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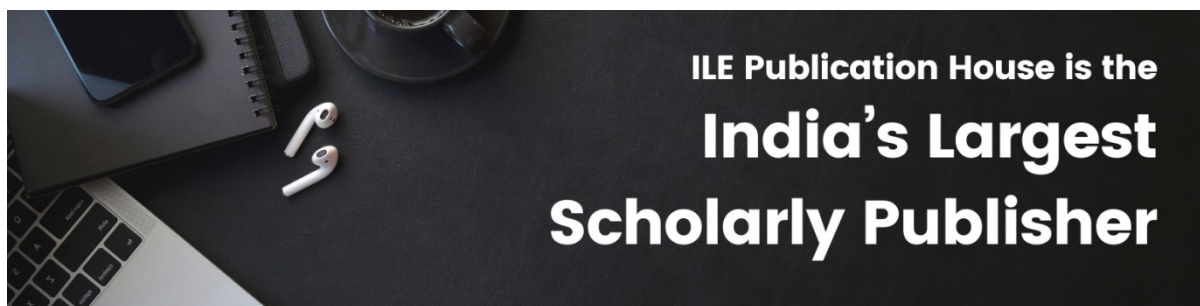
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CORRECTING & MODIFYING ARBITRAL AWARDS: THE LIMITATIONS OF SECTION 33 & THE DOCTRINE OF FUNCTUS OFFICIO

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Abstract

This paper examines the intricate relationship between Section 33 of the Arbitration and Conciliation Act, 1996, and the doctrine of functus officio in the context of correcting and modifying arbitral awards in India. The research analyzes the statutory limitations imposed on arbitral tribunals' post-award jurisdiction, the recent judicial developments following the Supreme Court's landmark decision in *Gayatri Balasamy v. ISG Novasoft Technologies Limited*, and the evolving jurisprudence surrounding the scope of correction versus modification of arbitral awards. Through a comprehensive analysis of case laws and statutory provisions, this paper argues that while Section 33 provides a narrow window for correction of specific types of errors, the functus officio doctrine continues to play a crucial role in maintaining the finality of arbitral awards, subject to limited exceptions recognized by recent judicial pronouncements.

Keywords: Arbitral Awards, Section 33, Functus Officio, Award Correction, Judicial Modification

I. Introduction

The finality of arbitral awards represents one of the fundamental pillars of arbitration as an alternative dispute resolution mechanism. However, the absolute nature of this finality has been tempered by legislative recognition that certain errors in awards may require correction without undermining the arbitral process's efficacy. Section 33 of the Arbitration and Conciliation Act, 1996 ("the Act") embodies this balance, providing limited mechanisms for correction while maintaining the doctrine of functus officio as a safeguard against excessive post-award intervention¹¹¹⁵.

The **doctrine of functus officio**, derived from Latin meaning "having performed one's office," establishes that once an arbitral tribunal has discharged its mandate by rendering an award, it becomes functus officio and loses jurisdiction

over the dispute¹¹¹⁶. This principle ensures finality and prevents tribunals from reconsidering their decisions indefinitely. However, the interaction between this doctrine and Section 33's correction provisions has generated significant jurisprudential debate, particularly following recent Supreme Court decisions that have refined the boundaries of post-award intervention.

The significance of this discourse has been amplified by the Supreme Court's recent Constitution Bench decision in *Gayatri Balasamy v. ISG Novasoft Technologies Limited*, which by a 4:1 majority upheld limited judicial power to modify arbitral awards under Sections 34 and 37 of the Act¹¹¹⁷. This development necessitates a fresh examination of the relationship between correction mechanisms, the functus officio doctrine, and the broader framework of arbitral award finality.

¹¹¹⁶ Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705, ¶ 18.

¹¹¹⁷ Gayatri Balasamy v. ISG Novasoft Technologies Limited, (2025) 2 SCC 1, ¶ 45-62.

¹¹¹⁵ MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163, ¶ 24.

II. Statutory Framework of Section 33

A. Scope and Provisions

Section 33 of the Act provides three distinct mechanisms for post-award intervention: correction of computational, clerical, or typographical errors; interpretation of specific points or parts of the award; and issuance of additional awards for claims presented but not decided in the original award¹¹¹⁸. These provisions represent exceptions to the general principle of *functus officio*, carved out by the legislature to address specific categories of deficiencies that do not require reconsideration of the substantive merits.

