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Judicial Review of Arbitral Awards: The Supreme Court's Tryst with Article 142 and Arbitral Finality

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Introduction

Within two years, the Supreme Court of India has thrice dealt with the issue of the finality of an arbitral award, each time through a different approach and at varying levels of review.

In *DMRC Ltd.* v. *Delhi Airport Metro Express (P) Ltd.*[1], the Supreme Court entertained a curative petition to set aside an award worth roughly INR 7500 crores, after that award had survived proceedings under Sections 34 and 37, Arbitration and Conciliation Act, 1996 (Arbitration Act), a special leave petition and a review. In *Gayatri Balasamy* v. *ISG Novasoft Technologies Ltd.*[2], a Constitution Bench held, by a four-to-one majority, that the statutory power to set aside an award under Section 34 inherently includes a limited, implied power to sever and excise clearly invalid portions without completely invalidating the remainder. In *Bhupesh Bhayana* v. *Kunal Seth*[3], the Supreme Court found an award patently illegal and declined to set it aside because

the parties had litigated since 2012, and invoked Article 142 to put a quietus to the matter.[4]

The three judgments raise the same concern in different ways: How far may a court go in correcting an arbitral award before it crosses the line from supervision into appellate review? They sit at different points on that line. The *DMRC case* represents the widest intervention, the *Gayatri Balasamy case* attempts to define the limited instances warranting correction/modification of arbitral awards, and the *Bhupesh Bhayana case* shows how Article 142 may be used to bring finality to a long-drawn case. The real concern is not any one of these decisions in isolation, but the possibility that an exceptional power may gradually become a regular tool for correcting commercial outcomes.

Commercial law depends on certainty. When parties enter into a contract, they agree not only on their obligations, but also on the risks they are willing to bear, the remedies available for breach, and the forum that will decide any dispute. Each of these choices depends on the assumption that the contract and the governing statute will be applied with a reasonable degree of predictability.

If, after the arbitral process and the statutory challenges are over, the outcome can still be reshaped on broad equitable grounds, that predictability is weakened. The result may appear fair in the individual case, but it hampers certainty in commercial dealings by making contractual outcomes vulnerable to reassessment long after the parties have acted on their bargain.

This article argues that the exercise of jurisdiction under Article 142 of the Constitution should remain confined to genuinely exceptional cases in commercial matters. Article 142 cannot become a fallback remedy for disappointed award-debtors, a means to rebalance commercial bargains, or a final appellate route once all remedies have been exhausted.

The discussion that follows examines why commercial disputes require a higher threshold of restraint, how the Arbitration Act protects finality, what the recent decisions reveal, and why certainty in commercial dealings must remain central to the use and invocation of Article 142 of the Constitution.

Article 142 of the Constitution: A safety valve

Article 142 empowers the Supreme Court to pass such orders as may be necessary for doing "complete justice" in a matter before it. The provision gives the Supreme Court flexibility to mould relief in cases where ordinary remedies may be insufficient to meet the demands of justice. However, that very breadth requires restraint.

The settled position, reflected in *Supreme Court Bar Assn.* v. *Union of India*[5] and earlier indicated in *Prem Chand Garg* v. *Excise Commr.*[6], is that Article 142 may supplement the law, but cannot supplant it. In other words, it may be used to fill a limited remedial gap in a given case, but not to replace the statutory framework with a result that the statute itself does not permit.

Article 142 of the Constitution acquired its force in cases where ordinary legal remedies were unable to meet the demands of justice. Its most compelling use has been in matters such as the release of undertrial prisoners, environmental protection, compensation for mass harm, and the framing of workplace harassment guidelines in the absence of legislation. These were not conventional disputes between parties asserting private rights. They were cases where the existing legal framework was either absent, inadequate or too slow to respond to the injustice before the court. Article 142 derives its strongest justification in precisely such situations, as an exceptional power to ensure that justice is not defeated by the limits of ordinary remedies.

