
LAKSHMAN REKHA OR LOOPHOLE? SECTION 34 & 37 OF THE ARBITRATION ACT AND THE CONTESTED POWER OF MODIFICATION

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ABSTRACT

This paper explores a longstanding yet unsettled question within Indian arbitration law: do Sections 34 and 37 of the Arbitration and Conciliation Act, 1996, permit courts to *modify* arbitral awards? Rooted in the Model Law, the 1996 Act was designed to uphold arbitral finality and limit judicial interference. However, evolving case law—ranging from *JC Budhraj* to *Project Director, NHAI v. M. Hakeem*—has given a contradictory picture on whether Indian courts may correct or adjust arbitral awards, even in the absence of explicit legislative authority.

The article critically examines the developments through procedural histories, a comparative analysis of foreign jurisdictions such as Singapore, the United States, and the UK, and a detailed study of the Constitution Bench judgment in *Gayatri Balasamy*. With the Bench affirming, by a 4:1 majority, the limited ability of courts to modify awards in rare and exceptional circumstances.

The paper engages with interpretive questions around implied powers, severance versus modification, and Section 34(4)'s evolving potential. It also reflects on the broader policy implications of expanding judicial authority, including the risk of diluting arbitration's efficiency and international enforceability. Ultimately, the authors argue that while the recent verdict offers a pragmatic middle path, a legislative review may be necessary to reconcile the foundational tension between *Lakshman Rekha* (judicial restraint) and perceived *loopholes* in the statutory scheme.

Keywords: Modification of Arbitral Awards, Severance of Awards, judicial interference, international norms, remitting awards for correction

Introduction

Arbitration in India has gone through substantial changes with the onset of the Arbitration and Conciliation Act, 1996 (*the "Act"*), which significantly curtailed judicial interference in the arbitral proceedings. Replacing the Indian Arbitration Act, 1940, the current regulation has aligned itself with the UNCITRAL Model Law on International Commercial Arbitration (*"Model Law"*), thereby stressing upon the principles of party autonomy and finality of awards. Interestingly, Section 34 (*"Challenge to arbitral award"*)¹ of the Act deviated from its previous act by implicitly limiting the room of judicial intervention, confining courts to either upholding, setting aside, or remitting an arbitral award—without the explicit power to modify it.

Despite this legislative intent, several cases have decided on whether courts can modify an arbitral award under Sections 34 and 37 (*"Appealable orders"*)² of the Act have been inconsistent. While some decisions have maintained that modification is impermissible, others have ordered or upheld the order of modification, thereby leading to uncertainty in the interpretation of these provisions. Considering the widespread implications of this issue for arbitration in India, a constitutional bench of five judges has been constituted, and have been hearing the case (*"Gayatri Balasamy"*) in February 2025, with the judgment being reserved as on 26th March 2025.³

This paper examines the evolution of judicial intervention in arbitration through a procedural history of the relevant cases, leading up to the current constitutional bench reference. Further, a comparative analysis of foreign jurisdictions is conducted, particularly those that have adopted the Model Law, to assess how courts in different legal systems approach the question of modifying arbitral awards. By analysing these perspectives, the paper aims to contribute to the present and likely outcomes of the jurisprudence regarding appellate power of courts to modify arbitral awards.

Issues for consideration

The present reference to a larger constitutional bench arises from the need to resolve the judicial

¹ The Arbitration and Conciliation Act, No. 26 of 1996, § 34, India Code (1996).

² The Arbitration and Conciliation Act, No. 26 of 1996, § 37, India Code (1996).

³ Gayatri Balasamy Versus M/S ISG Novasoft Technologies Limited| SLP(C) No. 15336-15337/2021

uncertainty surrounding the scope of court intervention under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996. The key issues that require authoritative determination are as follows⁴:

- Judicial ability to Modify an Arbitral Award – Whether the courts, while exercising jurisdiction under Sections 34 and 37, *possess the power to modify an arbitral award*, given that the statutory framework does not expressly confer such authority.
- Modification of Severable Awards – If courts do have the power to modify an arbitral award, is such power limited to cases where the award is severable, allowing only a portion of it to be modified while maintaining the integrity of the remainder?
- Limit of Judicial Authority Under Section 34 – Whether the broader power to set aside an award under Section 34 inherently includes the power to modify it, and if so, what are the contours and limitations of such authority?
- Implied Power to Modify Under Section 34 – Whether the power to modify an arbitral award can be incorporated into the power to set aside an award under Section 34, even though the statutory provision does not explicitly provide for such a remedy.