The correction provision under Section 33(1)(a) allows parties to request correction of "any computation errors, any clerical or typographical errors, or any other similar errors" within thirty days of receiving the award¹¹¹⁹. The tribunal may also make such corrections within the same timeframe. This provision embodies the principle that technical errors should not prejudice parties' substantive rights, while maintaining strict limitations on the types of errors that may be corrected.

B. Temporal Limitations

The temporal framework established by Section 33 reflects a carefully calibrated balance between finality and fairness. The thirty-day limitation period serves multiple purposes: it provides certainty regarding the tribunal's continued jurisdiction, prevents indefinite prolongation of proceedings, and ensures that correction requests are made promptly when errors are fresh and easily identifiable¹¹²⁰. The Supreme Court has consistently emphasized that these temporal limitations are mandatory and cannot be extended, reinforcing the importance of finality in arbitral proceedings¹¹²¹.

C. Distinction Between Correction and Review

A critical aspect of Section 33's operation lies in distinguishing between permissible correction and impermissible review of substantive decisions. The Supreme Court in *MMTC Ltd. v. Vedanta Ltd.* clarified that Section 33 does not empower tribunals to review, reconsider, or alter the substantive aspects of their awards¹¹²². The correction provision is limited to errors that do not affect the tribunal's reasoning or conclusions but merely rectify obvious mistakes in implementation or articulation.

This distinction has practical implications for practitioners and tribunals. Computational errors, such as mathematical mistakes in calculating damages or interest, clearly fall within Section 33's ambit. Similarly, typographical errors that do not alter the award's meaning are correctable. However, errors in legal reasoning, factual findings, or substantive conclusions cannot be addressed through Section 33, as these would constitute impermissible review rather than correction¹¹²³.

III. The Doctrine of *Functus Officio* in Arbitration

A. Conceptual Foundation

The doctrine of *functus officio* serves as a cornerstone of arbitral jurisprudence, ensuring that arbitral tribunals cannot indefinitely revisit their decisions once rendered. This principle derives from the need to maintain finality in arbitral awards, which is essential for the effectiveness of arbitration as a dispute resolution mechanism¹¹²⁴. The doctrine recognizes that arbitral tribunals, unlike permanent judicial institutions, are constituted for specific disputes and their authority terminates upon fulfilling their mandate.

The application of *functus officio* in arbitration contexts differs from its application to administrative bodies or lower judicial authorities. While administrative *functus officio*

¹¹¹⁸ The Arbitration and Conciliation Act, 1996, § 33, No. 26, Acts of Parliament, 1996 (India).

¹¹¹⁹ Id. § 33(1)(a).

¹¹²⁰ State Trading Corporation of India Ltd. v. Jainsons Clothing Co., (2012) 1 SCC 202, ¶ 15.

¹¹²¹ Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd., (2022) 1 SCC 131, ¶ 89.

¹¹²² MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163, ¶ 31-33.

¹¹²³ National Agricultural Cooperative Marketing Federation of India Ltd. v. Gains Trading Ltd., (2007) 5 SCC 692, ¶ 27.

¹¹²⁴ SSANGYONG Engineering & Construction Co. Ltd. v. National Highways Authority of India, (2019) 15 SCC 131, ¶ 45.

may be overcome in certain circumstances involving jurisdictional errors or procedural defects, arbitral *functus officio* is more stringent due to the contractual nature of arbitral jurisdiction and the policy emphasis on finality¹¹²⁵.

B. Exceptions to the Doctrine

Despite its general application, the *functus officio* doctrine admits of specific exceptions that have been recognized both statutorily and judicially. Section 33 itself represents a legislative exception, allowing tribunals to retain limited jurisdiction for correction purposes. The rationale for this exception is that correcting obvious errors does not constitute a reconsideration of the dispute but merely ensures that the tribunal's actual decision is properly reflected in the award¹¹²⁶.

Recent judicial developments have recognized additional exceptions, particularly in the context of clarifications that do not involve substantive reconsideration. In ***BCCI v. Kochi Cricket Pvt. Ltd.***, the Supreme Court held that requests for clarification of ambiguous award provisions do not necessarily violate the *functus officio* principle, provided the clarification does not amount to a review of the substantive decision¹¹²⁷. This approach recognizes that parties should not be prejudiced by ambiguities in award drafting when the tribunal's intent can be ascertained without reconsidering the merits.

