



THE LAWWAY WITH LAWYERS JOURNAL

VOLUME:-21 ISSUE NO:- 21 , April 23, 2025

ISSN (ONLINE):- 2584-1106

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REVISITING SECTION 34: HON'BLE SUPREME COURT RESTRICTS THE SCOPE OF JUDICIAL INTERVENTION IN ARBITRATION

ABSTRACT

*This write up presents a critical commentary on the Hon'ble Supreme Court of India's Constitution Bench judgment in **Gayatri Balasamy v. ISG Novasoft Technologies Ltd. (2025 SCC OnLine SC 986) (4:1)**, which resolved the long-standing controversy over whether courts exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996, may modify arbitral awards. The majority opinion (4:1), carves out a doctrinally restrained yet purposive interpretation: while courts cannot rewrite or reappraise arbitral awards, they may engage in limited modification in exceptional cases, such as severance of invalid portions, correction of clerical errors, or adjustment of post-award interest. The paper analyzes the evolution of judicial intervention in Indian arbitration law, the contours of the majority and minority opinions, and the implications of this ruling on arbitral finality, efficiency, and enforcement. Through comparative analysis and policy critique, the paper proposes structured judicial standards and legislative refinement to preserve the balance struck in this landmark ruling.*

Keywords: Arbitration, Constitution Bench, Scope of Section 34, Severability

I. Introduction:

In recent years, Indian arbitration jurisprudence has been marked by a persistent tension between judicial deference to arbitral autonomy and the temptation to revisit arbitral decisions on grounds of fairness or legal correctness. Nowhere is this more visible than in the interpretation of Section 34 of the Arbitration and Conciliation Act, 1996, which permits courts to set aside arbitral awards only on narrowly defined grounds. Yet, over time, courts have grappled with whether this provision also permits them to modify arbitral awards – a question that has produced inconsistent rulings and considerable doctrinal uncertainty.

The recent judgment of the Supreme Court in **Gayatri Balasamy v. ISG Novasoft Technologies Ltd. (2025 SCC OnLine SC 986)** provides long-awaited clarity on this point. Decided by a Constitution Bench, the ruling confines the role of courts under Section 34 to setting aside awards, while drawing careful boundaries around the rare instances in which limited interference may be justified. In doing so, the Court has reaffirmed the foundational principle that arbitration must be final, binding, and insulated from excessive judicial scrutiny, thereby reinforcing India's commitment to being a pro-arbitration jurisdiction.

This paper critically examines the decision in *Gayatri Balasamy*, situating it within the broader evolution of Indian arbitration law, unpacking the key doctrinal principles laid down by the Court, and exploring its implications for future arbitration practice and policy.

II. Background of Judicial Intervention in Arbitration:

The Arbitration and Conciliation Act, 1996 was enacted to bring Indian arbitration law in line with the UNCITRAL Model Law, with the aim of promoting efficiency, finality, and minimal court interference in arbitral proceedings. Section 34 of the Act, which outlines the grounds for setting aside arbitral awards, was intentionally drafted to reflect this principle. The provision confines judicial intervention to specific instances such as lack of proper notice, procedural impropriety, violations of public policy, or patent illegality. Unlike traditional civil appellate review, Section 34 does not envisage a re-evaluation of facts or merits, nor does it expressly empower courts to modify arbitral awards.

Despite this framework, Indian courts have, over the years, taken inconsistent positions on whether they can go beyond setting aside awards and actually modify them. This divergence has stemmed partly from a desire to do complete justice in hard cases and partly from the absence of clear statutory guidance on the question of modification. In a few decisions, such as *Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd.*, courts exercised an implicit power to adjust certain aspects of an award, most notably interest, on equitable grounds. In others, like *McDermott International Inc. v. Burn Standard Co. Ltd.*, the Supreme Court categorically rejected such an approach, emphasizing that courts must not act as appellate forums over arbitral decisions.

This judicial ambivalence created uncertainty for parties and practitioners, often undermining the very objectives that the 1996 Act sought to achieve. The absence of a clear position on whether courts could 'partially modify' or 'mould' an award during Section 34 proceedings raised practical and doctrinal challenges, particularly when only a portion of an award was defective or unlawful.