Procedural History

The Yea-sayers

In “*JC Budhraj v. Chairman, Orissa Mining Corporation Ltd*”⁵, the Supreme Court held and answered on the issue on if a court can modify an arbitral award. The case involved a claimant who was allowed a sum of money along with 12% interest per annum. However, the High Court set aside the award due to many grounds, including *limitation, excessive jurisdiction, and lack of clear reasoning*. The apex Court found that while some portions of the impugned award were flawed, other parts remained legally sound. Instead of setting aside the entire award, the Court choose to modify it by reducing the total amount awarded while maintaining the original rate of interest.

⁴ *Ibid*

⁵ *JC Budhraj v. Chairman, Orissa Mining Corporation Ltd.* (2008) 2 SCC 444

In *Tata Hydro-Electric v. Union of India*⁶, the Supreme Court ruled that the dispute was arbitrable, overturning the High Court's decision. The case involved a claim for additional charges on unrecorded electrical energy, with no real dispute over the defectiveness of the measuring apparatus (CT). While upholding the award, the Court modified the date from which interest would accrue. The umpire had awarded 12% interest from August 1993, but the Court revised it to start from March 30, 1998.

The Nay-Sayers

In "*Project Director, NHAI v. M. Hakeem*"⁷ ("**Hakeem case**"), the judgement, authored by Justice R.F. Nariman, firmly held that courts do not have the power to modify an arbitral award under the act. The Court emphasized that Section 34 only permits setting aside an award on limited grounds as mentioned in section 34 and does not allow courts to correct mistakes made by arbitrators.

Citing precedents like "*MMTC Ltd. and McDermott International Inc.*", the Court reaffirmed that modification is beyond judicial reach unless Parliament amends the law. It warned against judicial overreach, stating that interpreting Section 34 to include modification would cross the **Lakshman Rekha**, effectively turning judges into legislators.

In "*Larsen Air Conditioning & Refrigeration Co. v. Union of India*"⁸ ("**Larsen case**") the Supreme Court reaffirmed and followed its ruling in **Hakeem**, by holding that courts have no power to modify an arbitral award under the Act. It reiterated that Section 34 provides only a limited and highly circumscribed jurisdiction, allowing courts to *set aside an award—either wholly or partially*—only if the grounds specified under which the award or the order is challenged.

The Court highlighted that under the previous Arbitration Act, courts had the authority to modify awards, but Parliament consciously omitted this power in the 1996 Act, demonstrating a clear legislative intent to limit judicial interference. Consequently, the jurisprudence does not support reading a power to modify into Section 34, as doing so would be contrary to legislative intent and established precedent.

⁶ *Tata Hydro-Electric v. Union of India* (2003) 4 SCC 172

⁷ *Project Director, NHAI v. M. Hakeem* (2021) 9 SCC 1

⁸ *Larsen Air Conditioning & Refrigeration Co. v. Union of India* (2023) 15 SCC 472

comparative analysis with foreign jurisdictions

Jurisdiction	Appellate Court's Authority to Modify Arbitral Awards	Relevant Provisions
Singapore (Domestic Arbitration)	Appellate courts have limited ability to modify awards. Section 49(8) allows the court to either confirm, vary, remit, or set aside the award in whole or in part. ⁹	Arbitration Act 2001, Section 49(8)
Singapore (International Arbitration)	Courts do not possess the power to modify arbitral awards; they can only set aside awards on specific grounds. ¹⁰	International Arbitration Act 1994, Article 34 of the UNCITRAL Model Law
United States	Courts have limited authority to modify or correct awards under specific circumstances, such as evident material miscalculations or mistakes. ¹¹	Federal Arbitration Act, 1925, §11
United Kingdom	Courts have the power to modify awards on specific grounds, including appeals on points of law, subject to certain restrictions. ¹²	Arbitration Act 1996, § 68 and 69

⁹ Sudeshna Guha Roy & Treenok Guha, Modification of Arbitral Awards, BW Legal World (Sept. 27, 2024), <https://www.bwlegalworld.com/article/modification-of-arbitral-awards-534610>.

