

Why The Minority View Got It Right In Gayatri Balasamy

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Judicial Modification Of Arbitral Awards Is Impermissible

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Introduction

In *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* [2025 INSC 605] (“*Gayatri Balasamy*”), the Supreme Court of India resolved a long-standing issue: whether Indian courts possess the power to modify an award when deciding a challenge under [Section 34](#) of the [Arbitration and Conciliation Act, 1996](#) (“[Arbitration Act](#)”). With a 4:1 majority ruling, the Supreme Court held that courts do have the power, albeit a limited one, to amend arbitral awards. The judgment is seen as a pragmatic and realistic response to the ineffectiveness of setting aside an entire award, particularly when only certain parts are problematic, and can be neatly severed. However, the solitary dissenting opinion, authored by Justice K. V. Viswanathan, highlights a more fundamental concern. It is not an argument against pragmatism *per se*, but rather a defence of a legislative design that, in principle, avoided vesting the judiciary with explicit powers to modify an award.

Judicial Deference to the Statutory Intent

The core of the minority opinion is to remain true to the statutory text in [Section 34](#) of the [Arbitration Act](#). [Section 34\(1\)](#) specifically states that recourse to a court under the provision may only be made for setting aside the arbitral award. The dissent views this language as being peremptory and prohibitive against any relief less than annulment. According to the dissenting view, the act of modification is not simply a diluted or lesser form of setting aside, but a distinct process that involves the rewriting of the award. The dissent also argues that to suggest a limited power to modify awards does exist would be to insert in [Section 34](#) of the Arbitration Act what the legislature has explicitly excluded.

There is nothing abstract or speculative in the dissent’s recommendation on exercising judicial deference to the statutory intent. The earlier enactment, *i.e.*, the [Arbitration Act, 1940](#), gave explicit powers to the court to amend awards. Such power was abrogated when the Arbitration Act was enacted in accordance with the [UNCITRAL \(United Nations Commission On International Trade Law\) Model Law on International Commercial Arbitration \(2006\)](#). The conscious omission of a modification-related provision was, therefore, by no means to be considered an oversight in legislative drafting, especially when the later enactment was based on an international template and intended to create a statute that incorporated the global best practices. Viewed from this perspective, the dissent seems justified in resisting the urge to interpret the statute in a way that conflicts with its true meaning.

Party Autonomy is the Fountainhead of Arbitration Law Jurisprudence

The minority opinion does not solely concern textual fidelity or historical design. Instead, it bases its arguments on the conceptual foundation of arbitration. The essence of a mature arbitration jurisdiction lies in party autonomy, along with the immunity from subsequent re-evaluation by a court, except in rare and statutorily defined circumstances. Modification of an award involves a judicial substitution of reasoning, outcome, or quantum. This undermines party autonomy and the finality of outcomes that the Arbitration Act aims to protect. The dissent's commentary reminds us that arbitration is not a lesser adjudicative system to be overseen by courts. It is a distinct, self-contained process to be respected on its own terms.

The Fallacy of Functional Necessity

The majority view in [Gayatri Balasamy](#) justifies its stance based on functional efficiency. It argued that when the error was minor or obvious, judicial modifications could prevent unnecessary remand or re-arbitration, thereby saving time and costs. The dissent does not deny that such inefficiencies exist. Instead, it discourages the idea that these inefficiencies justify judicial overreach. Legislative reform, not judicial innovation, is the remedy for legislative shortcomings. Courts serve as guardians of legality rather than architects of procedural convenience. The dissent cautions that any pragmatic interference, regardless of intent, undermines the separation of powers between the judicial and legislative arms of the state. In this context, expediency should not compromise structural boundaries.

The International Dimension

Another potential cause of concern, as mentioned in the dissent, is the dangers associated with judicial modification of the enforceability of awards under the [United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards \(1958\)](#) (the “[NY Convention](#)”).

The NY Convention aims to establish a uniform and globally applicable regime for recognising and enforcing arbitral awards. When a domestic court makes substantive changes to the award, there is a risk of creating a hybrid instrument that does not qualify as a NY Convention-enforceable award by definition. This issue is real and has practical implications for the enforceability of Indian awards across borders. Many may have overlooked this risk by citing other countries with the power to amend awards, but those jurisdictions generally include this authority in the spirit of the law.

Setting Aside in Part Does Not Justify Partial Modification

Based on the *proviso* to [Section 34\(2\)\(a\)\(iv\)](#) of the [Arbitration Act](#), the majority in *Gayatri Balasamy* held that if a court is permitted to set aside part of an award, it should also be allowed to modify that same part. This view was dismissed by the dissent as a misinterpretation of the statutory framework. Setting aside a segment of an award involves the judicial rejection of the offending part without affecting the rest. However, modification involves judicial replacement of the tribunal's findings.

Conclusion

The majority views [Section 34](#) of the Arbitration Act as a fairly broad provision that includes the power to modify the award, as long as the court avoids examining the merits. The dissent resists this flexibility, arguing that Section 34 cannot be seen as a catch-all provision where powers are implied through judicial interpretation. Section 34, as per the dissenting view, provides for a limited recourse through the setting aside of an award on specific grounds. Attempts to extend the provision to secure what are considered well-intended and adequate remedies are viewed as re-engineering the statute.

The dissent does not dismiss the possibility of reform. What it opposes is judicial usurpation of legislative functions. The legislature retains the authority to amend the [Arbitration Act](#), providing the Indian arbitration regime with the flexibility to modify awards in clearly defined cases. In fact, many jurisdictions that permit modification have done so through statutory language rather than judicial inference. The dissenting opinion, therefore, proposes a path of development but within constitutionally appropriate bounds. It advocates moderation, not as a rejection of progress, but as a commitment to institutional decorum.

The majority's approach has a reformist tendency and rightly acknowledges key procedural inefficiencies. However, in attempting to seal what it sees as the loopholes, the majority risks jeopardising the entire concept of the arbitral process. The merit of the dissent lies in its highlighting that not all reform is positive, and not all procedural fixes are legally sound.

The dissenting opinion in *Gayatri Balasamy* exemplifies principled adjudication rooted in statutory discipline. It begins by interpreting [Section 34](#) narrowly as only permitting the setting aside of awards on limited grounds. Against this backdrop, the dissent views the lack of explicit statutory wording to allow modification as intentional, especially considering the express authority to modify under the [Arbitration Act, 1940](#) and its clear

omission in [the Arbitration Act](#). It does not equate severability with rewritings and differentiates between removing a defective part and the judicial act of replacing a tribunal's decision with that of a court. Notably, the dissent challenges the majority's reliance on [Article 142](#) and rejects the idea that constitutional equity can fill gaps deliberately left by Parliament. It sees the invocation of Article 142 not as harmless but as an overreach of constitutional power when used to grant powers not explicitly stated in the statute. The dissent also highlights the international implications, since modification could lead to awards whose enforceability under the NY Convention is questionable.

Gayatri Balasamy has presented a doctrinal shift; yet, the minority opinion serves as a necessary counterweight. The minority opinion, while outvoted, presents a more accurate picture of what a more efficient, respected, and rule-of-law-based arbitration regime should look like.

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