MODIFICATION OF ARBITRAL AWARD: A PRAGMATIC APPROACH ADOPTED BY THE SUPREME COURT?

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ABSTRACT

The question of whether courts possess the power to modify arbitral awards under Section 34 of the Arbitration and Conciliation Act, 1996 has long been debated in Indian arbitration jurisprudence. The statute, modeled on the UNCITRAL Model Law, deliberately limits judicial intervention and does not expressly provide for modification of arbitral awards, unlike the earlier Arbitration Act, 1940. Judicial precedent initially reinforced this restrictive approach, emphasizing that courts may only set aside an award and not alter its substance. However, recent judicial developments—particularly the Constitution Bench decision in Gayatri Balasamy v. ISG Novasoft Technologies Ltd. have revisited this position. By adopting the principle that the greater power to set aside includes the lesser power to modify, the Supreme Court recognized limited circumstances in which modification may be justified to avoid unnecessary re-arbitration and prolonged litigation. This article examines the evolution of judicial interpretation on this issue, analyzes the reasoning of the majority and minority opinions, and evaluates the implications of allowing modification of arbitral awards within the Indian arbitral framework. While the Court's approach seeks to promote efficiency and pragmatism, the article argues that expanding judicial powers risks undermining the core principles of party autonomy, minimal judicial intervention, and finality that underpin modern arbitration law.

Introduction

Over the years there have been multiple interpretations by various High Courts and the Supreme Court on whether an Arbitral Award can be modified. The absence of an express statutory provision to modify and arbitral award by the legislature can be only construed as deliberate, premised on the understanding that a wider scope of interference by Courts will defeat the purpose of the Arbitral framework.

The Arbitration and Conciliation Act, 1996 was enacted with the intention of reducing judicial intervention and to expedite redressal of disputes. Section 34 of the Arbitration and Conciliation Act, 1996 **(hereinafter A&C Act)** was modelled from Article 34 of the UNICITRAL Model law. Neither UNICITRAL nor the A&C Act, contemplated modification of Arbitral awards by Courts. In contrast to Section 15 of the Arbitration and Conciliation Act, 1940, which allowed Courts to modify or correct an award, the 1996 Act marked a paradigm shift by limiting judicial interference.

The grounds for setting aside an arbitral award under Section 34 of the A&C Act 1996, are very limited and only under circumstances where it can be proved that (a) a party was at some incapacity, (b) arbitration agreement is invalid, (c) the party filing the Section 34 application was not given proper notice of the appointment of an arbitration or of the arbitral proceedings, (d) the arbitral award dealt with a dispute not falling within the terms of the submission to arbitration or contains decision on matters beyond the scope of submission to arbitration, (e) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the arbitration agreement, (f) if the subject matter is not capable of settlement by arbitration, (g) the arbitral award is in conflict with the public policy of India, can an award be set aside.

In ***McDermott International Inc. v. Burn Standard Co. Ltd***[1], the court held that it only had supervisory role to ensure fairness of the award. It can only set aside the award leaving the parties to commence arbitration again if so desired. The parties had made a conscious decision to incorporate an arbitration clause to exclude judicial intervention and to ensure expediency and finality.

In ***Ssangyong Engineering & Construction Co. Ltd. v. NHAI***[2], the court went one step ahead

[1] (2006) 11 SCC 181
[2] (2019) 15 SCC 131

and narrowed down the meaning of **'Public Policy' and 'Patent illegality'**. The Court held that, judicial intervention can be allowed only if the award is so perverse that it **"shocks the conscience of the court"**.

In ***Project Director, NHAI v. M. Hakeem***[3], the apex Court made it clear that Courts are only vested with the power to either uphold or set aside an award. The power to modify an arbitral award was a **'forbidden territory'** that was intentionally omitted by the legislature. The Court held that, the A&C Act, 1940 allowed modification of award under section 15, however, the 1996 Act, which was modelled on UNICITRAL Model law consciously omitted this power, and modification of award would amount to judicial legislation.

Even though, the Supreme Court had made it clear that there is very limited scope for judicial interference under Section 34 of the A&C Act, 1996, in ***M/S Oriental Structural Engineers Private Limited vs State of Kerala***[4], the Court intervened and instead of setting aside the award, the court modified the interest component.

