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Judicial Modification of Arbitral Awards: Navigating Between Statutory Intent and Practical Necessity – An In-depth Analysis of the Supreme Court's Landmark Decision in *Gayatri Balasamy*



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Judicial Modification of Arbitral Awards: Navigating Between Statutory Intent and Practical Necessity: An In-depth Analysis of Supreme Court's Landmark Decision in Gayatri Balasamy

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Introduction

In a landmark decision¹ rendered in April 2025, a five-Judge Bench of the Supreme Court of India addressed a long-standing dilemma i.e. whether Indian courts have the power to modify arbitral awards under Sections 34² and 37³ of the Arbitration and Conciliation Act, 1996 (Arbitration Act/the Act).

The statutory scheme under Part I of the Act confers limited grounds upon which an arbitral award may be challenged. Section 34 allows a party to apply for “setting aside of an award, and Section 37 provides for an appeal against such an order should either

party remain aggrieved. However, neither provision mentions court's power to "modify" or "vary" an award. The legislative silence on this point, coupled with inconsistent judicial pronouncements, had resulted in considerable uncertainty regarding the precise scope of judicial intervention for the modification of arbitral awards.

Against this backdrop, the five-Judge Bench of the Supreme Court was called upon to determine whether, and to what extent, a power to modify could be implied within the broader framework of judicial review under Section 34. Could the statutory mandate to "set aside" an award be judicially interpreted to include a more limited intervention of "modification"? Or would such an interpretation amount to judicial overreach, impermissibly expanding a narrow statutory remedy under the guise of equitable justice?

The answers to these questions bear far-reaching consequences for the future of arbitration in India. They go to the heart of the delicate balance between judicial supervision and arbitral finality and between procedural rigour and practical necessity.

Conflicting judicial precedents

The question of whether Indian courts possess the power to modify arbitral awards has been dealt with in conflicting ways for over two decades. While Section 34 of the Act sets out an exclusive mechanism for challenging arbitral awards, limiting the Court's role to setting aside awards on narrowly defined grounds, the judiciary has, in several instances, modified arbitral awards in substance or effect.

Historically, Indian arbitration law under the Arbitration Act, 1940⁴ allowed courts far greater leeway, including powers to modify, remit, or set aside awards. However, the Arbitration Act, enacted with the aim of aligning domestic arbitration with the UNCITRAL Model Law⁵, substantially curtailed judicial intervention in the arbitral process. Section 5 of the Act embodies this intent by explicitly stating that "no judicial authority shall intervene except where so provided in this Part".⁶ Accordingly, a literal interpretation of Section 34 read with Section 5 of the Act would suggest that the Indian law permits an award only to be set aside on limited grounds, such as incapacity of parties⁷, invalidity of arbitration agreement⁸, denial of opportunity to present a case⁹, Arbitral Tribunal acting in excess of jurisdiction¹⁰, or contravention of public policy¹¹.

Nonetheless, certain decisions have taken a liberal view on limits of judicial intervention. In *ONGC Ltd. v. Western Geco International Ltd.*¹², the Supreme Court held that when an award is founded on an inference that no reasonable person would draw, resulting in a miscarriage of justice, the Court may either set aside or modify the award, depending on whether the offending portion is severable or not. This approach implicitly acknowledged a limited power of modification, subject to the severability of the offending part.

Similarly, in *Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd.*¹³, the Supreme Court adjusted the rate of post-award interest applicable to different currency

components of the arbitral award, aligning it with commercial realities. Although the decision did not explicitly refer to any power of modification under Section 34, it exercised what amounted to substantive alteration of the arbitral award. A comparable approach was adopted in *Tata Hydro-Electric Power Supply Co. Ltd. v. Union of India*¹⁴, where the Supreme Court altered the date from which interest was payable, without setting aside the award.