It was against this unsettled backdrop that the Supreme Court in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* was called upon to resolve the issue definitively. Referred to a Constitution Bench due to conflicting precedents, the case provided the Court with an opportunity to reconcile principle with pragmatism, and to restate the contours of judicial review in arbitration law with greater precision.

III. Facts and Procedural History of the Present Case:

The dispute in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* arose out of an employment-related contractual disagreement between the appellant, Ms. Gayatri Balasamy, and the respondent, ISG Novasoft Technologies Ltd., a private software company. Ms. Balasamy, a former employee of the company, initiated arbitration proceedings against the company, alleging unlawful termination and seeking various reliefs, including compensation and dues.

The arbitration culminated in an award that granted partial relief to the claimant. However, both parties were dissatisfied with different aspects of the award. Ms. Balasamy challenged the award before the Madras High Court under Section 34 of the Arbitration and Conciliation Act, 1996, primarily arguing that the award suffered from legal infirmities and failed to address several of her

key claims adequately. She also sought modification of the award rather than a complete setting aside, invoking judicial powers to mould the arbitral relief suitably.

The Single Judge of the High Court partially allowed her petition and proceeded to modify the arbitral award in terms of granting her enhanced relief. This decision was challenged by ISG Novasoft Technologies Ltd. by way of an appeal under Section 37 before a Division Bench of the High Court, which upheld the Single Judge's decision.

Aggrieved by the High Court's affirmation of judicial power to modify an arbitral award under Section 34, the company approached the Supreme Court. Notably, during the hearing, it became clear that there were conflicting views among various High Courts and Supreme Court benches on whether courts could modify arbitral awards under Section 34.

Recognizing the larger legal significance and doctrinal confusion, the Supreme Court referred the matter to a Constitution Bench to decisively settle the issue. The key question before the Bench was whether the jurisdiction of a court under Section 34 of the Arbitration and Conciliation Act, 1996, includes the power to modify or vary an arbitral award, or whether it is strictly limited to setting aside the award on specific statutory grounds.

What followed was a comprehensive and authoritative judgment by the five-judge Bench that has since reshaped the contours of post-award judicial intervention under Indian arbitration law.

IV. Core Issues Framed by the Supreme Court

Upon reference to the Constitution Bench, the Supreme Court was tasked with resolving a fundamental question in arbitration law that had long divided judicial opinion: whether a court, while exercising its jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996, possesses the power to modify an arbitral award.

In doing so, the Bench framed the following core issues for adjudication:

1. **Does Section 34 confer jurisdiction on courts to modify, vary, or alter the terms of an arbitral award, or is the power strictly limited to setting aside the award?** This question lay at the heart of the reference. It required the Court to interpret the legislative text and structure of the Arbitration Act, with particular focus on whether Section 34 implicitly or explicitly allows courts to do anything other than set aside an award.

2. **Can a court under Section 34 partially set aside an arbitral award by severing the invalid portion, thereby effectively modifying the outcome?** The Court considered whether the doctrine of severability permits partial annulment of an award and if such a power amounts to an indirect form of modification, especially where the rest of the award can stand independently.
3. **Are there any statutory or equitable grounds on which a court may intervene to correct or mould an award, such as modifying interest, rectifying errors, or granting relief not explicitly provided by the tribunal?** This issue required the Court to delineate the boundaries between judicial review and appellate correction, particularly with regard to interest under Section 31(7) and computational or clerical errors.
4. **What is the interplay between Sections 34 and 37 of the Arbitration Act in relation to judicial powers of modification or interference?** The Court also examined whether appellate powers under Section 37 could be interpreted more broadly than the review powers under Section 34, and whether any such broader interpretation would align with the overall scheme of the Act.
5. **To what extent, if any, can constitutional powers, such as those under Article 142, be invoked to mould arbitral awards in the interest of justice, and what constraints apply to such exercise of jurisdiction?** Though not the principal issue, this question was touched upon due to past instances where courts had used constitutional powers to grant relief beyond the statutory text, raising concerns about consistency and predictability in arbitration-related jurisprudence.