C. Judicial Interpretation and Evolution

The Supreme Court's interpretation of *functus officio* in arbitration contexts has evolved to accommodate practical necessities while maintaining the doctrine's essential purpose. In ***SSANGYONG Engineering & Construction Co. Ltd. v. National Highways Authority of India***, the Court emphasized that *functus officio* does not prevent courts from exercising their statutory jurisdiction under Sections 34 and 37,

distinguishing between tribunal jurisdiction and judicial jurisdiction¹¹²⁸.

This distinction has gained renewed significance following *Gayatri Balasamy*, where the majority opinion recognized that courts possess limited power to modify awards in specific circumstances without violating *functus officio* principles¹¹²⁹. The Court's reasoning distinguished between tribunal modification (which would violate *functus officio*) and judicial modification (which operates under different statutory authority), thereby preserving the doctrine's integrity while accommodating practical needs.

IV. Limitations of Section 33: Judicial Interpretation

A. Restrictive Interpretation by Courts

Indian courts have consistently adopted a restrictive interpretation of Section 33, emphasizing that its provisions must not be used to circumvent the finality principle underlying arbitral awards. The Supreme Court in ***Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.*** observed that Section 33 cannot be invoked to correct errors in legal reasoning or factual appreciation, as these would constitute impermissible review rather than correction¹¹³⁰.

This restrictive approach reflects judicial recognition that arbitration's effectiveness depends on maintaining strict boundaries between correction and review. Courts have been particularly vigilant in preventing parties from using Section 33 as a backdoor mechanism for challenging substantive aspects of awards that would otherwise be protected from judicial interference under the principle of minimal court intervention¹¹³¹.

¹¹²⁵ *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181, ¶ 53.

¹¹²⁶ *Ragya Bee v. P.S.R. Constructions*, (2022) 3 SCC 234, ¶ 18-20.

¹¹²⁷ *BCCI v. Kochi Cricket Pvt. Ltd.*, (2018) 6 SCC 287, ¶ 35-38.

¹¹²⁸ *SSANGYONG Engineering & Construction Co. Ltd. v. National Highways Authority of India*, (2019) 15 SCC 131, ¶ 48-51.

¹¹²⁹ *Gayatri Balasamy v. ISG Novasoft Technologies Limited*, (2025) 2 SCC 1, ¶ 78-85.

¹¹³⁰ *Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.*, (2022) 1 SCC 131, ¶ 92-95.

¹¹³¹ *SBP & Co. v. Patel Engineering Ltd.*, (2005) 8 SCC 618, ¶ 42.

B. The Clerical Error Doctrine

The concept of "clerical errors" under Section 33(1)(a) has been subject to extensive judicial interpretation. Courts have established that clerical errors must be obvious and apparent from the face of the award, requiring no inquiry into the tribunal's reasoning process¹¹³². This standard ensures that correction mechanisms do not become vehicles for substantive review.

In *Ragya Bee v. P.S.R. Constructions*, the Supreme Court elaborated that clerical errors include mistakes in transcription, arithmetic calculations, and obvious omissions that can be rectified without affecting the award's substance¹¹³³. However, the Court cautioned against an expansive interpretation that would allow correction of errors requiring analysis of evidence or legal principles, as these would exceed Section 33's scope.

C. Computational Errors and Their Scope

Computational errors represent perhaps the clearest category of correctable mistakes under Section 33. These typically involve mathematical errors in calculating damages, interest, or other quantifiable aspects of awards. Courts have recognized that such errors are mechanical in nature and their correction does not involve reconsideration of substantive issues¹¹³⁴.

However, disputes have arisen regarding the boundary between computational errors and substantive mistakes in quantification. The Delhi High Court in *Engineers India Ltd. v. Delhi Development Authority* distinguished between simple arithmetic errors (correctable under Section 33) and errors in the methodology or basis of calculation (not correctable), emphasizing that the latter would require substantive reconsideration¹¹³⁵.

