
FROM AUTONOMY TO INTERVENTION: TRACING THE EVOLUTION AND CONTESTATION OF JUDICIAL CONTROL IN INDIAN ARBITRATION JURISPRUDENCE

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1. Introduction

1.1 Background and context of Arbitration Law

*“By choosing arbitration, the parties choose, in principle, finality. An arbitral award is not intended to be a mere proposal as to how the dispute might be resolved, nor is it intended to be the first step on a ladder of appeals.”*¹

Arbitration, in its most essential form, emerged as a pragmatic response to the limitations of formal adjudicatory systems. Long before the institutionalization of courts, mercantile communities, trade guilds, and even local village bodies relied upon consensual mechanisms to resolve disputes. These mechanisms were not merely informal; they were deeply rooted in the idea that disputing parties could select a neutral decision-maker whose authority flowed from mutual agreement rather than sovereign command. This foundational characteristic continues to distinguish arbitration from litigation and lies at the heart of what modern scholarship identifies as “party autonomy.” As Gary Born notes, arbitration is “a creature of contract,” where the legitimacy of the process stems from the consent of the parties rather than the coercive authority of the state².

In the Indian context, the trajectory of arbitration law reflects a gradual but uneven shift from judicial dominance toward recognition of arbitral independence. During the colonial era, statutory interventions such as the Indian Arbitration Act, 1899, and subsequently the Arbitration Act, 1940, sought to formalize arbitration but simultaneously embedded it within a heavily court-supervised framework. The Arbitration Act, 1940, in particular, became emblematic of excessive judicial intervention. Courts were not only involved at the stage of

¹ Alan Redfern, Nigel A. Blackaby: *Redfern and Hunter on International Arbitration* (7th Edition, 2022)

² Gary B. Born: *International Commercial Arbitration*, 3rd ed., Kluwer Law International, 2021, p. 89

appointment and removal of arbitrators but also exercised expansive powers to scrutinize, remit, and even effectively rewrite arbitral awards. The Supreme Court itself later acknowledged these systemic inefficiencies, observing that the 1940 Act had made “lawyers laugh and legal philosophers weep”³. This oft-cited remark encapsulates the frustration with a regime that undermined the very objectives arbitration was meant to serve efficiency, finality, and minimal procedural complexity.

The enactment of the Arbitration and Conciliation Act, 1996 marked a decisive legislative attempt to break away from this interventionist legacy. Modelled on the UNCITRAL Model Law on International Commercial Arbitration, the 1996 Act sought to align Indian arbitration law with globally accepted principles, particularly the doctrine of minimal judicial interference. Section 5 of the Act explicitly restricts judicial intervention to instances expressly provided for within the statute, signalling a clear legislative intent to confine the role of courts. As Redfern and Hunter observe, modern arbitration statutes influenced by the Model Law aim to create a “self-contained procedural framework” where courts act as facilitators rather than supervisors⁴.

Despite this statutory shift, the practical application of arbitration law in India has been shaped significantly by judicial interpretation. In the years following the 1996 Act, courts often adopted an expansive approach to reviewing arbitral awards, particularly under Section 34, which governs applications for setting aside awards. The introduction of the “public policy” ground as a basis for judicial interference became a focal point of controversy. In *ONGC v. Saw Pipes Ltd.*, the Supreme Court broadened the scope of public policy to include “patent illegality,” thereby permitting courts to examine the substantive correctness of arbitral awards. This decision, while arguably motivated by concerns of justice and fairness, effectively reintroduced a level of judicial scrutiny reminiscent of the pre-1996 regime. Scholars have critiqued this development as blurring the distinction between appellate review and limited supervisory jurisdiction⁵.

The tension between judicial control and party autonomy thus became a defining feature of Indian arbitration jurisprudence. On one hand, party autonomy enables disputing parties to tailor the arbitral process according to their specific needs, including the selection of arbitrators,

³ *Guru Nanak Foundation v. Rattan Singh & Sons*

⁴ Alan Redfern et al., *Law and Practice of International Commercial Arbitration*, 6th ed., Oxford University Press, 2015, p. 105

⁵ Fali S. Nariman, “Ten Steps to Salvage Arbitration in India,” (2001) 3 SCC J-13

procedural rules, and substantive law. This flexibility is particularly significant in commercial contexts, where efficiency and expertise are highly valued. On the other hand, the judiciary has consistently asserted its role as a guardian of legality and fairness, intervening in cases where arbitral awards are perceived to violate fundamental legal principles or public policy. This duality is not unique to India but reflects a broader global debate about the appropriate boundaries of judicial involvement in arbitration.

Internationally, arbitration has been strengthened by instruments such as the New York Convention, 1958, which facilitates the recognition and enforcement of foreign arbitral awards across jurisdictions. The success of arbitration as a preferred mode of dispute resolution in cross-border transactions can be attributed largely to the predictability and enforceability offered by such frameworks. As Emmanuel Gaillard notes, the effectiveness of arbitration depends not only on party autonomy but also on the willingness of national courts to respect arbitral decisions and limit their intervention to exceptional circumstances⁶.

India's efforts to position itself as an arbitration-friendly jurisdiction have included multiple legislative amendments to the 1996 Act, notably in 2015, 2019, and 2021. These amendments sought to clarify the scope of judicial review, introduce stricter timelines, and promote institutional arbitration. For instance, the 2015 Amendment Act narrowed the interpretation of public policy and emphasized that courts should not review the merits of the dispute while considering applications under Section 34. Judicial pronouncements following these amendments, such as *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*, have attempted to reinforce the principle that arbitral awards should not be interfered with lightly, thereby reaffirming the legislative intent of minimal judicial intervention.

However, the question of whether courts possess the authority not merely to set aside but also to modify arbitral awards has remained contentious. This issue strikes at the core of the balance between judicial control and party autonomy. If courts are permitted to modify awards, it could be argued that they are effectively stepping into the shoes of the arbitral tribunal, thereby undermining the finality and independence of the arbitral process. Conversely, denying courts such power may, in certain cases, result in inefficiencies, particularly where a partial correction could avoid the need for re-arbitration. This unresolved tension has contributed to divergent

⁶ Emmanuel Gaillard & John Savage (eds.), *Fouchard Gaillard Goldman on International Commercial Arbitration*, Kluwer Law International, 1999, p. 73

judicial approaches and doctrinal uncertainty.

The broader context of arbitration law, therefore, is characterized by a continuous negotiation between competing values: efficiency versus fairness, finality versus correctness, and autonomy versus oversight. Each of these values carries significant implications for the legitimacy and effectiveness of arbitration as a dispute resolution mechanism. The Indian experience, shaped by its unique legal culture and judicial traditions, provides a particularly rich case study of how these tensions play out in practice.

1.2 Conceptual Framework: Judicial control *versus* Party Autonomy

The conceptual tension between judicial control and party autonomy lies at the very core of arbitration theory and practice. It is not merely a technical legal issue but reflects deeper philosophical questions about the nature of adjudication, the role of the state, and the extent to which private parties can determine their own dispute resolution mechanisms. Arbitration, by design, operates in a space where private ordering intersects with public authority. This dual character explains why the relationship between courts and arbitral tribunals has remained both dynamic and, at times, contested.