Through these questions, the Court sought to clarify the limits of judicial power in arbitration disputes and reaffirm the foundational principles of arbitral finality and minimal intervention.

V. Analysis of the Supreme Court's Judgment (Majority's Opinion):

The opinion authored by the Hon'ble the Chief Justice of India, Sanjiv Khanna, and concurred by Justices B.R. Gavai, P.V. Sanjay Kumar, and A.G. Masih formed the majority opinion signifying a measured departure from the absolutist “no modification” rule, while remaining faithful to the overall scheme and objectives of the Arbitration Act.

The Court began by emphasizing that Section 34 must be interpreted contextually and purposively, and not in a hyper-literal fashion. While the statute does not explicitly confer modification powers, the majority held that in practice, the act of partially setting aside or “correcting” a part of an award, particularly where the offending portion is severable, amounts to a form of limited modification, which courts have routinely and reasonably exercised.

The central contribution of the majority opinion is its recognition of “partial setting aside” or “severance” as a legally and doctrinally valid form of modification. This approach avoids the inefficient result of setting aside the entire award, leading to re-arbitration on settled issues. The majority described this as an exercise of procedural prudence, not substantive overreach.

To summarise, the Court affirmed that certain types of modifications are not only permissible but necessary to ensure that awards function justly and lawfully. These include:

1. **Correction of Arithmetical, Clerical, or Typographical Errors:** The Court upheld a long-standing practice of courts correcting minor errors that are evident on the face of the award, provided such corrections do not alter the substantive reasoning or findings of the arbitral tribunal.
2. **Severance of Invalid Portion:** Where an award contains both valid and invalid parts, and they are clearly separable, courts may set aside the invalid part and uphold the rest. This is not modification per se, but judicial severance supported by established doctrine.
3. **Modification of Post-Award Interest under Section 31(7)(b):** The Court held that courts may recalibrate post-award interest where the arbitral award fails to determine it, or where the interest awarded is unconscionably high, contrary to agreement, or contrary to law. Such interference is not a violation of arbitral autonomy but an exercise of judicial oversight grounded in statutory authority.
4. **Exercise of Article 142 Powers:** The Supreme Court may, in rarest of rare cases, invoke Article 142 of the Constitution to mould relief or “complete justice.” But it held this must not be used routinely to rewrite awards and must be confined to exceptional factual contexts

The majority repeatedly cautioned that its recognition of limited modification does not amount to granting appellate powers to courts. It stressed that, the Courts cannot reassess facts or reappraise

evidence. Courts cannot substitute their interpretation of the contract over that of the arbitrator. And, only when a defect in the award is apparent, narrow, and judicially manageable, such as an illegal penalty or a severable error, can intervention be justified.

In this way, the judgment retains the core ethos of arbitral finality, while allowing for surgical correction in narrowly drawn circumstances.

The Court distinguished but did not overrule *Project Director, NHAI v. M. Hakeem* (2021). It noted that Hakeem dealt with facts involving statutory interest rates under a special law and should not be read as a blanket bar on modification in all contexts. Additionally, the Court relied on prior decisions where courts had moulded relief or preserved portions of awards, noting that such practices had judicial legitimacy and consistency.

VI. Minority Opinion by Justice K.V. Viswanathan: A Firm Reaffirmation of No Modification:

In a principled dissent, Justice K.V. Viswanathan disagreed with the majority's conclusion that courts possess limited powers to modify arbitral awards under Section 34. His opinion emphasized fidelity to the statutory scheme of the Arbitration and Conciliation Act, 1996, the UNCITRAL Model Law, and the jurisprudence on judicial minimalism in arbitration. According to him, Section 34 does not and cannot permit modification of arbitral awards, whether directly or indirectly. His reasoning is rooted in a rigorous textual and structural reading of the statute and a concern for judicial discipline and institutional coherence.

Justice Viswanathan opened his opinion by asserting that Section 34 is an annulment provision, not a discretionary equity jurisdiction. It allows the court to set aside an award only when specific conditions exist, such as fraud, breach of natural justice, lack of jurisdiction, or patent illegality. He warned that allowing courts to modify awards, even partially, risks collapsing the careful separation of roles between arbitral tribunals and courts.

