THE SECTION 34 PARADOX: JUDICIAL CORRECTION, ARBITRAL FINALITY AND THE LIMITS OF MODIFICATION AFTER GAYATRI BALASAMY

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ABSTRACT

Section 34 of the Arbitration and Conciliation Act 1996 allows a court only to set aside an award, yet in *Gayatri Balasamy v ISG Novasoft Technologies Ltd* a Constitution Bench held by majority that courts have a limited power to modify. This paper asks whether that power resolves or reproduces a paradox: a rule adopted for speed and finality may generate boundary litigation that erodes both. Using doctrinal and comparative methods, it examines the statutory scheme, the reasoning in *NHAI v Hakeem* and *Balasamy*, the law of the United Kingdom, United States, Singapore and Australia, and the recommendations of the 246th Law Commission Report and the 2024 Expert Committee. It finds that comparable systems confer variation by express text within narrow limits, whereas India's power rests on judicial inference. It concludes that modification, if recognised, should be strictly limited so that judicial review does not become appellate review, and that the limits should be fixed by an amendment to section 34.

Keywords: arbitral award; section 34; judicial modification; finality; minimum judicial intervention; Gayatri Balasamy.

1. Introduction

Arbitration is chosen because it promises a final answer without the delay of litigation. The Arbitration and Conciliation Act 1996 (ACA) reflects that promise: no judicial authority may intervene except as the Act provides, and an award is final and binding subject to the Act. Section 34 is the principal point of contact between award and court, and it speaks only of setting aside.[1]

Yet courts have repeatedly been asked to repair awards rather than annul them. The Arbitration Act 1940 expressly empowered a court to modify or correct an award.[2] The 1996 Act, modelled on the UNCITRAL Model Law, did not carry that power forward.[3] In *Project Director, NHAI v M Hakeem* the Supreme Court held that section 34 confers no power to modify.[4] In *Gayatri Balasamy v ISG Novasoft Technologies Ltd* a Constitution Bench held, by four to one, that courts possess a limited power to modify.[5]

This paper examines that shift through what it calls the Section 34 paradox. A power justified by speed and finality may, if loosely bounded, generate satellite litigation over where correction ends and re-appreciation begins, and so erode the values it was meant to serve. Part 2 sets out the research framework. Part 3 analyses the statutory scheme, the two decisions, the paradox, comparative models and reform proposals. Parts 4 to 6 present the findings, suggestions and conclusion.

2. Research Framework

2.1 Research Objectives

This paper has three objectives. First, it examines the law on modification of arbitral awards in India, and determines whether modification by courts defeats the objectives of the ACA and, if it is allowed, to what extent. Secondly, it compares the law on modification in the United Kingdom, United States, Singapore and Australia, and assesses how efficiently those systems work. Thirdly, it analyses *Hakeem* and *Balasamy*, and identifies the guardrails and uncertainties

[1] Arbitration and Conciliation Act 1996 (ACA), ss 5, 34(1), 35.
[2] Arbitration Act 1940, ss 15–16.
[3] UNCITRAL Model Law on International Commercial Arbitration 1985 (amended 2006) (Model Law), art 34(1).
[4] *Project Director, NHAI v M Hakeem* (2021) 9 SCC 1 : AIR 2021 SC 3471 (*Hakeem*).
[5] *Gayatri Balasamy v ISG Novasoft Technologies Ltd* 2025 INSC 605, (2025) 7 SCC 1 (*Balasamy*).

that the later decision leaves.

2.2 Research Questions

The paper asks four questions. First, is there a paradox in judicial modification of, or intervention in, arbitral awards in India? Secondly, how do the laws of the United Kingdom, United States, Singapore, Australia and India regulate modification of awards? Thirdly, how did the Supreme Court reason in *Hakeem* and *Balasamy*, and how do the two decisions differ? Fourthly, if modification is justified, what statutory framework should govern it?

2.3 Hypothesis

The power of modification, if recognised, should be strictly limited so that judicial review does not become appellate review. Because the ACA contains no express provision, those limits should be fixed by statutory amendment and not left to judicial inference.