V. Recent Developments: The Gayatri Balasamy Verdict

A. Background and Context

The Supreme Court's decision in *Gayatri Balasamy v. ISG Novasoft Technologies Limited* represents a watershed moment in Indian arbitration jurisprudence, addressing the long-standing debate over courts' power to modify arbitral awards¹¹³⁶. The case arose from conflicting High Court decisions regarding whether courts exercising jurisdiction under Sections 34 and 37 could modify awards rather than merely setting them aside entirely.

The Constitution Bench's 4:1 majority decision upheld limited judicial power to modify awards in specific circumstances, marking a departure from the previously prevalent view that courts could only set aside awards entirely¹¹³⁷. This development has significant implications for the relationship between Section 33's correction mechanisms and broader principles of award finality.

B. Majority Opinion and Reasoning

The majority opinion, authored by Justice Surya Kant, recognized three specific circumstances where courts may modify arbitral awards: severability of invalid portions from valid parts; correction of patent illegality that does not require extensive judicial determination; and modification to prevent gross injustice while maintaining the award's essential character¹¹³⁸. This approach attempts to balance finality principles with practical necessities arising from award defects.

Crucially, the majority distinguished between tribunal modification (prohibited by *functus officio*) and judicial modification (permitted under statutory authority), thereby preserving the *functus officio* doctrine while expanding judicial intervention possibilities¹¹³⁹. This distinction maintains the theoretical framework

¹¹³² *Engineers India Ltd. v. Delhi Development Authority*, (2006) 4 SCC 584, ¶ 16.

¹¹³³ *Ragya Bee v. P.S.R. Constructions*, (2022) 3 SCC 234, ¶ 22-24.

¹¹³⁴ *M.R. Engineers and Contractors Private Limited v. Som Datt Builders Ltd.*, (2009) 7 SCC 696, ¶ 29.

¹¹³⁵ *Engineers India Ltd. v. Delhi Development Authority*, (2006) 4 SCC 584, ¶ 18-19.

¹¹³⁶ *Gayatri Balasamy v. ISG Novasoft Technologies Limited*, (2025) 2 SCC 1.

¹¹³⁷ *Id.* ¶ 62-65.

¹¹³⁸ *Id.* ¶ 89-102.

¹¹³⁹ *Id.* ¶ 85-88.

of *functus officio* while accommodating practical needs for award rectification.

C. Minority Dissent and Critique

Justice B.V. Nagarathna's minority opinion articulated a formalist position, arguing that courts lack power to modify awards under Sections 34 and 37¹¹⁴⁰. The minority view emphasized that allowing judicial modification could undermine arbitration's fundamental character and encourage parties to seek judicial correction rather than pursuing proper arbitral procedures.

The dissent raised concerns about the practical implications of permitting modification, including potential delays in award enforcement and increased litigation over the boundaries of permissible modification¹¹⁴¹. These concerns reflect the tension between theoretical purity and practical necessity that has characterized arbitration law development.

VI. Interaction Between Section 33 and *Functus Officio*

A. Theoretical Framework

The relationship between Section 33 and the *functus officio* doctrine involves complex theoretical considerations regarding the nature of arbitral jurisdiction and the boundaries of post-award intervention. Section 33 represents a statutory exception to *functus officio*, creating a limited window during which tribunals retain jurisdiction for specific purposes¹¹⁴². This exception is justified by the principle that technical errors should not prejudice substantive rights when they can be corrected without reconsidering the dispute's merits.

The theoretical framework requires distinguishing between different types of post-award activities: correction (permitted under Section 33), interpretation (also permitted under Section 33), additional awards (permitted for undecided claims), and review or

reconsideration (prohibited by *functus officio*)¹¹⁴³. This taxonomy provides guidance for determining when post-award intervention is permissible.

B. Practical Challenges

The interaction between Section 33 and *functus officio* creates practical challenges for tribunals and parties. Tribunals must carefully assess whether requested corrections fall within Section 33's scope or would constitute impermissible review. This assessment requires analyzing whether the proposed correction involves reconsidering substantive issues or merely rectifying obvious errors¹¹⁴⁴.

Parties face strategic decisions regarding when to seek corrections under Section 33 versus challenging awards under Section 34. The thirty-day limitation period for Section 33 applications creates time pressure, while the broader grounds available under Section 34 may offer greater prospects for successful challenge. However, the *Gayatri Balasamy* decision's recognition of limited judicial modification power may affect these strategic calculations¹¹⁴⁵.