The parties are ordinarily governed by a contract they negotiated, the limitation rules they are presumed to know, agreed-upon remedies, and a forum and hierarchy of recourse they chose. The legal consequences of those choices are often priced into the transaction itself. A party may assume an unfavourable risk, agree to an imperfect clause, allow a remedy to lapse, or fail before the forum it selected. The hardship that follows is not always a failure of the law. In many cases, it is the consequence of the bargain itself. In such cases, Article 142 cannot serve as a general jurisdiction to relieve commercial actors of the arrangements they made.

This does not mean that Article 142 is unavailable merely because the dispute is commercial. The issue is one of threshold and restraint. Experts have cautioned[7] that, in seeking to do justice in the case before it, the Supreme Court may sometimes overlook the wider effects of its orders on persons who are not before it. That concern is especially relevant in

commercial matters.

The Arbitration Act and the limits of judicial intervention

The Arbitration Act rests on a deliberate choice in favour of party autonomy, minimal judicial interference and the finality of awards. Section 5 bars judicial intervention in matters governed by Part I except where the part so provides. Section 34 supplies a limited recourse. It is not an appeal, it does not permit a rehearing on the facts, and it does not allow a court to substitute its own view because another is available. The grounds for putting up a challenge are limited.

The position before the controversy over whether courts exercising jurisdiction under Section 34, Arbitration Act can modify arbitral awards was shaped principally by two decisions. In *McDermott International Inc.* v. *Burn Standard Co. Ltd.*[8], the Supreme Court held that a court exercising jurisdiction under Section 34 may set aside an arbitral award, but cannot correct the errors of the arbitrator. The consequence of setting aside, if the parties so choose, is a fresh arbitration. This was carried forward in *NHAI* v. *M. Hakeem*[9], where the Supreme Court held that Section 34 does not confer a power to modify an award, since a limited statutory remedy must be exercised within the limits prescribed by the statute.

The rationale for the decisions in the *McDermott case* and the *NHAI case* is simple. Section 34 court does not sit in appeal over the award. It does not ask whether the arbitrator reached the best or most commercially sensible result. It only asks whether the award suffers from the limited defects recognised by the statute. If courts begin correcting or reshaping awards as a matter of course, arbitration loses much of its value. It stops being a final and limited process, and becomes only the first round of a longer court battle.

DMRC: The curative reopening of merits

In the *DMRC case*[10], an arbitral tribunal had awarded the concessionaire a sum approaching INR 7500 crores. A Single Judge upheld it, a Division Bench partly interfered, the Supreme Court restored the award under Article 136 of the Constitution, and a review was dismissed. The Supreme Court then entertained a curative petition and set the award aside, holding that the

Tribunal had committed a fundamental error in treating steps taken to cure defects as equivalent to the defects having actually been cured. The difficulty, for present purposes, is not simply the result. It is that a concluded arbitral award was reopened after the statutory process, special leave proceedings and review had all ended, on an issue closely connected with the interpretation of the contract.

This is why the *DMRC case* is the widest point in the spectrum. Notably, curative jurisdiction, as explained in *Rupa Ashok Hurra* v. *Ashok Hurra*[11], is meant for the rarest cases, such as a gross violation of natural justice or a reasonable apprehension of bias. When curative jurisdiction is invoked in a commercial arbitration matter to revisit the Tribunal's reasoning after all ordinary remedies have been exhausted, it undermines the assurance that an arbitral award will attain finality once the statutory process is complete.

Gayatri Balasamy: Structured modification

The *Gayatri Balasamy case*[12] is important because it is the Supreme Court's most detailed attempt to answer whether an arbitral award can be modified after it has been made. The Constitution Bench accepted that a complete bar on modification may, in some cases, produce unnecessary delay and hardship. If the defect is narrow, obvious and capable of correction without reopening the merits, setting aside the award and sending the parties back to arbitration may serve little purpose.