2.4 Research Method

The paper uses doctrinal and comparative methods. The doctrinal strand analyses the ACA, the 1940 Act, the case law from *Hakeem* to *Balasamy*, and the reports of the Law Commission and the 2024 Expert Committee. The comparative strand reads the statutes of the four foreign jurisdictions, which combine Model Law and non-Model Law regimes. No empirical data on post-*Balasamy* practice were available, so the paradox is tested analytically.

2.5 Limitations

Three limitations should be stated. First, the paper tracks no post-2025 High Court or Supreme Court decisions applying *Balasamy*, so its claims about boundary litigation, layered review and cross-border divergence are analytical predictions and not findings of fact. Secondly, the comparative strand rests on statutory text, leading decisions and secondary commentary; it does not measure delay, cost or the rate at which courts vary awards in any jurisdiction, so conclusions on efficiency are tentative. Thirdly, the English Arbitration Act 2025 has been in force only since 1 August 2025, and the draft Arbitration and Conciliation (Amendment) Bill 2024 has not been enacted, so both bodies of law may change. Part 6 identifies the research that would address these gaps.

3. Main Body

3.1 The Statutory Scheme: Correction by Tribunals, Annulment by Courts

The ACA divides correction and annulment between tribunal and court. First, section 5 bars intervention except as provided, and section 34(1) permits recourse to a court 'only' by an application to set aside. The grounds are those in section 34(2), together with patent illegality under section 34(2A), which is confined to domestic awards and excludes mere error of law. Secondly, the only partial remedy in the court's hands is textual severance: where an award goes beyond the submission, the proviso to section 34(2)(a)(iv) permits only the offending part to be set aside if it is separable.[6] Thirdly, correction belongs to the tribunal under section 33. A party may, within thirty days, request correction of computational, clerical or typographical errors, an interpretation, or an additional award on claims omitted, and limitation under section 34(3) runs from disposal of that request. The court may also adjourn a section 34 application so that the tribunal can cure the defect.[7]

The 1940 Act differed. Section 15 allowed a court to modify or correct an award that dealt with matters not referred, was imperfect in form or contained obvious errors, or contained clerical mistakes or accidental slips; section 16 allowed remission. The 1996 Act omitted that power and followed Article 34 of the Model Law, which treats setting aside as the exclusive recourse against an award. The structure therefore points to annulment by courts and correction by tribunals. It does not settle the matter, because silence is not necessarily prohibition, and the *Balasamy* majority built on that distinction.

3.2 From *Hakeem* to *Balasamy*

Hakeem concerned compensation for land acquired for national highways, with arbitration under section 3G of the National Highways Act 1956, to which the ACA applies. A district court hearing a section 34 application modified the award instead of setting it aside. The Supreme Court held that section 34 allows annulment on the statutory grounds, or at most a section 34(4) remand, but not revision, because revision would turn a section 34 court into an appellate court. Reading in a power to modify, it said, would cross the 'Lakshman Rekha'.[8]

[6] ACA (n 1), s 34(2), (2A) and proviso to s 34(2)(a)(iv); cf Model Law (n 3), art 34(2)(a)(iii).
[7] ACA (n 1), ss 33, 34(3)–(4); Model Law (n 3), art 33.
[8] *Hakeem* (n 4).

That view followed earlier authority in *McDermott*.[9] The Court had nonetheless modified awards on other occasions, sometimes without acknowledging the constraint, as in *Vedanta* and *Oriental Structural Engineers*, the latter reducing the interest awarded.[10] *Hakeem* explained such outcomes as exercises of the Supreme Court's power under article 142 of the Constitution.[11] The conflict led to a reference to a Constitution Bench in February 2024.