Justice Viswanathan acknowledged that courts may correct clerical, typographical, or computational errors, and address post-award interest issues under Section 31(7), but only if the arbitrator has clearly violated statutory mandates; or if interest has been awarded contrary to the

contract or without jurisdiction. Even here, he insisted, courts must not engage in “reasonableness-based recalibration,” which is inherently subjective and inconsistent with arbitral deference.

One of the central concerns in the dissent is the practical impact of opening the door to modification, even on a limited scale. Justice Viswanathan warned:, *“Once we allow courts to modify in some cases, we lose the discipline that arbitration demands. The exception will soon become the rule.”*

Drawing on international arbitration law, Justice Viswanathan pointed out that most UNCITRAL-compliant jurisdictions do not permit modification of awards. The New York Convention, too, presumes that courts will either enforce or annul an award, not rewrite it.

He further rejected the idea that Article 142 (which empowers the Supreme Court to do “complete justice”) could be invoked to justify modification, except in rare and constitutionally exigent circumstances. His dissent holds continuing relevance, especially for future benches and policymakers grappling with the boundaries of judicial oversight in arbitration. Though it did not carry the majority, it presents a compelling cautionary view, grounded in legislative fidelity and doctrinal rigor.

VII. Impact and Implications of the Judgment:

The Judgment carries far-reaching implications for the arbitration ecosystem in India. It is both a doctrinal milestone and a practical course correction, one that attempts to strike a middle ground between the imperatives of arbitral finality and the need for limited judicial recourse in exceptional circumstances.

One of the most immediate effects of the judgment is a redefinition of the judicial function under Section 34. By explicitly permitting courts to partially set aside or correct arbitral awards in strictly confined scenarios, such as severable illegality or incorrect interest awards, the Court has brought long-needed clarity to a previously unsettled area of law. While the power to modify is not recognized as a general rule, the acknowledgment of narrow, context-specific intervention provides courts with necessary flexibility without diluting the integrity of the arbitral process.

The decision harmonizes previous conflicting jurisprudence, most notably McDermott, Hakeem, and Vedanta, by carefully distinguishing contexts in which correction is judicially appropriate. It

closes a chapter of interpretive uncertainty by articulating a principled and nuanced framework: modification per se is impermissible, but partial annulment coupled with correction is legitimate when grounded in statute or logic of severance. This provides doctrinal clarity for lower courts, arbitration tribunals, and counsel alike, reducing the risk of fragmented judicial approaches across jurisdictions.

For arbitration practitioners, this judgment alters the litigation strategy post-award. Petitioners challenging an award can now explore the possibility of targeted relief rather than risking a full set-aside. Respondents, meanwhile, must brace for courts exercising limited discretion to adjust awards where glaring anomalies exist. The judgment also underscores the importance of careful drafting of arbitral claims, interest clauses, and pleadings, since courts are now more likely to preserve what is valid in the award rather than discard it entirely due to a defect in one part.

Grom an institutional standpoint, the judgment reinforces India's credibility as an arbitration-friendly jurisdiction. By resisting the extremes, neither adopting a blanket prohibition on judicial correction nor permitting open-ended modification. The Court aligns Indian arbitration law with international best practices while respecting domestic statutory architecture. This decision will likely enhance investor confidence, particularly for cross-border commercial parties who expect legal certainty and minimal litigation risk in post-award proceedings.

VIII. Critique and Practical Considerations:

While the Judgment offers doctrinal clarity and pragmatic balance, it is not without its critiques. The ruling attempts to harmonize competing values i.e. autonomy of arbitral tribunals versus the need for limited judicial oversight. But in doing so, it invites questions about consistency, judicial discretion, and future enforceability. This section explores these concerns and examines the practical issues that may emerge in the wake of the decision.

One of the central pillars of the majority's reasoning is the doctrine of severability – the idea that courts can set aside a discrete portion of the award if it is legally infirm and severable from the rest. While the doctrine is doctrinally sound, its application is inherently subjective. What is “severable” to one judge may not be so to another. In the absence of legislative standards or binding criteria, the risk of inconsistent application by High Courts and commercial benches remains a

serious concern. This may reintroduce the very uncertainty the judgment sought to resolve, especially if litigants begin relying heavily on severability to seek modifications in the guise of partial annulment.