¹⁰ *Ibid*

¹¹ The Basics of Confirming, Vacating, Modifying and Correcting an Arbitration Award Under the Federal Arbitration Act and the Texas Arbitration Act, FindLaw (Mar. 26, 2008), <https://corporate.findlaw.com/litigation-disputes/the-basics-of-confirming-vacating-modifying-and-correcting-an.html>.

¹² *Supra* at 9

Constitutional Bench Judgement

On April 30, 2025, a five-judge Constitution Bench of the Supreme Court, led by Chief Justice Sanjiv Khanna, gave a significant judgement on whether courts can *modify* arbitral awards under Section 34 of the Arbitration and Conciliation Act, 1996. While Section 34 allows courts to set aside awards under certain conditions, it is silent on modification.¹³

In a 4:1 majority, the Court held that **limited modification** is permissible in exceptional cases. Writing for the majority, CJI Khanna—joined by Justices Gavai, Sanjay Kumar, and Masih—held that denying courts this power could result in undue hardship, unnecessary delays, and repeated arbitration cases. They also recognised that the Supreme Court may invoke its discretionary powers under Article 142 to modify awards, given that it is done cautiously and within narrow limits to achieve *complete justice*.¹⁴

However, Justice K.V. Viswanathan dissented, asserting that Section 34 **neither contemplates nor allows** modification. He emphasised that this would breach the Arbitration Act's structure and violate its main principle of minimal court interference. He also rejected the use of Article 142 in this context, warning that it cannot override substantive statutory limits.

Severance vs. Modification

All five judges agreed that courts can *sever* or separate the invalid portions of an award—such as parts outside the tribunal's jurisdiction—while upholding the rest. This is recognised under Section 34(2)(a)(iv). However, the majority interpreted severance as implicitly including a limited power to *modify*, especially when failure to do so would force a complete retrial.

Justice Viswanathan disagreed, distinguishing between severance, which removes a part, and modification, which changes the substance. He insisted that these are separate legal actions governed by different principles.

Rectification of errors

The majority of judges held that courts could correct clear and non-debatable clerical,

¹³ *Supra* at 3

¹⁴ R. Sai Spandana, Court's Power to Modify an Arbitral Award, Supreme Court Observer (May 2, 2025), <https://www.scobserver.in/reports/courts-power-to-modify-an-arbitral-award-judgement-summary/>.

typographical, or computational errors, even if the Act is silent on this. This inherent power is similar to that of Section 152 of the Civil Procedure Code. Justice Viswanathan concurred with this limited exception but reiterated that it does not amount to general modification.¹⁵

Interest Rates: Pendente Lite Vs Post-Award

The majority ruled that courts cannot alter *pendente lite* interest (during arbitration) but may revise *post-award* interest if it appears unreasonable. This ensures fairness and encourages timely payment. Justice Viswanathan again opposed this, maintaining that courts must remit the matter to the tribunal instead of directly modifying interest, as permitted under Section 34(4).¹⁶

Foreign Awards and Statutory Arbitration

Concerns were raised about the impact of modifications on enforcement of foreign awards under the New York Convention. The majority found this as unfounded, asserting that limited modifications are part of India's domestic framework. Justice Viswanathan, however, warned that such changes could complicate international enforcement, particularly since Indian law lacks express recognition of modified awards.

Both sides agreed that Section 34 must apply uniformly to both consensual and statutory arbitrations, such as those under the NHAI Act. The Court refrained from commenting on the Act's validity, as it is under judicial review.

Critical Analysis

The crux of the matter revolves around whether appellate courts should have the power to modify arbitral awards under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996. A conjoint analysis of statutory interpretation, legislative intent, and comparative legal perspectives indicates that granting such powers could significantly alter the role of courts in arbitration proceedings, and this could undermine the core principles of limited judicial intervention and finality in arbitration.