In *Balasamy* the tribunal had awarded about ₹2 crore. A single judge of the Madras High Court enhanced the sum, and a Division Bench under section 37 reduced the enhancement to ₹50,000. The majority, per Khanna CJI, held that courts have a limited power under sections 34 and 37 to: (i) sever the invalid part of a separable award, relying on the proviso to section 34(2)(a)(iv); (ii) correct clerical, computational and typographical errors and other manifest errors needing no merits review; and (iii) in certain circumstances vary post-award interest under section 31(7)(b). The Supreme Court may additionally modify under article 142, sparingly.[12] The reasoning was that the power to set aside includes the lesser power to modify, that section 34 is silent rather than prohibitive, that modification avoids remand cycles, and that it does not impair enforcement under the New York Convention because the award is corrected, not converted into a decree. The Court stressed that modification is not an appeal and is permissible only where no uncertainty attends the change.

Viswanathan J dissented. For him section 34 permits only setting aside; severance is partial annulment; a court that finds the interest component flawed may only remit under section 34(4); and modification would turn supervisory courts into appellate forums, so any expansion must come from Parliament.[13]

Two points stand out. Severance has a textual anchor in the proviso, whereas correction and interest rest on inference from the power to set aside. And the correction power belongs, on the majority's account, to the court under sections 34 and 37, although the model for it in section 33 is a tribunal power. The court therefore borrows the categories of section 33 without its safeguard: the person correcting the award is not the tribunal that made it.

[9] *McDermott International Inc v Burn Standard Co Ltd* (2006) 11 SCC 181.
[10] *Vedanta Ltd v Shenzhen Shandong Nuclear Power Construction Co Ltd* (2019) 11 SCC 465; *Oriental Structural Engineers Pvt Ltd v State of Kerala* (2021) 6 SCC 550.
[11] Hakeem (n 5); Constitution of India, art 142; Supreme Court Bar Association v Union of India (1998) 4 SCC 409.
[12] *Balasamy* (n 5); ACA (n 1), s 31(7)(b).
[13] *Balasamy* (n 5) (Viswanathan J, dissenting).

3.3 The Section 34 Paradox

The paradox is that a power adopted for efficiency can undermine efficiency and finality. The majority's premise is sound: remand, or a fresh arbitration, over a clerical slip wastes time and money, and annulling a whole award for a minor error serves no one. Three risks nonetheless arise.

First, boundary litigation. 'Manifest error' and 'no uncertainty' are judicial standards, not statutory text, and each case will test where correction ends and re-appreciation begins. A losing party has every incentive to present a merits challenge as a correction. *Balasamy* itself illustrates the difficulty: one judge enhanced the award, a bench reduced the enhancement, and the question reached a Constitution Bench. A section 34 court does not ask whether the tribunal was right, and a section 37 court's review is narrower still.[14]

Secondly, layering. A section 34 order is appealable under section 37(1)(c); section 37(3) bars a second appeal, but the Supreme Court's jurisdiction under article 136 remains.[15] Each head of power is a further point on which review may be sought in the High Court and the Supreme Court.

Thirdly, cross-border divergence. If an Indian court alters an award, the instrument enforced abroad and the one surviving in India may differ. The majority answered that modification accords with section 48(1)(e) of the ACA and article V of the New York Convention. That answer is plausible but incomplete. Article V(1)(e) permits refusal of enforcement where the award has been set aside or suspended by a competent authority of the seat; it says nothing about variation, and the scholarship on the Convention concentrates on annulment, not on variation by the seat court.[16] The paper has identified no foreign decision testing how an enforcing court treats an award varied at the seat. The risk is therefore real in principle but unproven in practice, and it should be given limited weight. It is also capable of a textual answer: the English and Singapore statutes provide that a variation made by the court has effect as part of the tribunal's award, so that the award enforced abroad and the award at the seat are

[14] *MMTC Ltd v Vedanta Ltd* (2019) 4 SCC 163; *UHL Power Co Ltd v State of Himachal Pradesh* (2022) 4 SCC 116.
[15] ACA (n 1), s 37(1)(c), (3); Constitution of India, art 136.
[16] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 38, art V(1)(e); ACA (n 1), s 48(1)(e); Albert Jan van den Berg, *The New York Convention of 1958* (Kluwer 1981).

the same instrument.[17] Neither the ACA nor *Balasamy* contains an equivalent provision, which is a further reason to settle the matter by amendment (see Part 5).