Another ambiguity lies in the distinction between permissible correction and impermissible substitution. While the Court has held that computational or clerical errors can be rectified, and post-award interest may be adjusted, it is unclear how far a court can go in “recasting” parts of an award. If a court modifies the quantum of damages after excising an unlawful component, does that not amount to rewriting the award? Without clear judicial guardrails, there is a possibility of courts inadvertently stepping into the arbitral domain under the pretext of correction or severance.

Though, the judgment reaffirms arbitral finality in principle, some critics argue that by opening the door, however narrowly, to judicial modifications, the Court has introduced a systemic tension into the arbitral process. The fear is that losing parties will now routinely seek limited corrections or severance as fallback strategies under Section 34, resulting in more protracted litigation and strategic post-award challenges. This concern echoes Justice K.V. Viswanathan’s dissent, which warned against “*exception becoming the rule*” and urged that courts resist the temptation to judicially engineer arbitral awards.

Finally, some may argue that the Supreme Court, despite offering a solution to the conflict in precedent, has filled a legislative vacuum that Parliament was better suited to address. The tension between judicial power and arbitral finality could have been resolved through statutory amendment, especially given the evolving nature of arbitration in India. By taking a purposive route, the Court has resolved the immediate question but left room for future contention.

IX. Recommendations and Suggestions

In light of the nuanced but impactful judgment, several key recommendations emerge for stakeholders in the Indian arbitration ecosystem i.e. the legislators, courts, arbitrators, and practitioners alike.

1. The Court's recognition of severability and limited correction powers could be given statutory recognition through a targeted amendment to Section 34. This would avoid over-

reliance on evolving judicial interpretation and provide clear legislative contours to govern when and how courts may partially annul or correct awards.

2. Though the Hon'ble Supreme Court has clarified that severance is permitted where the invalid portion is clearly separable. However, operationalising this principle requires structured judicial guidelines. Factors such as the economic and legal independence of the severed portion, party autonomy, and the structure of relief should be developed through future case law or a practice direction.
3. Arbitral tribunals should be encouraged, through institutional training and model award templates, to structure their awards in a modular and logically divisible format, with distinct heads of claim and reasoning. This would aid courts in identifying severable portions, thereby making limited judicial review more efficient and principled.
4. While judicial discretion is now accepted in cases of post-award interest and error correction, courts must exercise this discretion within defined parameters to avoid inconsistency. Courts should resist the urge to calibrate arbitral decisions based on subjective notions of fairness or reasonableness, and instead rely on contractual, statutory, or jurisdictional violations.
5. Since most Section 34 applications are first heard by commercial courts under the Commercial Courts Act, there is a need for targeted judicial capacity-building at that level. Specialized training in arbitration law, Model Law principles, and enforcement implications would enhance consistency and predictability in applying the Gayatri Balasamy doctrine.

X. Conclusion

The Judgment marks a defining moment in the development of Indian arbitration law. Moving beyond the absolutist stance, the Court has adopted a doctrinally restrained but pragmatically flexible approach allowing limited judicial correction of arbitral awards, without undermining the foundational principles of party autonomy and finality.

By affirming that courts cannot re-write awards, yet acknowledging that severable and curable defects may be addressed, the judgment strikes a careful balance between arbitral sanctity and

procedural justice. It also harmonizes years of conflicting precedent and charts a middle course that gives courts a narrow but necessary role in preserving the integrity of arbitral outcomes.

That said, the judgment also leaves open several practical challenges, chiefly the risk of inconsistent application and enforcement complications. Its success will ultimately depend on how faithfully its nuanced principles are implemented by commercial courts, and whether arbitration stakeholders internalize its message: finality is the rule, judicial intervention the rare exception.

As India aspires to become a global arbitration hub, *Gayatri Balasamy* may be remembered not just for resolving a legal conflict, but for reinforcing a legal culture of judicial discipline, statutory fidelity, and institutional maturity in arbitration law.

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