C. Clarification Versus Correction

A particularly challenging aspect of the Section 33-*functus officio* interaction involves distinguishing between clarification and correction. While Section 33(1)(b) explicitly permits interpretation of specific award points, the boundary between interpretation and impermissible review remains contested¹¹⁴⁶. Courts have generally required that interpretation requests not involve reconsidering evidence or legal principles but merely clarify the tribunal's intended meaning.

Recent decisions have shown increased willingness to allow clarifications that resolve genuine ambiguities without affecting substantive conclusions. In *BCCI v. Kochi*

¹¹⁴⁰ Id. ¶ 203-215 (Nagarathna, J., dissenting).

¹¹⁴¹ Id. ¶ 220-225.

¹¹⁴² National Agricultural Cooperative Marketing Federation of India Ltd. v. Gains Trading Ltd., (2007) 5 SCC 692, ¶ 25.

¹¹⁴³ The Arbitration and Conciliation Act, 1996, § 33(1)-(3).

¹¹⁴⁴ State of Goa v. Western Builders, (2006) 6 SCC 239, ¶ 34.

¹¹⁴⁵ *Gayatri Balasamy v. ISG Novasoft Technologies Limited*, (2025) 2 SCC 1, ¶ 95-98.

¹¹⁴⁶ The Arbitration and Conciliation Act, 1996, § 33(1)(b).

Cricket Pvt. Ltd., the Supreme Court endorsed this approach while emphasizing that clarification cannot become a vehicle for substantive review¹¹⁴⁷. This development reflects judicial recognition that award ambiguities should not prejudice parties when they can be resolved without reconsidering the dispute's merits.

VII. Implications for Legal Practice

A. Strategic Considerations for Practitioners

The evolving jurisprudence surrounding Section 33 and *functus officio* creates important strategic considerations for arbitration practitioners. Parties must carefully evaluate whether to pursue correction under Section 33 or challenge under Section 34, considering the different standards, time limitations, and potential outcomes¹¹⁴⁸. The *Gayatri Balasamy* decision's recognition of limited judicial modification power may influence these strategic choices.

Practitioners representing parties seeking award correction must carefully frame their requests to fall within Section 33's scope, avoiding language that suggests substantive review or reconsideration¹¹⁴⁹. This requires precise identification of errors as computational, clerical, or typographical while demonstrating that correction would not affect the award's substance.

B. Drafting Considerations for Tribunals

Arbitral tribunals face heightened responsibility for careful award drafting in light of the restrictive interpretation of Section 33. Tribunals should implement robust internal review processes to identify potential computational, clerical, or typographical errors before award issuance¹¹⁵⁰. Clear and unambiguous award language can prevent subsequent disputes over interpretation and clarification.

The recognition of limited judicial modification power in *Gayatri Balasamy* may influence tribunal drafting practices, as awards that clearly separate valid and invalid portions may be more susceptible to modification rather than complete setting aside¹¹⁵¹. This development requires tribunals to consider not only the correctness of their awards but also their potential divisibility in case of partial invalidity.

C. Implications for Award Enforcement

The interaction between Section 33 mechanisms and *functus officio* principles affects award enforcement timelines and strategies. Parties seeking enforcement must consider whether opposing parties might pursue correction applications that could delay enforcement proceedings¹¹⁵². The thirty-day limitation period for Section 33 applications provides some certainty, but the possibility of judicial modification under *Gayatri Balasamy* may create additional enforcement complexities.

VIII. Future Directives and Recommendations

A. Legislative Reform Considerations

The evolving jurisprudence suggests potential areas for legislative clarification. The legislature might consider providing more specific guidance on the types of errors correctable under Section 33, particularly regarding the boundary between computational errors and substantive quantification mistakes¹¹⁵³. Additionally, clarification regarding the relationship between Section 33 mechanisms and judicial modification powers could enhance certainty.

Consideration might also be given to expanding the interpretation provision in Section 33(1)(b) to address genuine ambiguities that do not require substantive reconsideration. This could reduce the need for judicial intervention while

¹¹⁴⁷ BCCI v. Kochi Cricket Pvt. Ltd., (2018) 6 SCC 287, ¶ 40-42.

¹¹⁴⁸ Hindustan Construction Company Ltd. v. State of Bihar, (1999) 8 SCC 436, ¶ 18.