Party autonomy is widely acknowledged as the foundational principle of arbitration. It signifies the freedom of parties to structure the arbitral process according to their preferences, subject to certain mandatory legal constraints. This includes the ability to choose the governing law, the seat of arbitration, the procedural rules, and even the arbitrators themselves. In essence, arbitration allows parties to create a bespoke dispute resolution mechanism tailored to their commercial realities. As Born articulates, party autonomy is “the guiding principle in determining the validity and effect of arbitration agreements and the conduct of arbitral proceedings”⁷. This principle is also embedded in statutory frameworks such as the Arbitration and Conciliation Act, 1996, where provisions repeatedly defer to party agreement unless it conflicts with non-derogable norms.

However, party autonomy is not absolute. It operates within a legal framework that imposes limits to safeguard fairness, equity, and public interest. These limits are where judicial control becomes relevant. Judicial control refers to the supervisory and corrective jurisdiction exercised by courts over the arbitral process. This control manifests at various stages: referral

⁷ Gary B. Born, *International Commercial Arbitration*, 2021, p. 212

to arbitration, appointment of arbitrators, interim measures, and most importantly, review of arbitral awards. The justification for such control lies in the need to ensure that arbitration does not become a parallel system devoid of accountability. Courts act as a safety valve, intervening in situations involving procedural irregularities, bias, fraud, or violations of natural justice.

The relationship between these two principles is often described as one of balance rather than opposition. Yet, in practice, maintaining this balance has proven to be complex. Excessive judicial intervention can erode the very advantages that make arbitration attractive speed, finality, and flexibility. On the other hand, an overly deferential approach may lead to unchecked arbitral discretion, potentially compromising substantive justice. This dichotomy has been vividly illustrated in Indian jurisprudence, where courts have oscillated between interventionist and pro-arbitration approaches.

A significant aspect of this conceptual framework is the distinction between “supervisory jurisdiction” and “appellate jurisdiction.” Arbitration law generally confines courts to a supervisory role, meaning they can ensure procedural integrity but cannot re-examine the merits of the dispute. This distinction is crucial because allowing courts to act as appellate bodies would undermine the finality of arbitral awards. The Supreme Court in *McDermott International Inc. v. Burn Standard Co. Ltd.* emphasized this limitation, observing that courts cannot correct errors of fact or law in arbitral awards but can only quash them on limited grounds. This position reinforces the idea that arbitration is intended to be a self-contained mechanism, with minimal judicial interference.

At the same time, the scope of judicial control has often expanded through interpretative innovations, particularly under the “public policy” exception. The landmark decision in *ONGC v. Saw Pipes Ltd.* introduced the concept of “patent illegality” as a ground for setting aside awards, thereby broadening the ambit of judicial review. While this development was justified on the grounds of preventing injustice, it also raised concerns about courts encroaching upon the domain of arbitral tribunals. The subsequent narrowing of this doctrine in later cases reflects an ongoing attempt to recalibrate the balance between control and autonomy.

Another important dimension of this framework is the concept of finality. Arbitral awards are intended to be final and binding, a feature that distinguishes arbitration from traditional litigation with its multiple layers of appeal. Finality is closely linked to party autonomy, as it reflects the parties’ decision to accept the arbitral tribunal’s determination as conclusive.

Judicial interference, particularly in the form of modification or extensive review, can dilute this finality. This is why most arbitration regimes, including the UNCITRAL Model Law, limit judicial intervention to setting aside awards rather than altering them. The absence of an explicit statutory provision permitting modification has been a key point of debate in Indian law, especially in light of conflicting judicial precedents.

From a theoretical standpoint, the tension between judicial control and party autonomy can also be understood through competing models of arbitration. The “contractual model” views arbitration as an extension of the parties’ agreement, emphasizing autonomy and minimal court involvement. In contrast, the “jurisdictional model” treats arbitration as a form of adjudication that derives its legitimacy from the legal system, thereby justifying a greater role for courts. Modern arbitration law represents a hybrid of these models, recognizing both the contractual origins of arbitration and the need for judicial oversight.

The Indian experience illustrates how this hybrid model operates in practice. Courts have increasingly acknowledged the importance of party autonomy, particularly in commercial arbitration, where predictability and efficiency are paramount. At the same time, they have retained the power to intervene in exceptional cases to uphold the rule of law. Decisions such as *Ssangyong Engineering & Construction Co. Ltd. v. NHAI* demonstrate a conscious effort to align Indian jurisprudence with international standards by limiting the scope of judicial review and emphasizing the finality of arbitral awards.

Yet, unresolved questions remain, particularly regarding the extent to which courts can go beyond setting aside an award and engage in its modification. This issue sits squarely within the conceptual framework being discussed, as it directly implicates both judicial control and party autonomy. Allowing modification could be seen as enhancing efficiency by avoiding the need for re-arbitration, but it also risks transforming courts into appellate bodies, thereby undermining the autonomy of the arbitral process.

The interplay between these principles is further complicated by considerations of public policy, equity, and access to justice. Courts are often called upon to strike a balance between respecting the parties’ agreement and ensuring that the outcome does not violate fundamental legal norms. This balancing act is inherently context-specific and has led to a body of jurisprudence that is both rich and, at times, inconsistent. In this sense, the conceptual framework of judicial control versus party autonomy is not static but evolves in response to

changing legal, economic, and social conditions. It reflects an ongoing dialogue between the judiciary, legislature, and arbitral community about the proper role of arbitration within the broader legal system.

1.3 Evolution of Arbitral jurisprudence in India

The evolution of arbitral jurisprudence in India reflects a gradual, and at times uneasy, transition from a regime dominated by judicial intervention to one that aspires toward autonomy, efficiency, and global compatibility. This development has not been linear. Instead, it has been shaped by shifting legislative frameworks, changing judicial attitudes, and the growing demands of a liberalized economy that increasingly relies on arbitration as a preferred mode of dispute resolution.

In its earliest phase, arbitration in India functioned largely as an adjunct to the judicial system rather than an independent mechanism. The colonial legal framework, particularly the Indian Arbitration Act, 1899, introduced formal recognition of arbitration but limited its application primarily to presidency towns. This was followed by the more comprehensive Arbitration Act, 1940, which governed arbitration for several decades. While the 1940 Act sought to consolidate the law, it embedded arbitration within a structure that was heavily reliant on court supervision. Judicial intervention was not the exception but the norm, occurring at almost every stage from the appointment of arbitrators to the enforcement of awards.

The judiciary itself later acknowledged the inefficiencies of this framework. In *Guru Nanak Foundation v. Rattan Singh & Sons*, the Supreme Court famously criticized the working of the 1940 Act, remarking that the process had become so cumbersome that it undermined the very purpose of arbitration. This observation is frequently cited in academic literature as a turning point, highlighting the urgent need for reform. Scholars such as O.P. Malhotra have similarly argued that the 1940 regime transformed arbitration into “a prolonged litigation process in disguise”⁸.

The liberalization of the Indian economy in the early 1990s created additional pressure to modernize dispute resolution mechanisms. As India integrated into the global market, the limitations of its arbitration framework became increasingly apparent, particularly in the context of international commercial transactions. This led to the enactment of the Arbitration

⁸ O.P. Malhotra, *The Law and Practice of Arbitration and Conciliation*, 2006, p. 45

and Conciliation Act, 1996, which marked a watershed moment in the evolution of arbitral jurisprudence. Modelled on the UNCITRAL Model Law, the 1996 Act sought to minimize judicial intervention, promote party autonomy, and ensure the finality of arbitral awards.

However, the early years following the enactment of the 1996 Act revealed a divergence between legislative intent and judicial interpretation. Courts often continued to adopt an interventionist approach, particularly in relation to the enforcement of foreign awards and the scope of judicial review under Section 34. A notable example is *Bhatia International v. Bulk Trading S.A.*, where the Supreme Court held that Part I of the Act could apply even to international commercial arbitrations seated outside India unless expressly excluded by the parties. This decision effectively expanded the reach of Indian courts and was widely criticized for undermining the principle of territoriality, which is central to the Model Law framework⁹.