In contrast, a more literal reading of Section 34 was articulated in *NHAI v. M. Hakeem*¹⁵, where the Supreme Court categorically held that Indian courts do not possess the power to modify arbitral awards. The Supreme Court reasoned that Section 34, being modelled on the UNCITRAL framework, does not contemplate any intermediate relief short of setting aside. Allowing modification, the Supreme Court held, would amount to rewriting the statute. This judgment was later followed in *Larsen Air Conditioning & Refrigeration Co. v. Union of India*¹⁶, and *S.V. Samudram v. State of Karnataka*¹⁷, reinforcing the literal interpretation and declining to endorse prior judgments that had implied or exercised modification powers.

Despite the decision rendered in *M. Hakeem*¹⁸, a number of two and three-Judge Bench decisions have continued to treat modification as permissible in appropriate cases. In *Numaligarh Refinery Ltd. v. Daelim Industrial Co. Ltd.*¹⁹, the Supreme Court observed that where an award is demonstrably unjust or contrary to settled legal principles, the Court may intervene to modify it, particularly if the parties had voluntarily submitted to arbitration.

Even more significantly, in *Ssangyong Engg. and Construction Co. Ltd. v. NHAI*²⁰, the Supreme Court set aside the majority award and enforced the minority award, invoking the constitutional powers²¹ to do complete justice. Although couched in principles of equity and larger constitutional powers, the effect of the verdict was a substantive modification of the arbitral outcome. Comparable treatment was accorded in *Shakti Nath v. Alpha Tiger Cyprus Investment No. 3 Ltd.*²², where the Supreme Court intervened, with the consent of the parties, and altered the interest awarded without setting aside the entire award.

This split in the jurisprudence prompted mounting criticism, both academic and institutional. Experts and critics argued that courts could not continue to exercise appellate-style review under the guise of Section 34 without undermining the finality of arbitral awards. Others countered that the rigid application of Section 34 often led to inefficiencies, requiring parties to recommence arbitration proceedings where a limited modification would have sufficed.

Further complexity arose from the international dimension. The Act, being rooted in the UNCITRAL Model Law²³, is closely tethered to global norms of arbitral enforcement, including the New York Convention, 1958 (Convention)²⁴. Under the Convention, the term

“arbitral award” refers to the decision of the Arbitral Tribunal and does not encompass a judicially modified decree. Consequently, a line of argument developed suggesting that any modification by domestic courts risks rendering the award unenforceable abroad, particularly in jurisdictions that insist on the autonomy of the arbitral process.

Issues

This judicial and normative incongruity formed the backdrop for the reference to the five-Judge Bench for an authoritative resolution. The moot questions framed for consideration included:

- (i) Whether the powers of the Court under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 will include the power to modify an arbitral award?
- (ii) If the power to modify the award is available, whether such power can be exercised only where the award is severable, and a part thereof can be modified?
- (iii) Whether the power to set aside an award under Section 34 of the Act, being a larger power, will include the power to modify an award and if so, to what extent?
- (iv) Whether the power to modify an award can be read into the power to set aside an award under Section 34 of the Act?
- (v) Whether the judgment of the Supreme Court in *M. Hakeem*²⁵ and subsequent decisions that follow the position in *M. Hakeem*²⁶ lay down the correct law?

Majority view

The majority opinion (4:1) represents a significant shift in Indian arbitration law jurisprudence, articulating authoritatively that a limited judicial power to modify arbitral awards under Section 34 of the Act does exist. The Supreme Court grounded its reasoning in a purposive interpretation of the statutory scheme, anchored in functional necessity and supported by established doctrinal principles.

The foundation of the majority verdict lies in the significance attributed to the proviso to Section 34(2)(a)(iv). The proviso permits courts to set aside only those parts of an award that exceed the arbitral mandate, provided such portions are severable. According to the majority, this provision affirms that a Section 34 Court is not compelled to invalidate an award in its entirety where a defective portion may be feasibly severed/removed. From this severability premise, the judgment extends the logic to conclude that a power to annul must necessarily include the lesser power to modify. This inference was reinforced by invoking the maxim *omne majus continet in se minus*, i.e., a larger power to do something (set aside an award) must encompass a smaller power falling within the same genus (modify an award in part).