¹⁵ *Ibid*

¹⁶ *Ibid*

From a statutory perspective, the *omission of the term “modification”* in the 1996 Act is quite significant. As argued by the respondents in *Gayatri Balasamy*, the Indian legal framework has traditionally maintained a distinction between setting aside an award and modifying it. This distinction was expressly recognized in the 1940 Arbitration Act, where *Section 15*¹⁷ separately provided for modification, while the 1996 Act deliberately omitted this power. This omission points towards a legislative intent to limit judicial interference in arbitration, again reiterating the principle that courts should not act as appellate bodies reviewing the merits of an arbitral award.¹⁸

Another argument against widening of the powers was that granting courts the power to modify awards could impact the enforceability of arbitral decisions. Many international arbitration-friendly jurisdictions, such as the UK and New Zealand, *provide clear statutory provisions for modification*.¹⁹ The absence of such a provision in India suggests a conscious policy decision to ensure that Indian arbitration remains free from excessive judicial intervention, thereby allowing it to maintain *its aim of creating an international arbitration friendly jurisdiction*.²⁰

The argument that courts already engage in a form of modification through partial setting aside under Section 34(2)²¹ also does not necessarily justify or interpret the expansion of their powers. As pointed out during the hearings, partial setting aside *does not equate to direct modification*; rather, it is a chance to remedy or *correct legal defects* while respecting the *finality of arbitral award*. There is a grave risk of subjectivity and inconsistency across different courts.²²

From an overall policy standpoint, expanding judicial powers in this manner could create economic uncertainty. Arbitration by nature is designed to provide swift and final resolution to commercial disputes, reducing litigation costs and delays. Introducing modification as a

¹⁷ The Arbitration Act, No. 10 of 1940, § 15 (India).

¹⁸ *Supra* at 3

¹⁹ *Supra* at 3

²⁰ Arvind Datar, *Legal Notes by Arvind Datar: Modification of Arbitral Awards*, Bar & Bench (May 3, 2025, 3:31 PM), <https://www.barandbench.com/columns/legal-notes-by-arvind-datar-modification-of-an-arbitral-award>.

²¹ The Arbitration and Conciliation Act, No. 26 of 1996, § 34(2), India Code (1996).

²² Vijayendra Pratap Singh, Abhijnan Jha & Ankitesh Ojha, *India's Tryst with Modifying Awards – Pragmatic Recognition or a Catastrophe*, Global Arb. Rev. (May 15, 2025), <https://globalarbitrationreview.com/review/the-asia-pacific-arbitration-review/2026/article/indias-tryst-modifying-awards-pragmatic-recognition-or-catastrophe>.

judicial power may lead to increased litigation, which can reduce arbitration's effectiveness and discourage arbitration as an ADR mechanism.

Expansion of the Scope of 34(4)

Section 34(4)²³ allows courts to *remit an arbitral award for corrections* instead of setting it aside. Earlier used sparingly, this section can now be utilized more broadly as a corrective mechanism. Traditionally, its application was confined to rectifying procedural defects, but recent cases indicate a shift toward a more expansive use. Courts may now direct tribunals to *elaborate reasoning instead of quashing an award, address evidentiary omissions by considering overlooked admissible evidence without going into the merits, and rectify manifest errors that do not necessitate setting aside the award.*²⁴

Conclusion

The debate around the power of Indian courts to modify arbitral awards under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996, is at its core goes to a deeper tension between judicial oversight and the autonomy of the arbitral process. While the Act deliberately limits court intervention to preserve arbitration's speed and finality, recent jurisprudence and practical concerns have reopened questions around modification—particularly in cases where setting aside an award in full may lead to undue hardship. The Supreme Court's recent Constitution Bench decision brings clarity by permitting limited modifications in exceptional cases, but the strong dissent by Justice Viswanathan underscores the risks of judicial overreach. Moving forward, a legislative review may be necessary to settle this doctrinal divide. Until then, courts must act carefully, balancing fairness with fidelity to legislative intent and international arbitration norms.

²³ The Arbitration and Conciliation Act, No. 26 of 1996, § 34(4), India Code (1996).

²⁴ I-Pay Clearing Services v. ICICI Bank Ltd., 2022 SCC OnLine SC 4