The paradox is therefore conditional, not inevitable. Remand is itself a source of delay, the tribunal may be unavailable, and the guardrails narrow the risk. It may also be said that the Supreme Court, as the highest court, is well placed to police the limits it has set, and that without some power of modification parties will find it easy to attack awards. Both points have force. But supervision case by case is the very process that the Act sought to avoid, and no empirical data yet exist on post-*Balasamy* section 34 practice. The argument is that limits fixed by statutory text are easier to apply, and cheaper to litigate, than limits fixed by evolving case law.

3.4 Comparative Models

United Kingdom. England and Wales distinguish tribunal correction from court powers. Section 57 of the Arbitration Act 1996 lets the tribunal correct an award or make an additional award, and section 70(2) requires available recourse under section 57 to be exhausted before a challenge.[18] On a jurisdictional challenge, section 67(3), as substituted from 1 August 2025, allows the court to confirm, vary, remit, set aside or declare the award of no effect, and section 67(3A) requires remission to be considered before setting aside.[19] Section 68 (serious irregularity) permits remission, setting aside or a declaration, but not variation. Section 69 permits an appeal on a point of law, with the agreement of all parties or the leave of the court, unless the right is excluded, and the court may confirm, vary, remit or set aside.[20] The 2025 Act also runs the 28-day challenge period from the 'applicable date', which takes account of any material correction, additional award or refusal of correction under section 57.[21]

United States. The Federal Arbitration Act separates vacatur (section 10) from modification (section 11). Section 11 permits correction for an evident material miscalculation or mistake in description, for an award on a matter not submitted where the merits are unaffected, and for imperfection of form not affecting the merits. The power is corrective, not appellate, and *Hall*

[17] Arbitration Act 1996 (UK) (AA 1996), s 71(2); Arbitration Act 2001 (2020 Rev Ed) (Singapore) (AA 2001), s 51(2).
[18] AA 1996 (n 17), ss 57, 70(2).
[19] Arbitration Act 2025 (UK), s 10(3), in force 1 August 2025 (SI 2025/905, reg 2).
[20] AA 1996 (n 17), ss 68(3), 69(1)–(3), (7).
[21] Arbitration Act 2025 (UK), s 12, amending AA 1996 (n 17), s 70(3), (3A)–(3B).

Street Associates LLC v Mattel Inc held the statutory grounds exclusive and incapable of expansion by contract.[22]

Singapore. The International Arbitration Act 1994 gives the Model Law the force of law, and the court's recourse against an international award is setting aside; it confers no power to vary. For domestic arbitration, section 47 of the Arbitration Act 2001 denies the court any power to confirm, vary, set aside or remit an award except as the Act provides, a rule parallel to section 5 of the ACA. Section 49 allows an appeal on a question of law with agreement or leave; on appeal the court may confirm, vary, remit or set aside, but may set aside only where remission is inappropriate.[23]

Australia. The International Arbitration Act 1974 (Cth) gives the Model Law force of law, with setting aside as the only recourse. The domestic Commercial Arbitration Acts replicate Articles 33 and 34 and add section 34A: an appeal on a question of law lies only if the parties have agreed, and then only with leave. *ViaSat Inc v Hansen Yuncken Pty Ltd* confirmed that the bar for leave is high.[24]

Table 1 sets the four systems beside India.

Table 1: Court power to vary an award in the comparator jurisdictions and India

Jurisdiction	Source of court's power to vary	Scope of variation	Filters and limits	Tribunal-first correction	International awards
England and Wales	Statute: AA 1996 ss 67(3), 69(7) (as amended in 2025)	Jurisdiction challenges; appeals on a point of law	Consent or leave (s 69); remission considered before setting aside (s 67(3A)); no variation under s 68	Yes (ss 57, 70(2))	Variation available; one regime for all

[22]Federal Arbitration Act 9 USC §§ 10–11; *Hall Street Associates LLC v Mattel Inc* 552 US 576 (2008).
[23]International Arbitration Act 1994 (2020 Rev Ed) (Singapore), ss 3, 24; AA 2001 (n 17), ss 47–49.
[24]International Arbitration Act 1974 (Cth), ss 16, 19; Commercial Arbitration Act 2010 (NSW), s 34A; *ViaSat Inc v Hansen Yuncken Pty Ltd* [2024] NSWSC 1581.