Similarly, in *ONGC v. Saw Pipes Ltd.*, the Court broadened the scope of the “public policy” ground for setting aside arbitral awards to include “patent illegality.” While this was intended to prevent unjust outcomes, it significantly widened the scope of judicial review, allowing courts to scrutinize the merits of arbitral awards more closely. This phase of jurisprudence is often described as a period of “judicial expansion,” where the courts, perhaps motivated by concerns of fairness and accountability, extended their supervisory role beyond what the statute appeared to permit.

The turning point in this trajectory came with the decision in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* (commonly referred to as *BALCO*). In this landmark judgment, a Constitution Bench of the Supreme Court overruled *Bhatia International* and reaffirmed the principle of territoriality. The Court held that Part I of the 1996 Act applies only to arbitrations seated in India, thereby limiting the jurisdiction of Indian courts over foreign-seated arbitrations. This decision was widely welcomed as it brought Indian arbitration law in line with international standards and restored confidence among foreign investors.

Following *BALCO*, the judiciary began to adopt a more restrained approach, emphasizing minimal intervention and respect for arbitral autonomy. This shift was further reinforced by legislative amendments, particularly the Arbitration and Conciliation (Amendment) Act, 2015. The 2015 amendments sought to clarify the scope of the public policy exception and introduced

⁹ Gary B. Born, *International Arbitration*, 2021, p. 1567

the concept of “patent illegality” as a separate and narrowly defined ground applicable only to domestic awards. The amendments also aimed to streamline the arbitral process by introducing time limits and reducing procedural delays.

Judicial decisions in the post-amendment era reflect a conscious effort to align with this pro-arbitration stance. In *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*, the Supreme Court emphasized that courts should not interfere with arbitral awards merely because an alternative interpretation of the contract is possible. The Court clarified that judicial review under Section 34 is limited to instances where the award is fundamentally flawed, thereby reinforcing the principle of finality.

At the same time, certain ambiguities have persisted, particularly regarding the extent of judicial powers in relation to arbitral awards. One such area of uncertainty concerns the power of courts to modify or vary arbitral awards. While the 1996 Act does not explicitly confer such power, some judicial decisions have suggested that courts may, in limited circumstances, modify awards to achieve justice. This has led to a degree of doctrinal inconsistency, as other decisions have categorically held that courts can only set aside or uphold awards, not alter them. The Supreme Court in *McDermott International Inc. v. Burn Standard Co. Ltd.* observed that courts cannot correct errors in arbitral awards and must either uphold or set them aside, a position that underscores the limited nature of judicial intervention.

The evolution of arbitral jurisprudence in India must also be understood in light of broader institutional and policy developments. The establishment of arbitral institutions, the promotion of institutional arbitration, and the increasing specialization of the judiciary in commercial matters have all contributed to shaping the arbitration landscape. Amendments in 2019 and 2021 further sought to strengthen institutional mechanisms and address concerns related to enforcement and efficiency.

What emerges from this historical trajectory is a jurisprudence that has gradually moved toward recognizing the autonomy and finality of arbitration, while still grappling with the appropriate scope of judicial oversight. The Indian judiciary has played a pivotal role in this evolution, at times expanding and at other times restraining its own powers in response to legislative intent and international best practices. The resulting body of law is both rich and complex, reflecting the ongoing effort to balance competing principles within the arbitration framework.

1.4 Statement of the Problem

The statement of the problem in the present study arises from a persistent and unresolved doctrinal tension within Indian arbitration law: the uncertainty surrounding the precise limits of judicial power in dealing with arbitral awards, particularly in the context of modification versus annulment. While arbitration as a dispute resolution mechanism is fundamentally premised on party autonomy and finality, the role of courts as supervisory authorities has continued to generate interpretative conflicts. This tension has become especially pronounced in the aftermath of evolving judicial precedents and culminates in the contemporary relevance of the Constitution Bench ruling in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*

At the legislative level, the Arbitration and Conciliation Act, 1996 was enacted with a clear objective: to minimize judicial intervention and align Indian arbitration law with international standards such as the UNCITRAL Model Law. Section 34 of the Act provides a limited mechanism for setting aside arbitral awards on specific grounds, such as incapacity, procedural irregularity, or conflict with public policy. Notably, the provision does not expressly confer upon courts the power to modify or vary arbitral awards. This omission is not accidental but reflects a conscious legislative design to preserve the finality of arbitral decisions and restrict courts to a supervisory rather than appellate role. Despite this statutory clarity, judicial practice in India has not been entirely consistent. Courts have, at different points in time, adopted divergent approaches to the scope of their powers under Section 34. On one end of the spectrum, decisions such as *McDermott International Inc. v. Burn Standard Co. Ltd.* have emphasized that courts cannot correct errors in arbitral awards and must confine themselves to either setting aside or upholding the award. This approach reinforces the principle that arbitration is a self-contained mechanism and that judicial interference should remain minimal.

On the other end, certain judicial pronouncements have indicated a willingness to modify arbitral awards in order to “do complete justice,” thereby blurring the distinction between supervisory and appellate jurisdiction. This has created a doctrinal inconsistency, as the exercise of such power effectively allows courts to step into the role of the arbitral tribunal. The expansion of judicial review through the “public policy” doctrine, particularly in *ONGC v. Saw Pipes Ltd.*, further complicated this landscape by enabling courts to scrutinize awards on substantive grounds under the guise of patent illegality. Although later decisions and legislative amendments have sought to narrow this scope, the underlying ambiguity regarding

modification powers has persisted.

The core problem, therefore, lies in the absence of a clear and consistent legal position on whether Indian courts possess the authority to modify arbitral awards and, if so, under what circumstances. This uncertainty has significant implications for the arbitration framework. From the perspective of party autonomy, the possibility of judicial modification undermines the finality of arbitral awards and dilutes the parties' choice to have their disputes resolved outside the traditional court system. From the standpoint of judicial control, however, a complete prohibition on modification may, in certain cases, lead to inefficiencies—particularly where a limited correction could avoid the need for setting aside the award and initiating fresh arbitral proceedings.

This doctrinal ambiguity is not merely theoretical but has practical consequences for commercial arbitration in India. Parties engaging in arbitration expect a degree of certainty and predictability in the enforcement of awards. Inconsistent judicial approaches can lead to increased litigation, delays, and additional costs, thereby eroding confidence in arbitration as an effective dispute resolution mechanism. Moreover, in the context of international commercial arbitration, such uncertainty may deter foreign investors who rely on stable and arbitration-friendly legal frameworks.

The issue also raises broader conceptual questions about the nature of arbitration itself. If courts are permitted to modify arbitral awards, does arbitration retain its character as a final and binding process, or does it become a preliminary stage subject to judicial revision? Conversely, if courts are strictly limited to setting aside awards, does this adequately address situations where the award is flawed but not entirely unsustainable? These questions highlight the delicate balance between ensuring justice in individual cases and maintaining the structural integrity of the arbitral system.

The Constitution Bench ruling in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* assumes particular significance in this context, as it seeks to address these competing concerns and clarify the extent of judicial powers. However, the need for a comprehensive analysis remains, especially in understanding how this ruling fits within the broader trajectory of Indian arbitration jurisprudence and whether it successfully resolves the longstanding tension between judicial control and party autonomy.