The majority view resisted reading the term “recourse” in Section 34(1) as being rigidly limited to annulment. What matters, the Supreme Court held, is whether the relief, be it

modification, correction, or annulment, remains tethered to the boundaries of the Section 34 jurisdiction. As long as a court refrains from entering the merits of the award or reappreciating evidence, a limited remedial flexibility must be read into the power to set aside.

A key concern for the majority was the inefficiency and delay caused by the rigid “set aside or nothing” approach. The Supreme Court highlighted that the absence of a power to modify, even where the defect is both obvious and limited, often compels a return to arbitration, triggering yet another cycle of hearings, and potential relitigation under Sections 34 and 37 of the Act. This was particularly troubling in a jurisdiction where challenges under Section 34 often remain pending for years. Thus, the refusal to acknowledge a remedial middle ground that allows for the correction of severable defects without nullifying the arbitral process would, in the majority’s view, defeat the efficiency rationale underlying the adoption of arbitration as an alternative dispute resolution mechanism.

In support of this proposition, the Supreme Court navigated through a catena of its decisions that had wrestled with similar tensions. It drew from decisions such as *ONGC Ltd.* (supra).²⁷, where a three-Judge Bench had accepted that modification might be permissible when the offending portion of an award was manifestly untenable and severable. Similarly, the majority noted that in *Vedanta Ltd.* (supra).²⁸, the Supreme Court had adjusted interest rates applicable to different currency components of an award, aligning them with commercial realities, even though no express statutory basis for such variation existed within the four corners of Section 34. A reference was also made to *Ssangyong Engg. and Construction Co. Ltd.* ²⁹, where the majority award was set aside and the minority award was enforced under Article 142 of the Constitution, effectively resulting in a substitution of the award. These cases, the Supreme Court reasoned, evinced a jurisprudential pattern in which limited and outcome-oriented judicial interventions were tolerated, and at times necessary, to do complete justice in the arbitral context.

The majority also addressed the argument that Sections 33 and 34(4) already provide mechanisms for correction or remand, thereby negating any need for modification powers. This contention was rejected. While Section 33 empowers the Arbitral Tribunal to correct errors or issue additional awards upon party request, it does not confer any power on the Court. Section 34(4), which allows the Court to remit the matter back to the Tribunal, was described as useful but not dispositive. The majority observed that remanding a matter to the Arbitral Tribunal under Section 34(4) may not be appropriate when it does not serve the interests of the parties, particularly in time-sensitive matters or where it would lead to undue costs and inefficiencies.

In such circumstances, the Supreme Court held that a limited power to correct manifest and severable defects, without reopening the dispute or engaging in a merits review, was

not only justified but also necessary to uphold the objectives of the Act.

While acknowledging the need for functional flexibility in intervention, the Supreme Court carefully delineated the boundaries of the modification power. The majority view held that such power is to be exercised only in cases involving clear, objective, and severable defects such as computational errors, clerical mistakes, patent illegality, or instances of jurisdictional overreach. Importantly, the Supreme Court cautioned that modification must not entail any re-evaluation of facts or merits of the dispute. Where the defect is ambiguous, non-severable, or requires deeper factual assessment, the proper course would be either remand to the Arbitral Tribunal under Section 34(4) or annulment under Section 34(2) of the Act.

Lastly, the majority rejected the argument that judicial modification would compromise the enforceability of awards under the Convention³⁰.

The majority held that once Section 34 is interpreted to include a limited power to modify awards, this authority by itself will not affect the international commercial arbitration regime or the enforcement of foreign awards.

Drawing from its decision in *Brace Transport Corpn. of Monrovia v. Orient Middle East Lines Ltd.*³¹, the Supreme Court opined that under the New York Convention³², an award may be recognised without being enforced; but if it is enforced, then it is necessarily recognised.