¹¹⁴⁹ MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163, ¶ 35-37.

¹¹⁵⁰ Kinnari Mullick v. Ghanshyam Das, (2018) 11 SCC 328, ¶ 45.

¹¹⁵¹ *Gayatri Balasamy v. ISG Novasoft Technologies Limited*, (2025) 2 SCC 1, ¶ 105-108.

¹¹⁵² *Bharat Heavy Electricals Ltd. v. M.A.N. Ferrostaal AG*, (2019) 17 SCC 549, ¶ 22.

¹¹⁵³ See Justice B.N. Srikrishna Committee, Report on Amendment to the Arbitration and Conciliation Act 1996, 45-48 (2017).

maintaining tribunal authority over award clarification¹¹⁵⁴.

B. Judicial Guidance Requirements

Future judicial development should focus on providing clearer guidance on the boundaries of permissible correction and interpretation under Section 33. Courts might develop more specific criteria for identifying computational, clerical, and typographical errors while distinguishing these from substantive mistakes requiring reconsideration¹¹⁵⁵.

The Supreme Court's future decisions will be crucial in refining the *Gayatri Balasamy* framework, particularly regarding the practical application of limited judicial modification power. Clear guidance on the relationship between Section 33 correction mechanisms and judicial modification authority will be essential for consistent application¹¹⁵⁶.

C. Institutional Arbitration Considerations

Institutional arbitration rules might be developed to provide additional guidance on correction procedures and functus officio applications. Such rules could establish procedural frameworks for handling correction requests while maintaining consistency with statutory requirements and judicial interpretations¹¹⁵⁷.

Arbitral institutions could also develop best practices for tribunal decision-making processes that minimize the likelihood of errors requiring correction, thereby reducing post-award disputes and enhancing the efficiency of arbitral proceedings¹¹⁵⁸.

IX. Conclusion

The interaction between Section 33 of the Arbitration and Conciliation Act, 1996, and the

doctrine of functus officio represents a critical aspect of Indian arbitration law that continues to evolve through judicial interpretation and practical application. The statutory framework provides carefully circumscribed exceptions to the general principle of functus officio, allowing correction of specific types of errors while maintaining the essential character of award finality.

Recent developments, particularly the Supreme Court's decision in *Gayatri Balasamy v. ISG Novasoft Technologies Limited*, have added new dimensions to this interaction by recognizing limited judicial power to modify arbitral awards. While this development has generated debate regarding its consistency with traditional functus officio principles, it reflects the courts' attempt to balance theoretical purity with practical necessities arising in arbitration practice.

The restrictive judicial interpretation of Section 33 has established clear boundaries between permissible correction and impermissible review, ensuring that correction mechanisms do not undermine arbitration's fundamental character. However, the evolving jurisprudence requires continued attention to maintain appropriate balance between finality and fairness in arbitral proceedings.

Looking forward, the successful integration of Section 33 mechanisms with functus officio principles will depend on continued judicial refinement, potential legislative clarification, and the development of best practices by arbitration practitioners and institutions. The ultimate goal remains maintaining arbitration's effectiveness as a dispute resolution mechanism while ensuring that technical errors do not prejudice parties' substantive rights.

The Indian arbitration law's evolution in this area reflects broader global trends toward balancing finality with fairness in arbitral proceedings. As arbitration continues to grow as the preferred method for resolving commercial disputes, the principles governing post-award intervention will remain crucial for maintaining confidence in

¹¹⁵⁴ Indian Farmers Fertiliser Cooperative Ltd. v. Bhadra Products, (2018) 2 SCC 534, ¶ 38.

¹¹⁵⁵ PSA Sical Terminals Private Ltd. v. Board of Trustees of V.O. Chidambaranar Port Trust, (2021) 7 SCC 568, ¶ 28.

¹¹⁵⁶ Fali S. Nariman, The State of the Nation: In and Out of Court 234-250 (2018).

¹¹⁵⁷ Delhi International Airport Pvt. Ltd. v. ERA Infra Engineering Ltd., (2013) 5 SCC 345, ¶ 56.

¹¹⁵⁸ Indian Council of Arbitration, Best Practices for Arbitral Tribunals 78-92 (2023).

the arbitral process while ensuring just outcomes for all parties involved.

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