Accordingly, the problem addressed in this dissertation can be articulated as follows: the lack of doctrinal clarity and consistency regarding the limited powers of courts to interfere with, and specifically to modify, arbitral awards under Indian law, and the consequent impact of this ambiguity on the principles of party autonomy, finality, and efficiency that underpin the arbitration process. This problem necessitates a critical examination of statutory provisions, judicial precedents, and comparative jurisprudence to determine whether the current legal framework achieves an appropriate balance or requires further refinement.

1.5 Research Question and Hypothesis

The formulation of research questions and corresponding hypotheses in this study is guided by the central doctrinal tension identified earlier namely, the uncertain boundary between judicial control and party autonomy in the context of post-award intervention. The ambiguity surrounding the extent to which courts may interfere with arbitral awards, particularly in the absence of an explicit statutory provision permitting modification under the Arbitration and Conciliation Act, 1996, necessitates a set of carefully structured inquiries that move beyond descriptive analysis and engage with normative and doctrinal concerns.

At the outset, the primary research question is framed to address the core issue directly:

- i. **To what extent do Indian courts possess the power to modify arbitral awards under the existing statutory framework, particularly in light of the Constitution Bench ruling in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*?**

This question is rooted in the interpretative conflict between the text of Section 34, which appears to limit courts to setting aside awards, and judicial practices that have occasionally suggested a broader remedial jurisdiction. The corresponding hypothesis posits that courts in India do not possess an inherent or implied power to modify arbitral awards, and any exercise of such power represents a judicial expansion beyond the legislative mandate, thereby potentially undermining the finality of arbitration.

- ii. **How have Indian courts historically interpreted their powers under Section 34 and is there a coherent jurisprudential trend regarding modification versus annulment of arbitral awards?**

This question seeks to trace the evolution of judicial reasoning from decisions such as *ONGC*

v. *Saw Pipes Ltd.* to later rulings like *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*. The working hypothesis here is that Indian arbitration jurisprudence has been marked by inconsistency, with periods of judicial expansion followed by corrective phases aimed at restoring minimal intervention, resulting in a fragmented doctrinal landscape.

iii. **Does the power (or absence thereof) to modify arbitral awards strike an appropriate balance between judicial control and party autonomy?**

This inquiry moves into the normative domain, evaluating whether the current legal position aligns with the foundational principles of arbitration. The hypothesis advanced is that permitting judicial modification, even in limited circumstances, risks transforming courts into appellate bodies and thereby diluting party autonomy, whereas a strict prohibition may enhance finality but could occasionally compromise substantive justice.

iv. **How does the Indian position on judicial modification of arbitral awards compare with other Model Law jurisdictions, and what lessons can be drawn from such comparisons?**

This question is premised on the understanding that arbitration is inherently transnational, and domestic frameworks are often influenced by international best practices. The hypothesis suggests that most Model Law jurisdictions adhere to a strict “set aside or uphold” approach, thereby reinforcing the finality of arbitral awards and limiting judicial discretion, and that India’s divergence, where it exists, may affect its credibility as an arbitration-friendly jurisdiction.

v. **What are the implications of uncertain judicial powers for commercial parties, arbitral institutions, and the overall efficiency of the arbitration process in India?**

Here, the focus shifts from doctrinal analysis to real-world impact. The hypothesis is that uncertainty regarding judicial powers increases litigation risk, prolongs dispute resolution, and undermines investor confidence, particularly in high-value commercial disputes.

vi. **Does the ruling in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* provide definitive clarity on the scope of judicial powers, or does it leave certain questions unresolved?**

This question is critical to situating the dissertation within contemporary legal developments. The hypothesis advanced is that while the ruling represents a significant step toward clarifying

the limits of judicial intervention, it may not entirely eliminate interpretative ambiguities, especially in complex factual scenarios where partial modification could be seen as a pragmatic solution.

Collectively, these research questions and hypotheses are designed to structure the inquiry in a manner that is both analytically rigorous and practically relevant. They move from identifying the doctrinal problem to examining its historical evolution, conceptual foundations, comparative dimensions, and real-world implications. At the same time, the hypotheses provide a tentative framework that will be tested and refined through detailed analysis of statutory provisions, judicial precedents, and scholarly commentary.

1.6 Objectives of the study

The objectives of this study are formulated to systematically address the doctrinal, conceptual, and practical issues arising from the limited scope of judicial intervention in arbitral awards under the Arbitration and Conciliation Act, 1996, particularly in light of recent constitutional bench developments.

At the most fundamental level, the study seeks to examine and clarify the scope of judicial powers in relation to arbitral awards, with specific focus on whether courts possess the authority to modify such awards or are confined strictly to setting them aside. This objective arises from the persistent ambiguity in judicial interpretation and aims to provide a coherent understanding of the statutory framework.

Closely connected to this is the **objective** to analyse the evolution of judicial interpretation under Section 34, tracing how courts have approached the question of interference with arbitral awards over time. By engaging with key precedents such as *McDermott International Inc. v. Burn Standard Co. Ltd.* and *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*, the study aims to identify patterns, inconsistencies, and shifts in judicial reasoning.

Another important objective is to critically evaluate the balance between judicial control and party autonomy within the arbitration framework. This involves assessing whether the current legal position effectively preserves the autonomy of parties while ensuring that arbitral awards remain subject to necessary safeguards against illegality or procedural unfairness.

The study also aims to assess the impact of judicial intervention on the finality and efficiency

of arbitration, particularly in commercial disputes. This includes examining how uncertainty regarding judicial powers may influence the behaviour of parties, the duration of dispute resolution, and the overall credibility of arbitration as an alternative to litigation.

In addition, a comparative objective is pursued: to examine how other Model Law jurisdictions approach the issue of judicial interference with arbitral awards, and to evaluate whether the Indian position aligns with or deviates from international best practices. This comparative perspective is intended to provide a broader context for assessing the adequacy of the Indian legal framework.

A further objective is to analyze the implications of the Constitution Bench ruling in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* for arbitration law in India, particularly in terms of clarifying or redefining the limits of judicial authority. This involves situating the ruling within the broader trajectory of arbitral jurisprudence and evaluating its practical consequences.

Finally, the study seeks to identify gaps, challenges, and areas requiring reform within the existing legal framework, with a view to suggesting measures that can enhance clarity, consistency, and effectiveness in the regulation of arbitral awards. Collectively, these objectives are designed to ensure a comprehensive and critical engagement with the central theme of the dissertation, while maintaining a clear focus on the interplay between judicial control and party autonomy.

1.7 Scope and Limitation

The scope of this study is primarily confined to a doctrinal examination of the limits of judicial intervention in arbitral awards under the Arbitration and Conciliation Act, 1996. It focuses specifically on the interpretation of Section 34 and the broader question of whether courts possess the power to modify arbitral awards or are restricted to setting them aside. The analysis is centered on Indian jurisprudence, with particular attention to key Supreme Court decisions such as *McDermott International Inc. v. Burn Standard Co. Ltd.* and *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*, along with the implications of the Constitution Bench ruling in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*. A limited comparative perspective is included to situate India within the broader framework of Model Law jurisdictions. However, the study is subject to certain limitations. It adopts a doctrinal approach and does not include

empirical analysis or field-based data. The comparative discussion is selective rather than exhaustive, and the focus remains on post-award judicial intervention, without detailed exploration of other stages of arbitration such as enforcement or appointment of arbitrators. Additionally, given the evolving nature of arbitration law, the findings are based on the current legal position and may be influenced by future judicial or legislative developments.

