the court to do complete justice but the exercise of this power has to be in consonance with specific public policy in this case the exercise of the power has to be exercise in consonance with intent and objective of arbitration and conciliation act 1996 and not in derogation or in suppression thereof. The supreme court relied on the judgement for the above reasoning on the basis of the judgement of SHILIPA SAILESH V. VARUN SREENIVASAN [70] in which the supreme court summarized the scope and its power under article 142 of the constitution,

the judgement held that the plenary and conscientious power conferred to the courts under article 142 of the constitution is seemingly unhindered, is tempered or bounded by restraint, which must be exercised based on fundamental consideration of general and specific public policy of India. Even in the strictest sense it was never doubted that the court is empowered to do complete justice under article 142(1) and not being bound by the relevant procedures if it is satisfied that departure is necessary to do complete justice between the parties.[71]

Therefore, the supreme court in balasamy held that the power should not be exercised where the effect of the order passed by the court would rewrite the award or modify the award on merit. This power should can be exercised to end the dispute or litigation and save parties time and money.

However, Justice Visvanathan in his dissenting judgement relied on the judgement of SHILIPA SAILESH V. VARUN SREENIVASAN and held that Article 142 will not be exercised if it would contravene a fundamental and non - derogable principle at the core of a statute it was further held that restraint based on specific policy should be understood as same pre-eminent prohibition in any substantive law and not mere stipulation and requirement to a particular statutory scheme.Further justice Visvanathan held that to change, vary, or qualify a arbitral award under 142 of the constitution would strike at very root of the arbitral proceeding and breach the pre-eminent prohibition in the Arbitration and conciliation act 1996.

Further he held that if such a power is exercised to fag end to litigation, then it will leave the parties uncertain and would be ant- ethical to arbitration as an alternative and efficacious mode of dispute resolution.[72]

This perspective is consistent with the precedent set in Supreme Court Bar Association v. Union of India, where it was held that Article 142 cannot be used to 'supplant' substantive law applicable to a case. He further added that such judicial intervention could erode confidence in the arbitration process and deter its use as an effective alternative dispute resolution mechanism.[73]

[68] Gayatri Balasamy v. ISG Novasoft Techs. Ltd., (2025) INSC 605, 107 (per Viswanathan, J., dissenting) (India).
[69] Constitution of India, art. 142, No. 1, Acts of Parliament, 1950 (India).
[70] Shilpa Shailesh v. Varun Sreenivasan, (2023) 14 SCC 231.
[71] Gayatri Balasamy v. ISG Novasoft Techs. Ltd., (2025) INSC 605, 35 (India).
[72] Gayatri Balasamy v. ISG Novasoft Techs. Ltd., (2025) INSC 605, 87 (per Viswanathan, J., dissenting) (India).
[73] Supreme Court Bar Association v. Union of India, (1998) 4 SCC 409: AIR 1998 SC 1895

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

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Conclusion

The Supreme Court's ruling in *Gayatri Balasamy v. Novasoft Technologies Ltd.* marks a pivotal shift in India's arbitration jurisprudence, bringing judicial modification into the foreground despite the legislative silence on the matter. While courts have traditionally adhered to the strict textual limits of Section 34 of the Arbitration and Conciliation Act, 1996, recent decisions reflect a growing tendency to recognize modification as an inherent judicial function, particularly in cases involving clerical errors or post-award interest adjustments. This doctrinal expansion, though justified on procedural grounds, risks weakening the principle of arbitral finality and could encourage prolonged litigation rather than fostering procedural efficiency.

Justice Viswanathan's dissenting opinion in *Gayatri Balasamy* reflects concerns over judicial overreach, emphasizing that courts should remit the matter to the arbitral tribunal rather than modifying awards themselves. His reasoning aligns with India's adherence to the UNCITRAL Model Law, which does not expressly permit modification. The tension between party autonomy, legislative intent, and judicial pragmatism highlights the evolving and unsettled nature of arbitration jurisprudence in India.

Going forward, doctrinal clarity is imperative—either through legislative amendments or consistent judicial interpretation—to ensure that India's arbitration framework remains predictable, effective, and in alignment with international arbitration standards. The balance between judicial oversight and arbitral independence will play a crucial role in shaping India's arbitration landscape and its global credibility as a jurisdiction committed to efficient dispute resolution.