At the same time, the Supreme Court did not convert Section 34, Arbitration Act into an appellate remedy. The power recognised by the majority is limited. It extends to cases where an invalid part of the award can be severed from the valid part, where there are clerical, computational or manifest errors apparent on the face of the record, where post-award interest requires correction in an appropriate case, and where Article 142 of the Constitution may be invoked with caution to bring an end to the dispute.

The judgment is therefore best read narrowly. It does not say that a court may revisit the merits of the award merely because the result appears harsh or commercially inconvenient. It permits correction only where the court can act without reappreciating evidence, reconsidering contractual interpretation or substituting its own view for that of the Tribunal.

The dissent of Justice K.V. Viswanathan is significant because it identifies the

risk in recognising even a limited power of modification. In his view, the power to set aside an award and the power to modify it are different in character, and Article 142 cannot be used to bypass the statutory scheme of the Arbitration Act. The majority also acknowledged this danger by cautioning that Article 142 must not be used to rewrite an award or modify it on merits.

Bhupesh Bhayana: Testing the limits of Gayatri Balasamy

The *Bhupesh Bhayana case*[13] is important because it shows how the framework in the *Gayatri Balasamy case* may operate in a concrete commercial dispute. The dispute arose from a reconstruction agreement under which the builder was found to be in breach. The Arbitral Tribunal awarded delay penalty to the owners, but declined a separate forfeiture claim on the ground that both reliefs could not be granted together. The Single Judge, in proceedings under Section 34, Arbitration Act, altered the period for which penalty was payable. The Division Bench held that such modification was beyond the scope of Section 34, but then denied damages to the owners altogether for want of proof of actual loss.

The Supreme Court restored the contractual basis of the claim. It held that where the agreement itself fixed a per-day amount for delay, the owners were not required to separately prove actual loss. The Supreme Court, however, confined the penalty to the period that was contractually sustainable and adjusted it against the builder's entitlement. This was a narrow correction based on the record. It did not require fresh evidence or a wider reconsideration of the merits.

Article 142 was invoked at the final stage to close the matter rather than send the parties into another round of proceedings. The decision is therefore best read narrowly. It supports the use of Article 142 where the correction is limited, the figures can be worked out from the record, and a remand would serve no real purpose. It should not be read to mean that long pendency, by itself, permits modification of an arbitral award in a commercial dispute.

The comparative position

A comparison with other jurisdictions reinforces the same position. Under

English arbitration law, challenges are confined to want of substantive jurisdiction, serious procedural irregularity, and a narrow appeal on a point of law, which parties may exclude by agreement. In *Lesotho Highlands Development Authority* v. *Impregilo SpA*[14], the House of Lords emphasised that courts must intervene only where the statutory conditions for intervention are satisfied. Singapore, following the Model Law, confines annulment to the grounds recognised in Article 34. In the United States, review is limited by the Federal Arbitration Act, and in *Hall Street Associates, LLC* v. *Mattel, Inc.*[15], the Supreme Court of the United States held that parties cannot contractually expand the exclusive statutory scope of federal judicial review under the Federal Arbitration Act. France and Switzerland also proceed on limited annulment grounds, principally directed at jurisdiction, due process and public policy. The common thread is that arbitral finality is protected by keeping judicial review within defined statutory limits. These systems do not recognise a general equitable power to reopen or alter an award merely because the outcome appears harsh or the litigation has been long.

Judicial restraint: The need of the hour

The temptation is easy to understand. When a commercial dispute has travelled through several rounds of litigation, and the result appears harsh or inefficient, the instinct is to bring the matter to an end. Article 142 gives the Supreme Court a powerful means of doing so. But in commercial and arbitration matters, the question is not only whether complete justice can be done between the parties before the court. The question is also what such intervention does to the system within which other parties operate.