1.8 Research Methodology

The research methodology adopted in this study is primarily doctrinal and analytical, focusing on the interpretation of legal principles governing judicial intervention in arbitral awards under the Arbitration and Conciliation Act, 1996. The study relies on primary sources, including statutory provisions particularly Section 34 and key judicial decisions such as *McDermott International Inc. v. Burn Standard Co. Ltd.* and *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*, along with the Constitution Bench ruling in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* In addition, secondary sources such as scholarly writings, commentaries, and journal articles are used to provide theoretical and contextual insights. A limited comparative approach is also adopted to briefly examine practices in Model Law jurisdictions. The study is qualitative in nature and does not involve empirical methods like surveys or interviews. Instead, it emphasizes case law analysis and critical evaluation to assess how effectively the law balances judicial control with party autonomy.

2. Theoretical foundation of Arbitration

2.1 Nature and Philosophy of Arbitration

“The philosophy of arbitration is that of ‘self-help’, a consensual process where the parties determine the procedure, the judge, and the law that will govern their resolution.”¹⁰

The nature and philosophy of arbitration can only be fully appreciated when one recognizes that arbitration is not merely a procedural alternative to litigation, but a distinct legal and conceptual framework that reflects deeper ideas about autonomy, adjudication, and the role of the state in dispute resolution. At its foundation, arbitration represents a deliberate shift away from the monopolistic authority of courts toward a system where parties exercise a significant degree of control over how their disputes are resolved. This shift is neither absolute nor

¹⁰ Alan Redfern & Martin Hunter: *The Law & Practice of International Commercial Arbitration*

unregulated; rather, it is structured within a legal framework that simultaneously enables and constrains arbitral processes.

At the heart of arbitration lies the principle of consensual adjudication. Unlike litigation, where jurisdiction is imposed by law, arbitration is initiated through agreement. This agreement commonly referred to as the arbitration agreement or clause serves as the juridical basis for the entire process. It reflects the parties' intention to substitute court adjudication with a privately constituted tribunal. As Gary Born explains, arbitration "derives its existence, authority, and scope from the consent of the parties," making it fundamentally different from state-imposed dispute resolution¹¹. This consensual foundation is what gives rise to the doctrine of party autonomy, widely regarded as the cornerstone of arbitration. However, the nature of arbitration cannot be reduced to contract alone. Once constituted, an arbitral tribunal performs functions that are inherently adjudicatory. Arbitrators hear evidence, interpret contracts, apply legal principles, and render binding decisions. These decisions are not merely contractual outcomes; they possess legal force and are enforceable through the machinery of the state, particularly under statutes such as the Arbitration and Conciliation Act, 1996. This enforceability distinguishes arbitration from other forms of alternative dispute resolution such as mediation or negotiation. As Redfern and Hunter observe, arbitration is "a private process with a public effect," highlighting its hybrid nature¹².

This dual character has given rise to competing theoretical explanations of arbitration, most notably the contractual theory and the jurisdictional theory. The contractual theory views arbitration as an extension of party agreement, emphasizing that the authority of arbitrators and the structure of proceedings are determined by the will of the parties. Under this view, judicial intervention should be minimal, as excessive interference would undermine the very purpose of arbitration. In contrast, the jurisdictional theory posits that arbitration derives its legitimacy from the legal system of the state, which recognizes and enforces arbitral awards. From this perspective, courts play a necessary supervisory role to ensure that arbitration complies with fundamental legal norms, including principles of natural justice and public policy.

Modern arbitration law reflects a synthesis of these theories rather than a strict adherence to either. The Arbitration and Conciliation Act, 1996, for instance, embodies this balance by

¹¹ Gary B. Born, *International Commercial Arbitration*, 3rd ed., 2021, p. 89

¹² Alan Redfern et al., *Law and Practice of International Commercial Arbitration*, 6th ed., 2015, p. 3

granting parties significant freedom in shaping the arbitral process while simultaneously preserving limited judicial oversight. Section 5 of the Act explicitly restricts judicial intervention to instances provided within the statute, signalling a legislative preference for autonomy. At the same time, provisions such as Section 34 allow courts to set aside arbitral awards on specific grounds, thereby ensuring that arbitration does not operate in a legal vacuum. The philosophical underpinnings of arbitration also emphasize finality and efficiency. Arbitration is designed to provide a conclusive resolution to disputes without the delays typically associated with litigation. This objective is particularly important in commercial contexts, where prolonged disputes can disrupt business operations and increase transaction costs. The principle of finality is closely linked to the limited scope of judicial review. As the Supreme Court observed in *McDermott International Inc. v. Burn Standard Co. Ltd.*, courts do not sit in appeal over arbitral awards and cannot correct errors of fact or law. This reinforces the idea that arbitration is intended to be a self-contained mechanism, where the decision of the arbitral tribunal is, in most cases, the last word on the dispute. At the same time, arbitration is not insulated from considerations of fairness and justice. The philosophical justification for judicial oversight lies in the need to prevent arbitral processes from producing outcomes that are fundamentally unjust or contrary to public policy. This is particularly evident in the development of the “public policy” doctrine in Indian arbitration law. In *ONGC v. Saw Pipes Ltd.*, the Supreme Court expanded the scope of public policy to include “patent illegality,” thereby allowing courts to intervene where an award is manifestly erroneous. While this approach was intended to safeguard justice, it also raised concerns about excessive judicial interference, illustrating the ongoing tension between autonomy and control.

Another important philosophical dimension of arbitration is its emphasis on neutrality and flexibility. In international commercial disputes, parties often belong to different legal systems and may be reluctant to submit to the jurisdiction of a foreign court. Arbitration offers a neutral forum where parties can agree on procedural rules, select arbitrators with relevant expertise, and choose a seat that is legally and geographically convenient. This flexibility enhances the attractiveness of arbitration, particularly in cross-border transactions. As Emmanuel Gaillard notes, arbitration represents a “delocalized system of justice,” operating across national boundaries while remaining anchored in domestic legal systems¹³.

Confidentiality further reinforces the private nature of arbitration. Unlike court proceedings,

¹³ Gaillard & Savage, *Fouchard Gaillard Goldman on International Commercial Arbitration*, 1999, p. 35

which are generally public, arbitration allows parties to resolve disputes in a more discreet setting. This is especially valuable in commercial disputes involving sensitive information, trade secrets, or reputational concerns. Although confidentiality is not absolute and may depend on the governing rules or institutional framework, it remains a key factor influencing the choice of arbitration.

In the Indian context, the philosophy of arbitration has undergone significant transformation. The earlier regime under the Arbitration Act, 1940, was characterized by extensive judicial control, which often undermined the efficiency and autonomy of arbitration. The shift brought about by the 1996 Act reflects a broader philosophical realignment toward minimal intervention and respect for party autonomy. Judicial decisions in recent years, including *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*, have reinforced this approach by narrowing the scope of judicial review and emphasizing the finality of arbitral awards.

At a deeper level, arbitration embodies a broader transformation in legal thought from a state-centric model of dispute resolution to a more pluralistic system where private and public mechanisms coexist. It reflects the recognition that parties, particularly in commercial contexts, are often best placed to determine how their disputes should be resolved. At the same time, the involvement of courts ensures that this autonomy operates within the bounds of legality and fairness. The nature and philosophy of arbitration, therefore, cannot be understood in isolation from this dynamic interplay between private choice and public control. It is precisely this interplay that gives arbitration its unique character and continues to shape its development within both domestic and international legal systems.