From strict interpretation of the Statute to modification of interest, various High Courts have interpreted the scope of intervention differently. While some Courts strictly follow the rule of non-interference, others look at re-arbitration as a cumbersome process that defeats the purpose of arbitration.

Constitution Bench in Gayatri Balasamy v. ISG Novasoft Technologies Ltd[5].

By a 4:1 majority, the Supreme Court put an end to the debate whether the court has inherent powers to modify an arbitral award. The reasoning of the majority was founded on the legal maxim, ***Omne majus continet in se minus*** which means the greater power contains the less. The court held that if Section 34 of the A&C Act, 1996 gave power to set aside and annul an award completely then it also includes the power to modify it. When the defect in an award is severable and can be modified, compelling parties to re-arbitrate would undermine the efficiency of the arbitral framework and would only result in multiple rounds of litigation. Therefore, it was necessary to consider a harmonious interpretation of the statute to preserve the legislative intent of Arbitration.

[3] *(2021)* 9 SCC 1
[4] (2021) 6 SCC 150
[5] 2025 SCC OnLine SC 986

The majority's view also addressed the **"Remand vs. Modification"** conflict. While Section 34(4) allows a court to adjourn proceedings to let the Arbitral Tribunal eliminate grounds for setting aside an award, the majority observed that this is not a mandatory or exhaustive remedy. In case the award is remanded back to the tribunal, the parties would have to bear additional expenses and further delay the proceeding; where the tribunal is *functus officio*, the court should not be a helpless spectator. Therefore, in such cases, the power to modify acts as a necessary pragmatic fallback.

Regarding the scope of modification, the Court held that when there are clerical, computational or typographical errors that is apparent on the face of the award, the Court can intervene and modify the award.

Further, the apex court distinguished between different types of interest. The Court held that, it cannot modify Pendente lite interest but can modify post – award interest if it appears to be unjustified or excessive. Although Article 34 of UNICITRAL Model does not allow modification of award, Section 31(7) of the A&C Act, 1996 was inserted by the Indian Legislature granting wider scope, to ensure interest awarded is justified.

However, the minority view held that, neither Section 34 or Section 37 envisaged modification of arbitral award. If the there was an error that was erroneous and the award suffered from defects, the Court is only vested with the power to only record the reasons and remit it back to the Arbitral tribunal.

The majority also held that it may invoke its extraordinary powers under Article 142 of the Constitution to modify an award in order to do complete justice. The Court cautioned that such power must be exercised sparingly and cannot override the statutory framework governing arbitration. However, Justice K.V. Viswanathan adopted a strict textual approach. He rejected the use of Article 142 to modify arbitral awards, holding that it cannot be invoked to bypass the statutory limits imposed by the Arbitration Act. According to him, allowing courts to modify an award amounts to judicial legislation and undermines the deliberate choice of Parliament, which had omitted such a provision while enacting the 1996 Act.

Global perspective on enforcement of award

There was a concern that a modified award would lose its character as an arbitral award and it

would become difficult to enforce it in foreign jurisdictions. The Court held that, New York Convention looks into the domestic framework of a state while deciding its validity and while setting aside an award. Now, since the Supreme Court has widened the scope of interpretation of Section 34 and allowed modification of award, any such modified award rendered remains valid in the eyes of law. By ensuring that the award is legally valid, it remains enforceable under the New York Convention in other member states.

Conclusion

In my opinion, the majority took a pragmatic approach to avoid re-arbitration while addressing the issue of whether the court is vested with the power to modify an arbitral award. However, arbitration loses its legislative intent when courts are allowed to modify and award. The Arbitral framework is founded on the principle of party autonomy to choose an arbitrator and adjudicate the disputes within a timeframe. A section 34 petition becomes a de facto appeal on merit if courts are vested with the power to reappreciate facts which the Hon'ble Arbitral tribunal has already considered over the period of 18 months.

If the legislative intention was to allow courts to modify, then it would have retained Section 15 of the A&C Act 1940. The omission of Section 15 can only be assumed as a deliberate choice. In order to preserve the legislative intent and integrity of arbitral framework, the courts should strictly restrict themselves from reappreciating merits of the case and modifying the award. The scope of judicial interference should be constrained to limitations set out under Section 34 of the Arbitration and Conciliation Act, 1996.