Article 142 continues to apply in commercial disputes, and the Constitution does not exclude such matters from its reach. The real question is not whether the power exists, but when it should be exercised. In the commercial context, Article 142 should remain an exceptional corrective jurisdiction, not a substitute for statutory remedies or a means of revisiting outcomes simply because they appear unsatisfactory. This requires a clear set of limits, which the following principles seek to identify.

The first limit is fidelity to the statute. Where the legislature has created a complete remedial framework, especially one built on limited judicial interference, Article 142 should not be used to create a remedy that the statute does not provide. This is particularly important under the Arbitration

Act. Parties choose arbitration with the knowledge that court supervision is limited. That limitation is not a technical feature of the Arbitration Act but also a part of the commercial bargain.

The second limit is deferring to party autonomy. Commercial parties accept risks and remedies with open eyes. If these choices later produce a difficult result, that is not necessarily a failure of justice. Article 142 cannot become a jurisdiction to relieve parties from the commercial consequences of arrangements they voluntarily made.

The third limit is a firm boundary against merits review. Article 142 should not be used to reappreciate evidence, reinterpret contractual clauses, reassess damages or substitute the court's commercial view for that of the Tribunal. The Supreme Court may intervene where the correction is narrow, obvious and possible on the existing record. But it should not use Article 142 to do what Sections 34 and 37, Arbitration Act do not permit.

Delay may be relevant to the manner in which relief is moulded, but it cannot be the foundation of the power itself. A long-pending dispute may justify the court in avoiding a remand where the correction is narrow, evident from the record and does not require a fresh adjudication. But most commercial disputes that reach the Supreme Court have already taken years to get there. If delay is treated as a standalone reason for intervention under Article 142, the exception will quickly become routine, and finality under the statutory framework will give way to a case-by-case appeal to equity.

There must also be candour in the use of the power. Whenever Article 142 is invoked in a commercial matter, the Supreme Court ought to identify the precise injustice, explain why the ordinary statutory framework is insufficient, and ensure that the relief granted does not disturb the statute, the bargain or the finality of the award. Without that discipline, individual orders may slowly harden into a general equitable jurisdiction over commercial outcomes.

Commercial justice is not achieved merely by producing a fair result between the parties before the court. It also requires predictability, respect for contractual choices, finality of awards and confidence that statutory limits will be honoured. When those values are diluted to correct a hard case, the cost is not confined to that case. It is borne by every party that contracts, lends, invests or arbitrates on the assumption that the legal framework will

mean what it says.

Article 142 does some of its most valuable work where ordinary law is unable to respond to injustice. But in commercial law, ordinary law is usually the very framework the parties chose. That is why the power that may do the most immediate good in an individual case must be used with the greatest restraint in the field that depends most on certainty.

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1. (2024) 6 SCC 357.
2. (2025) 7 SCC 1.
3. 2026 SCC OnLine SC 950.
4. *Bhupesh Bhayana* v. *Kunal Seth*, 2026 SCC OnLine SC 950.
5. (1998) 4 SCC 409.
6. 1962 SCC OnLine SC 37.
7. Mr K.K. Venugopal, former Attorney General for India in his article titled "Article 142 and the Need for Judicial Restraint", *The Hindu*, 18-5-2017.
8. (2006) 11 SCC 181.
9. (2021) 9 SCC 1.
10. *DMRC Ltd.* v. *Delhi Airport Metro Express (P) Ltd.*, (2024) 6 SCC 357.
11. (2002) 4 SCC 388.
12. *Gayatri Balasamy* v. *ISG Novasoft Technologies Ltd.*, (2025) 7 SCC 1.
13. *Bhupesh Bhayana* v. *Kunal Seth*, 2026 SCC OnLine SC 950.
14. (2005) 3 WLR 129 : 2005 UKHL 43.
15. 2008 SCC OnLine US SC 20 : 170 L Ed 2d 254 : 552 US 576 (2008).