2.2 Doctrine of Party Autonomy in Arbitration

The doctrine of party autonomy in arbitration is often described as the intellectual and functional backbone of the arbitral process, but its significance extends far beyond mere procedural flexibility. It represents a broader legal philosophy that recognizes the capacity of parties particularly in commercial relationships to design not only their substantive obligations but also the mechanism through which disputes arising from those obligations will be resolved. In this sense, party autonomy is not simply a procedural convenience; it is an expression of private ordering within the framework of the rule of law.

At its most basic level, party autonomy allows disputing parties to determine key elements of

the arbitral process. These include the choice of the arbitral seat, the governing law, both substantive and procedural, the composition of the arbitral tribunal, the language of proceedings, and the institutional or ad hoc nature of the arbitration. This flexibility is codified in multiple provisions of the Arbitration and Conciliation Act, 1996. For instance, Section 19 permits parties to agree on the procedure to be followed by the arbitral tribunal, while Section 20 allows them to determine the place of arbitration. Such provisions illustrate that the statute does not impose a rigid procedural framework but instead defers, wherever possible, to the choices made by the parties. From a theoretical standpoint, party autonomy is closely aligned with the principle of freedom of contract, a foundational concept in private law. However, in arbitration, this principle acquires a procedural dimension. Parties are not merely agreeing on rights and obligations but are effectively creating a private adjudicatory system. As Julian Lew observes, arbitration agreements function as “a constitution for the dispute resolution process,” setting out the rules, powers, and limitations that will govern the tribunal¹⁴. This characterization highlights the structural importance of party autonomy in shaping the arbitral process.

One of the most significant manifestations of party autonomy is the concept of choice of seat, which determines the legal framework governing the arbitration. The seat is not merely a geographical location; it carries juridical significance, as it dictates the procedural law applicable to the arbitration and the extent of judicial supervision. The Supreme Court in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO)* emphasized this distinction, holding that the seat of arbitration anchors the arbitration to a particular legal system. This decision reinforced the autonomy of parties to select a legal regime that best suits their needs, particularly in international commercial disputes. Another critical dimension is the choice of substantive law, which governs the rights and obligations of the parties. Arbitration allows parties to select a legal system that may not necessarily be connected to the transaction, thereby enabling neutrality and predictability. This is particularly important in cross-border transactions, where parties may seek to avoid the perceived bias of domestic courts. As Redfern and Hunter note, the ability to choose applicable law enhances the attractiveness of arbitration as it allows parties to “escape the uncertainties of unfamiliar legal systems”¹⁵.

Party autonomy also extends to the selection of arbitrators, which is a defining feature of

¹⁴ Julian D.M. Lew et al., *Comparative International Commercial Arbitration*, Kluwer Law International, 2003, p. 77

¹⁵ Redfern et al., *Law and Practice of International Commercial Arbitration*, 2015, p. 199

arbitration. Unlike judges, who are appointed by the state, arbitrators are chosen by the parties, often based on their expertise, experience, and neutrality. This ensures that disputes are decided by individuals who possess specialized knowledge relevant to the subject matter, thereby enhancing the quality and credibility of the decision-making process. The importance of this aspect is reflected in provisions such as Section 11 of the Arbitration and Conciliation Act, 1996, which recognizes the primacy of party agreement in the appointment process, subject to limited judicial intervention. Despite its centrality, party autonomy is not without limits. It operates within a framework of mandatory legal norms that cannot be derogated from by agreement. These include principles of natural justice, such as the right to a fair hearing and the requirement of impartiality. Courts retain the power to intervene where these principles are violated, as reflected in Section 34 of the Act. The Supreme Court in *Associate Builders v. DDA* clarified that arbitral awards may be set aside if they contravene fundamental policy or basic notions of justice. This demonstrates that while party autonomy is extensive, it is not absolute.

The doctrine also interacts closely with the principle of *kompetenz-kompetenz*, which allows arbitral tribunals to rule on their own jurisdiction. This principle reinforces party autonomy by ensuring that challenges to the validity of the arbitration agreement are initially decided by the tribunal itself rather than by courts. Although subject to subsequent judicial review, this mechanism reduces premature court intervention and preserves the integrity of the arbitral process¹⁶. Another important aspect is the role of party autonomy in procedural flexibility. Arbitration allows parties to adopt procedures that are tailored to the complexity and nature of the dispute. This may include streamlined procedures for smaller disputes or more elaborate processes for complex commercial matters. Institutional arbitration rules, such as those of the ICC or LCIA, often provide default frameworks, but even these can be modified by party agreement. This adaptability is one of the key reasons why arbitration is preferred in commercial contexts. However, the expansive scope of party autonomy also raises concerns about potential imbalances, particularly where there is inequality in bargaining power. Standard form contracts, for instance, may impose arbitration clauses that favour one party over the other. In such cases, judicial intervention may be necessary to ensure fairness. This highlights the need to balance autonomy with protective safeguards, a theme that recurs throughout arbitration jurisprudence.

¹⁶ Gary B. Born, *International Commercial Arbitration*, 2021, p. 1045

In the Indian context, the judiciary has increasingly recognized the importance of party autonomy, particularly in the post-2015 amendment era. Decisions such as *Perkins Eastman Architects DPC v. HSCC (India) Ltd.* have emphasized the need to preserve neutrality in the appointment of arbitrators, thereby reinforcing the integrity of party-driven processes. At the same time, courts have remained vigilant in ensuring that autonomy does not override fundamental principles of fairness and impartiality. From a broader perspective, the doctrine of party autonomy reflects a shift toward decentralized dispute resolution, where parties are empowered to design mechanisms that best suit their needs. This shift is particularly significant in the context of globalization, where diverse legal systems and commercial practices necessitate flexible and neutral dispute resolution frameworks. Arbitration, with its emphasis on autonomy, provides such a framework while remaining anchored in the legal systems that enforce its outcomes. The doctrine, therefore, is not merely a procedural principle but a reflection of deeper legal and economic realities. It acknowledges that in a complex and interconnected world, parties often require greater control over how their disputes are resolved, while still operating within a system that ensures fairness, enforceability, and legal certainty.

2.3 Limits of Part Autonomy

While party autonomy is widely regarded as the cornerstone of arbitration, it is neither absolute nor unregulated. Its operation is necessarily confined within a framework of mandatory legal principles, public policy considerations, and institutional safeguards that ensure arbitration remains a legitimate and fair mechanism of dispute resolution. The limits of party autonomy, therefore, are not exceptions to the rule but integral components of the arbitral system itself, preventing it from devolving into an unchecked private regime. A primary limitation arises from mandatory statutory provisions, which parties cannot contract out of. Under the Arbitration and Conciliation Act, 1996, while several provisions are enabling and defer to party agreement, others impose non-derogable requirements. For instance, Section 34 provides specific grounds on which an arbitral award may be set aside, including incapacity, invalidity of the arbitration agreement, and violations of natural justice. Parties cannot, through agreement, exclude the jurisdiction of courts under this provision. This reflects a broader principle that arbitration, despite its private nature, operates within the overarching authority of the legal system. Closely connected to this is the limitation imposed by public policy. The concept of public policy acts as a substantive check on the outcomes of arbitration, ensuring that arbitral awards do not contravene fundamental legal principles or societal values. In *ONGC*

v. Saw Pipes Ltd., the Supreme Court expanded the scope of public policy to include “patent illegality,” thereby allowing courts to intervene where an award is manifestly erroneous or unjust. Although subsequent decisions have narrowed this interpretation, the case illustrates how public policy operates as a boundary beyond which party autonomy cannot extend. As Gary Born notes, public policy functions as a “safety valve” that preserves the integrity of the legal system while accommodating private dispute resolution¹⁷.