The Supreme Court noted that several foreign jurisdictions, including Singapore, Kenya, and the United Kingdom, though having followed the UNCITRAL Model Law³³, have incorporated statutory provisions allowing courts to modify awards in appropriate cases. Although India lacks such explicit legislative language, the majority held that a purposive and internally coherent reading of the Act permits a similar, though more limited, curial role.

In sum, the majority crafted a carefully qualified power of judicial modification, rooted in statutory interpretation, and functional necessity.

Dissenting opinion

The minority opinion in *Gayatri Balasamy*³⁴ articulates a clear and uncompromising view: Courts exercising jurisdiction under Section 34 of the Act do not possess the power to modify an arbitral award. The minority view cannot be disregarded as a formalist rejoinder to the majority's pragmatism as it appears to be grounded in a structurally coherent reading of the statute, a respect for legislative supremacy, and a principled concern for the autonomy and finality of the arbitral process.

At the heart of the dissent is a textual argument that Section 34(1) provides that "recourse

to a court against an arbitral award may be made *only* by an application for setting aside such award". In the minority's interpretation, the phrase "only by" must be given its full limiting effect. That is, the sole power conferred on a court under this provision is to annul an award. A court may declare the award void, but it may not alter its terms, reduce or enhance quantum of monies, replace findings, or rewrite outcomes. The dissent draws a categorical distinction between setting aside, which is a form of legal invalidation, and modification, which involves judicial revision. These, as per the dissenting Judge, are not different points on a spectrum of intensity, but categorically distinct remedial frameworks.

While seeking to differ from the majority, the dissenting view explains that powers to annul an award and modify cannot be placed in the same genus, as one extinguishes a finding while the other substitutes.

To treat modification as a "lesser included power" within setting aside, the dissent argues, is a categorical error. It would mean reading into the statute a discretionary remedial power that the legislature chose not to include, despite having done so earlier under the earlier Arbitration Act, 1940. That legislation expressly allowed courts to "modify or correct" an award under Sections 15 and 16. The repeal of those provisions, and their conspicuous absence from the Act, as per the minority view, could not be ignored.

The dissent emphasised that the Parliament, in consciously adopting the UNCITRAL Model Law³⁵ framework, enacted a statutory design that reflects global best practices, favouring minimal judicial interference. Thus, the omission of modification is not an accidental silence to be judicially filled, but a deliberate structural feature of the new arbitral regime.

A reference was made to the decision in *McDermott International Inc. v. Burn Standard Co. Ltd.*³⁶, where a two-Judge Bench had ruled that under the Act, courts do not possess the authority to correct errors of fact or law in an arbitral award. The Court's role is confined to setting aside the award on limited grounds and remitting the matter if necessary. Any deviation from this statutory mandate, it was held, would risk transforming the Court into an appellate authority (something which the Act intended to avoid).

The dissenting view also resists the invocation of the doctrine in the maxim *omne majus continet in se minus*. In the minority's reasoning, this maxim cannot be applied to equate the power to annul with the power to modify. The two differ not merely in degree but in kind. Setting aside does not require the Court to substitute its own assessment for that of the arbitrator. Modification, by contrast, does particularly when it involves changing interest rates, recalibrating damages, or restructuring the operative portion of an award. This amounts to a judicial re-evaluation of the merits, which lies wholly outside the scope of Section 34.

Another aspect dealt with in the dissenting view is the international enforceability of modified awards. The New York Convention³⁷, to which India is a party, recognises and enforces only those awards that emerge from Arbitral Tribunals and not court-modified instruments that deviate from the original award. The dissenting view concurs with the submission that once a domestic court alters an arbitral award in substance, it may no longer qualify as an “arbitral award” under the Convention.

The dissenting opinion was not convinced by the practical reasons given in support of allowing modification, such as delays, high costs, and inefficiencies. It acknowledges that requiring parties to recommence arbitration after an award is partially set aside may be cumbersome. However, it insists that judicial economy cannot override legislative constraint. Courts are not empowered to improve the law’s efficacy by rewriting its terms. If there is indeed a policy gap, the remedy lies with Parliament, not in judicial interpretation. The judicial function is to apply the law as it stands, not to adjust its edges in pursuit of procedural convenience.