Jurisdiction	Source of court's power to vary	Scope of variation	Filters and limits	Tribunal-first correction	International awards
United States	Statute: FAA s 11	Evident miscalculation, misdescription, form	Merits unaffected; grounds exclusive (*Hall Street*)	No statutory exhaustion rule	Same regime
Singapore	Domestic: AA 2001 s 49(8). International: none	Domestic: confirm, vary, remit, set aside on a question of law	Consent or leave; set aside only if remission inappropriate (s 49(9))	Model Law art 33 (international)	Cannot be varied (IAA 1994)
Australia	Domestic: CAA s 34A (appeal). International: none	Domestic: appeal on a question of law	Agreement and leave; high bar (*ViaSat*)	Model Law art 33 (international)	Cannot be varied (IAA 1974)
India (post-*Balasamy*)	Judicial inference from s 34 and s 37 (proviso to s 34(2)(a)(iv) for severance)	Severance; clerical, computational and typographical correction; post-award interest	Judicial standards ('manifest error', 'no uncertainty'); no statutory text	Section 33 exists but is not made a precondition	No distinction: Part I applies to both

Four points emerge. First, wherever a court may vary an award, the power is conferred by statute. Secondly, it is either corrective (United States) or confined to questions of law behind consent or leave filters (England, and domestic Singapore and Australia). Thirdly, correction is tribunal-first in England and under the Model Law generally. Fourthly, international awards in Singapore and Australia cannot be varied at all.

Why do the systems differ? Three explanations are suggested, each drawn from the statutory texts and the leading reform materials; none is tested empirically. The first is Model Law adoption. Where the Model Law governs, setting aside is the exclusive recourse, so Singapore and Australia deny any variation of international awards and confine variation to a separate domestic track; the choice reflects a policy of making the seat attractive by keeping review out of the merits.[25] The second is legal history and culture. England, domestic Singapore and, until

[25]Law Commission of England and Wales, *Review of the Arbitration Act 1996: Final Report and Bill* (Law Com

its reform, domestic Australia inherited a common-law appeal on a question of law and have since narrowed it through consent, leave and substantial-effect filters; the result is that variation survives only as a remedy on a point of law. The United States took a different path: a short federal statute with fixed grounds, in which section 11 is a corrective tool and *Hall Street* closed the door to contractual expansion. The third is structure. England, Singapore and Australia run separate domestic and international tracks, or a single regime with leave filters, so a variation power can be kept away from international awards. India applies Part I to both domestic and international commercial arbitrations seated in India, so a variation power read into section 34 reaches both, although the Act itself already distinguishes the two for patent illegality.[26] These differences also explain why the comparison cuts in two directions. Evidence on efficiency is thin, but the comparison suggests that finality is preserved less by denying variation than by confining it through text, filters and sequence. Variation is accepted policy elsewhere, so the real dispute concerns the source and limits of India's power rather than its existence. In content (severance, clerical correction, interest) that power is closer to section 11 of the Federal Arbitration Act than to section 69 of the English Act, but in source it is the outlier.

3.5 Reform Bodies

The 246th Law Commission Report (2014) pursued minimal intervention, proposing patent illegality under section 34(2A) and a narrower public policy ground; in the chapters reviewed it proposes no court power to modify, so its silence is neutral.[27] The 2024 Expert Committee records that under the 1940 Act the court could modify, remit or set aside, and affirms minimum judicial interference.[28] Paragraph 3.25 recommends amending section 34 to permit setting aside in whole or in part and consequential orders varying the award only in exceptional circumstances to meet the ends of justice. The draft Arbitration and Conciliation (Amendment) Bill 2024, released for consultation on 18 October 2024, proposes an appellate arbitral tribunal under a new section 34A; it has not been enacted.[29] The reform bodies thus treated modification as a legislative question, which *Balasamy* resolved judicially before Parliament acted.