Another significant limitation is the requirement of procedural fairness and natural justice. Arbitration must adhere to basic principles such as equality of parties, the right to be heard, and impartiality of the tribunal. These principles are non-negotiable and cannot be waived by agreement. The Supreme Court in *Associate Builders v. DDA* emphasized that an arbitral award may be set aside if it violates the fundamental policy of Indian law or basic notions of justice and morality. This ensures that party autonomy does not override the essential requirements of due process. The neutrality and independence of arbitrators also impose limits on party autonomy. While parties are free to choose arbitrators, this freedom is subject to safeguards designed to prevent bias and conflicts of interest. In *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, the Supreme Court restricted the unilateral appointment of arbitrators by one party in certain circumstances, holding that such arrangements could compromise the impartiality of the tribunal. This decision reflects a recognition that party autonomy must be balanced against the need for a fair and unbiased adjudicatory process.

Another important constraint relates to the arbitrability of disputes. Not all disputes can be resolved through arbitration, regardless of party agreement. Matters involving criminal liability, matrimonial disputes, insolvency, and certain aspects of public law are generally considered non-arbitrable. The rationale is that such disputes involve public rights or interests that cannot be privatized. The Supreme Court in *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.* clarified that rights in rem, as opposed to rights in personam, are typically outside the scope of arbitration. This limitation ensures that arbitration does not encroach upon domains reserved for courts and public authorities. Party autonomy is also constrained by the doctrine of separability and competence-competence, which, while reinforcing arbitral independence, simultaneously subject arbitration agreements to judicial scrutiny at certain stages. Courts retain the power to examine the validity of arbitration agreements, particularly when issues such as fraud, coercion, or incapacity are raised. This reflects a balance between

¹⁷ Born, *International Commercial Arbitration*, 2021, p. 3720

allowing arbitral tribunals to rule on their own jurisdiction and ensuring that the foundational agreement itself is legally sound.

In addition, inequality of bargaining power can act as a practical limitation on party autonomy. In many commercial relationships, particularly those involving standard form contracts, one party may have significantly greater negotiating power than the other. This can result in arbitration clauses that are one-sided or oppressive. Courts have, in certain instances, intervened to address such imbalances, recognizing that true autonomy presupposes a degree of equality between the parties. As Redfern and Hunter note, the legitimacy of arbitration depends not only on consent but on “informed and genuine consent,” free from coercion or undue influence¹⁸. The choice of seat and governing law, while central to party autonomy, is also subject to limitations. Once a seat is chosen, the procedural law of that jurisdiction becomes applicable, and the courts of that jurisdiction acquire supervisory authority. This means that parties cannot entirely escape the legal framework of the chosen seat. The decision in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* underscores this point by emphasizing the juridical significance of the seat in determining the scope of judicial intervention.

Finally, enforcement considerations impose an external limit on party autonomy. Even if parties agree on certain procedural or substantive arrangements, the resulting award must be enforceable under applicable legal regimes, including international instruments such as the New York Convention. Courts may refuse enforcement if the award violates public policy or if due process requirements have not been met. This ensures that arbitration remains integrated within the broader legal order and does not operate as an isolated system. These limitations demonstrate that party autonomy, while expansive, is carefully calibrated within a network of legal controls. Rather than undermining arbitration, these constraints enhance its legitimacy by ensuring that it operates in a manner consistent with fundamental legal principles. The interplay between autonomy and its limits is central to understanding the broader theme of judicial control versus party autonomy, as it highlights the conditions under which courts are justified in intervening in the arbitral process.

2.4 The concept of Judicial intervention and control

The concept of judicial intervention and control in arbitration must be understood not merely

¹⁸ Redfern et al., 2015, p. 137

as a set of statutory powers, but as a structural safeguard embedded within the arbitral system to reconcile private dispute resolution with public legal order. Arbitration, despite its consensual foundation, cannot operate in complete isolation from the state because its legitimacy, enforceability, and procedural integrity ultimately depend on the legal framework within which it is situated. Judicial control, therefore, is not an anomaly but an essential attribute that ensures arbitration remains both effective and accountable. A useful way to conceptualize judicial intervention is through its functional justification rather than its formal classification. Courts intervene not to re-adjudicate disputes, but to address specific risks inherent in private adjudication such as lack of jurisdiction, procedural unfairness, or outcomes that conflict with fundamental legal norms. As Emmanuel Gaillard explains, judicial control in arbitration serves as a mechanism of “judicial anchoring,” ensuring that arbitration remains connected to a national legal system that can validate and enforce its outcomes¹⁹. This anchoring function is particularly important in cross-border disputes, where arbitral awards must circulate across jurisdictions.

Under the Arbitration and Conciliation Act, 1996, judicial intervention is deliberately structured to avoid overlap with the merits of the dispute. The statutory design reflects what scholars describe as a “negative competence” model, where courts refrain from interfering unless specific statutory thresholds are met. This is evident in the language of Section 34, which does not permit a general review but confines judicial scrutiny to enumerated grounds. The Supreme Court in *Renusagar Power Co. Ltd. v. General Electric Co.*, though decided in the context of foreign awards, articulated a narrow interpretation of public policy, limiting it to fundamental principles such as illegality, fraud, or conflict with basic notions of morality. This restrictive approach laid the groundwork for understanding judicial control as an exceptional remedy rather than a routine mechanism.

Judicial control also operates as a corrective device against jurisdictional excesses. Arbitration is premised on consent, and therefore the arbitral tribunal’s authority is limited to the scope of the arbitration agreement. Courts retain the power to examine whether the tribunal has acted within its jurisdiction, particularly in cases where disputes fall outside the agreed terms. This is closely linked to the doctrine of consent itself while parties may agree to arbitrate, they cannot be compelled to submit to a process beyond what they have agreed. As Born notes, judicial review of jurisdictional issues is essential to ensure that arbitration “remains anchored

¹⁹ Gaillard & Savage, *Fouchard Gaillard Goldman on International Commercial Arbitration*, 1999, p. 649

in consent rather than coercion”²⁰.

Another dimension of judicial intervention is its role in maintaining procedural legitimacy. Arbitration, unlike litigation, does not have a uniform procedural code imposed by the state. While this flexibility is one of its strengths, it also creates the possibility of procedural irregularities. Judicial oversight ensures that minimum standards such as equal treatment of parties and the opportunity to present one’s case are upheld. The importance of this function is reflected in Section 34(2)(a)(iii) of the Act, which allows an award to be set aside if a party was unable to present its case. In *ONGC Ltd. v. Western Geco International Ltd.*, the Court linked procedural fairness with the “fundamental policy of Indian law,” thereby reinforcing the idea that due process is a non-negotiable element of arbitration. Judicial intervention also serves a systemic function in preserving the coherence of legal norms. Arbitration, by its nature, allows parties to operate within a relatively autonomous framework, but this autonomy cannot extend to outcomes that undermine the legal order. Courts act as gatekeepers in this regard, ensuring that arbitral awards do not conflict with statutory mandates or constitutional principles. This is particularly relevant in areas where arbitration intersects with regulatory or public law concerns. The refusal to enforce awards on public policy grounds is not an intrusion into arbitration but a reflection of the broader principle that private agreements cannot override fundamental legal norms²¹.

At a more nuanced level, judicial control can also be viewed through the lens of institutional trust. Arbitration relies heavily on the confidence of parties, particularly in commercial contexts. The availability of limited judicial review reassures parties that there is a mechanism to address extreme cases of injustice or procedural failure. Without such a safety net, arbitration might risk being perceived as unreliable, especially in jurisdictions where institutional frameworks are still developing. As Julian Lew observes, the credibility of arbitration is “enhanced, not diminished, by the existence of carefully circumscribed judicial supervision”²².