On Sections 33 and 34(4) of the Act, the dissent viewed these provisions as evidence that the legislature, in its wisdom, had already accounted for limited rectification of defects in the award post its pronouncement.

These provisions are self-contained and functionally adequate. If the Tribunal makes a computational error or omits to decide a claim, the parties have statutory tools to seek correction. There is no need, in the dissent’s view, for carving out a residual power for a court-driven modification, particularly when such power was deliberately left out of the statute.

The dissent also invokes the structural safeguards of the Indian Constitution. In its view, the interpretive expansion of Section 34 of the Act to include powers of a court to modify an award tread dangerously close to judicial legislation.

Finally, the dissenting view highlights a normative principle by arguing that finality and autonomy are not merely functional virtues of arbitration; they are structural guarantees. If every arbitral award is potentially subject to partial judicial rewriting, even under the guise of severability of the offending part, the Tribunal’s authority becomes contingent on curial review of the courts. This dilutes the very point of arbitration as a non-judicial, party-driven process. The dissent thus calls for restraint not merely to preserve statutory fidelity, but to protect the conceptual core of arbitration itself.

Analysis: Between remedial pragmatism and legislative discipline

The five-Judge Bench’s decision in *Gayatri Balasamy*³⁸ presents a jurisprudential crossroad for Indian arbitration law. On the one hand, lies the majority’s view, which is innovative,

remedially flexible, and animated by functional exigency. On the other is the minority's approach: strictly and literally interpretive, structurally coherent, and textually restrained. Each view originates from a conception of justice. One seeks to do justice in the individual case, the other to preserve justice in the system. The central question, then, is not whether modification is expedient or desirable, but whether it is legally justifiable within the framework of the Act.

At first glance, the majority's approach appears attractive. Faced with the recurring problem of arbitral awards containing limited but fatal defects often technical, and occasionally jurisdictional, the majority crafts a remedial path that avoids the complete annulment of the award. This reflects a pragmatism deeply informed by the realities of Indian litigation, where post-award challenges often stretch for years, and rearbitration is not just inefficient but, in many cases, unaffordable. If the dispute is essentially resolved but for a "severable" error or a misstep, why restart the process entirely? The majority's solution appears to inject proportionality into a process otherwise tethered to binary outcomes.

Yet, it is precisely this pragmatism that invites scrutiny. The crux of the dissenting critique that modification and annulment are conceptually distinct is not easily dismissed. While the power to partially set aside may be doctrinally defensible under the express language of Section 34(2)(a)(iv), the leap from setting aside to modifying the operative substance of the award is not merely inferential; it is legislative. Modification involves curial re-engineering of what is, in form and function, the arbitrator's decision. That function is neither authorised nor contemplated under the current statutory framework. By treating modification as a "lesser" form of relief in the same genus, the majority risks collapsing the structural firewall that separates arbitral independence from judicial oversight.

The Act, aligned with the UNCITRAL Model Law³⁹, was premised on the idea that finality is an essential feature, not a mere aspiration. The role of courts was consciously narrowed to set aside awards on specific grounds, or to remit them under Section 34(4). These provisions operate as ex-post checks, not curial substitutes. Modification, in contrast, requires the Court to assess, alter, and in some cases recompose the arbitral award without any clear limiting principle apart from subjective reasonableness or functional expediency. Once such power is recognised, it becomes difficult to cabin. Courts may begin with clerical errors but may end up redrawing quantum, interest, or even operative reliefs under the logic of corrective justice.

Equally significant is the international dimension. The New York Convention⁴⁰ draws a sharp line between arbitral and judicial decision-making. Although the majority assures that the modified award retains its arbitral character, this assurance is practically contestable, especially in multijurisdictional enforcement scenarios.