No 413, 2023).

[26]ACA (n 1), ss 2(2), 34(2A); *Hall Street* (n 22).

[27]Law Commission of India, *Amendments to the Arbitration and Conciliation Act 1996* (Law Com No 246, 2014).

[28]Expert Committee on Arbitration Law, *Report of the Expert Committee on Arbitration Law* (Ministry of Law and Justice, Government of India 2024) paras 2.2.3, 2.4.2, 3.25.

[29]Arbitration and Conciliation (Amendment) Bill 2024 (draft), Department of Legal Affairs, Ministry of Law and Justice, released 18 October 2024.

4. Findings

(1) *Scheme.* The ACA allocates correction to the tribunal (section 33) and annulment to the court (section 34). It contains no express power of judicial modification; the 1940 Act power was not carried forward, and severance under the proviso to section 34(2)(a)(iv) is the only textual exception.

(2) *Shift. Hakeem* denied any power to modify; *Balasamy* recognised a limited power with four heads. The guardrails are real, but they are judicial standards, and only severance has a textual anchor.

(3) *Paradox.* The paradox is real but conditional. A speed-oriented power creates risks of boundary litigation and layered review, though no empirical evidence yet shows that they have materialised. The cross-border risk is the weakest of the three: it is unproven, and comparable statutes answer it by deeming a variation to be part of the award.

(4) *Comparison.* In the United Kingdom, United States, Singapore and Australia, variation is conferred by express text and confined by consent, leave, exhaustion or a non-merits limit, and Model Law international awards in Singapore and Australia cannot be varied. The differences follow Model Law adoption, legal history and the structure of each regime. India is the outlier in the source of its power.

(5) *Reform.* The Expert Committee and the Law Commission treated modification as a matter for legislation. The 2024 draft Bill remains unenacted, so the legislative route exists but has not been used.

5. Suggestions

In Indian law the ACA nowhere provides for modification, and a court that modifies without statutory text goes beyond the role the Act gives it and risks the objectives of finality and minimum intervention. If modification is needed, it should be authorised by amendment, and a court should modify only where it is prima facie apparent that the case falls within the defined limits. This paper proposes a new sub-section within section 34, or a separate provision such as section 34A (renumbered if the draft Bill's section 34A is enacted), along these lines:

> '(2B) On an application under this section the Court may, without setting aside

> the award as a whole: (a) set aside a separable part of the award where a ground in sub-section (2) or (2A) is established as to that part; (b) correct a clerical, computational or typographical error prima facie apparent on the face of the award, where correction has first been sought under section 33 or the Tribunal cannot act; or (c) vary post-award interest consistently with section 31(7). The Court shall not re-appreciate evidence, enhance or reduce any sum awarded on the merits, or substitute its own view for that of the Tribunal, and shall proceed under sub-section (4) where any uncertainty exists. A variation made under this sub-section has effect as part of the Tribunal's award.'

The last sentence of the clause is new in this version. It follows the English and Singapore provisions and answers the cross-border concern in Part 3.3.

Three further steps follow. First, the clause should apply sequentially: section 33 first, remand under section 34(4) where in doubt, and a fixed timeline. Secondly, the Supreme Court should confine article 142 to exceptional cases and not use it to enlarge the statutory heads. Thirdly, tribunals can reduce the occasion for intervention by drafting awards with precision: separating issues, checking figures and addressing interest clauses carefully. Until amendment, courts applying *Balasamy* should prefer remand to modification whenever doubt exists.

6. Conclusion

The question after *Balasamy* is not whether limited correction is useful, but who may create the power and on what terms. The Constitution Bench's guardrails are real and finality has not been abandoned. Yet a power that Parliament omitted and the Model Law does not contain is better created by amendment, with defined limits, than by inference from the power to set aside. Comparative systems confer variation by text and confine it by filters. The hypothesis is therefore supported: modification, if recognised, should be strictly limited so that judicial review does not become appellate review. The practical value of limited correction is accepted. Future research should test the paradox empirically by tracking post-2025 decisions that characterise relief as correction.