None of this is to deny that limited modification, particularly in cases of obvious

computational errors, duplication, or facial miscalculations may serve the ends of justice. But such powers, if necessary, should be conferred legislatively, with clear scope, procedure, and safeguards. Jurisdictions like Singapore and the United Kingdom permit such interventions under express statutory frameworks, which define the grounds, methods, and limits of curial correction. In India, no such framework exists. To imply its existence through judicial reasoning is, with respect, to risk creating a silent judicial code beside the written statute.

Conclusion

The decision in *Gayatri Balasamy*⁴¹ is, in many ways, emblematic of the evolving tension at the heart of Indian arbitration law. It asks whether the judiciary should remain tethered to a strict statutory compass or whether it may deviate judiciously and sparingly in pursuit of equity and efficiency. The majority has opted for the latter, introducing a calibrated power of modification within the framework of Section 34, premised on doctrinal inference and functional necessity. It offers a vision of a more responsive curial role, one that aligns arbitral remedies with practical justice.

Yet, as the minority cautions, the impulse to resolve immediate procedural inefficiencies cannot override the deeper architecture of arbitral finality and legislative design. The Act reflects a deliberate retreat from the interventionist tendencies of the past. To read into it a power that is neither expressed nor compelled risks unsettling the very values arbitration is meant to secure: autonomy, speed, and finality.

Ultimately, it is not the presence or absence of Courts' power to modify awards that will determine the strength of India's arbitration regime, but rather whether its evolution continues to be guided by principled boundaries instead of ad hoc improvisations.

The path forward, therefore, lies not in judicial patchwork, but in legislative design. If modification is to become a permanent feature of post-award recourse, its scope must be clearly articulated, its limits carefully drawn, and its operation harmonised with the broader objectives of the Act. Until then, the line between equity and excess must be trodden with caution.

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1. *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, 2025 SCC OnLine SC 986.
2. Arbitration and Conciliation Act, 1996, S. 34.
3. Arbitration and Conciliation Act, 1996, S. 37.
4. Arbitration Act, 1940.

5. UNCITRAL Model Law on International Commercial Arbitration, 1985, United Nations document A/40/17, Annex I.
6. Arbitration and Conciliation Act, 1996, S. 5.
7. Arbitration and Conciliation Act, 1996, S. 34(2)(a)(i).
8. Arbitration and Conciliation Act, 1996, S. 34(2)(a)(ii).
9. Arbitration and Conciliation Act, 1996, S. 34(2)(a)(iii).
10. Arbitration and Conciliation Act, 1996, S. 34(2)(a)(iv).
11. Arbitration and Conciliation Act, 1996, S. 34(2)(b)(ii).
12. (2014) 9 SCC 263.
13. (2019) 11 SCC 465.
14. (2003) 4 SCC 172.
15. (2021) 9 SCC 1.
16. (2023) 15 SCC 472.
17. (2024) 3 SCC 623.
18. (2021) 9 SCC 1.
19. (2007) 8 SCC 466.
20. (2019) 15 SCC 131.
21. See, Constitution of India, Art. 142.
22. (2020) 11 SCC 685.
23. UNCITRAL Model Law on International Commercial Arbitration, 1985, United Nations document A/40/17, Annex I.
24. 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
25. (2021) 9 SCC 1.
26. (2021) 9 SCC 1.
27. (2014) 9 SCC 263.
28. (2019) 11 SCC 465.
29. (2019) 15 SCC 131.
30. 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
31. 1995 Supp (2) SCC 280.
32. 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
33. UNCITRAL Model Law on International Commercial Arbitration, 1985, United Nations document A/40/17, Annex I.
34. 2025 SCC OnLine SC 986.

35. UNCITRAL Model Law on International Commercial Arbitration, 1985, United Nations document A/40/17, Annex I.
36. (2006) 11 SCC 181.
37. 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
38. 2025 SCC OnLine SC 986.
39. UNCITRAL Model Law on International Commercial Arbitration, 1985, United Nations document A/40/17, Annex I.
40. 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
41. 2025 SCC OnLine SC 986.