In the Indian context, judicial control has undergone a process of gradual recalibration, moving from an expansive approach to a more restrained one. Earlier tendencies to broaden the scope of review, particularly through doctrines such as patent illegality, reflected a concern with substantive justice but also led to unpredictability. Subsequent jurisprudence has sought to

²⁰ Born, *International Commercial Arbitration*, 2021, p. 1127

²¹ Redfern et al., *Law and Practice of International Commercial Arbitration*, 2015, p. 570

²² Lew et al., *Comparative International Commercial Arbitration*, 2003, p. 413

restore a more disciplined approach, emphasizing that judicial intervention should not extend to re-evaluating evidence or interpreting contractual terms unless they give rise to manifest illegality. This recalibration aligns with international standards, where courts are expected to exercise restraint and respect the autonomy of the arbitral process. A particularly important aspect of judicial control, relevant to the present study, is the distinction between annulment and modification of arbitral awards. While annulment is expressly provided for within the statutory framework, modification remains a contested issue. The absence of explicit statutory authority for modification suggests a legislative preference for limiting judicial intervention to setting aside awards. Allowing courts to modify awards would fundamentally alter the nature of judicial control, transforming it from a supervisory function into a quasi-appellate one. This distinction underscores the broader conceptual boundary between control and substitution courts may supervise the process, but they are not intended to replace the arbitral tribunal.

Finally, judicial intervention must be understood as part of a broader ecosystem of checks and balances within arbitration. It interacts with other mechanisms, such as institutional rules, professional standards for arbitrators, and international enforcement regimes. Together, these elements create a system where autonomy is preserved but not unchecked, and where private dispute resolution operates within a framework of legal accountability. In this sense, judicial control is neither an impediment to arbitration nor a mere procedural formality. It is a carefully calibrated mechanism that ensures arbitration remains a credible, fair, and enforceable method of dispute resolution, capable of functioning within both domestic and international legal systems.

2.5 Balancing Efficiency, Fairness and Finality

The idea of balancing efficiency, fairness, and finality lies at the heart of arbitration theory and practice, and it represents one of the most delicate and persistent challenges within arbitral jurisprudence. These three values are not merely procedural goals; they are competing normative priorities that shape how arbitration is designed, conducted, and reviewed. The difficulty arises because strengthening one often risks weakening another, and the role of law particularly judicial oversight is to maintain a workable equilibrium among them. Efficiency is often the primary reason parties choose arbitration over litigation. In commercial settings, time and cost are critical considerations, and arbitration is expected to provide a quicker, less formal, and more streamlined resolution of disputes. The flexibility embedded in the Arbitration and

Conciliation Act, 1996 reflects this objective. Provisions allowing parties to determine procedure, timelines, and evidentiary rules are intended to reduce procedural rigidity and avoid the delays commonly associated with court litigation. As Born notes, arbitration's procedural adaptability is one of its defining advantages, enabling parties to tailor proceedings to the complexity and urgency of the dispute²³. However, the pursuit of efficiency cannot come at the cost of fairness, which remains a foundational requirement of any adjudicatory process. Fairness in arbitration is primarily expressed through adherence to principles of natural justice equal treatment of parties, impartiality of the tribunal, and the right to be heard. These principles are non-derogable and operate as limits on party autonomy. Even where parties agree to simplified or expedited procedures, such arrangements must not compromise procedural integrity. The Supreme Court in *Associate Builders v. DDA* emphasized that an arbitral award may be set aside if it violates fundamental notions of justice or fairness, thereby reaffirming that efficiency cannot override due process.

The third pillar, finality, is what distinguishes arbitration most sharply from litigation. Arbitration is designed to provide a binding and conclusive resolution, with minimal scope for appeal or re-litigation. This finality is essential for commercial certainty, as parties rely on arbitral awards to settle disputes definitively and move forward with their business affairs. Section 34 of the Arbitration and Conciliation Act, 1996 reflects this principle by limiting judicial review to specific grounds rather than permitting a full reconsideration of the merits. In *McDermott International Inc. v. Burn Standard Co. Ltd.*, the Supreme Court underscored that courts cannot act as appellate bodies over arbitral awards, reinforcing the importance of finality.

The tension between these three values becomes particularly evident when judicial intervention is considered. For instance, expanding judicial review in the name of fairness such as allowing courts to correct substantive errors may undermine finality and reduce efficiency by prolonging disputes. This concern was highlighted in *ONGC v. Saw Pipes Ltd.*, where the broad interpretation of "public policy" allowed courts to scrutinize awards more extensively. While this approach aimed to prevent unjust outcomes, it also led to increased litigation and uncertainty, thereby affecting both efficiency and finality. Subsequent jurisprudence has attempted to recalibrate this balance by narrowing the scope of review and emphasizing that

²³ Born, *International Commercial Arbitration*, 2021, p. 91

courts should not interfere with the merits of the dispute.

Conversely, an overly rigid commitment to finality may compromise fairness in certain cases. If courts are entirely precluded from intervening, even in situations where an award is manifestly erroneous or procedurally flawed, the legitimacy of arbitration may be called into question. This is why most arbitration regimes, including Indian law, retain limited grounds for judicial intervention. As Redfern and Hunter observe, finality must be “tempered by a minimum standard of justice,” ensuring that arbitration does not become a mechanism for enforcing unjust outcomes²⁴.

Efficiency also interacts with fairness in complex ways. While streamlined procedures can reduce costs and delays, they may also limit the ability of parties to fully present their case, particularly in disputes involving complex factual or legal issues. This raises questions about whether expedited arbitration always serves the interests of justice. Courts, when reviewing awards, often have to consider whether procedural shortcuts have crossed the line into procedural unfairness. This reinforces the idea that efficiency must be pursued within the boundaries of due process. The balance among these three values is further complicated by the question of judicial modification of arbitral awards, which lies at the core of the present study. Allowing courts to modify awards may, in some cases, enhance efficiency by avoiding the need to set aside the award and initiate fresh arbitration. However, such power could undermine finality by introducing a quasi-appellate layer of review. It may also raise concerns about fairness if courts, rather than the arbitral tribunal chosen by the parties, effectively determine the outcome of the dispute. This illustrates how a single doctrinal issue can simultaneously engage all three principles, making the task of balancing them particularly challenging.

In the Indian context, recent judicial developments reflect an increasing awareness of this need for balance. Decisions such as *Ssangyong Engineering & Construction Co. Ltd. v. NHA* demonstrate a shift toward limiting judicial interference and reinforcing finality, while still preserving the ability to intervene in cases of fundamental illegality or procedural violation. This approach aligns with international best practices, where courts are expected to exercise restraint and respect the autonomy of the arbitral process. From a broader perspective, the interplay between efficiency, fairness, and finality can be seen as a triangular framework, where each value must be calibrated in relation to the others. Arbitration does not aim to

²⁴ Redfern et al., *Law and Practice of International Commercial Arbitration*, 2015, p. 573

maximize one at the expense of the others but to achieve a workable equilibrium that meets the needs of modern dispute resolution. This equilibrium is not fixed; it evolves in response to changes in legal doctrine, commercial practice, and judicial interpretation. Ultimately, the effectiveness of arbitration as a dispute resolution mechanism depends on how well this balance is maintained. If efficiency dominates, arbitration risks becoming procedurally inadequate; if fairness dominates, it may lose its advantage over litigation; and if finality is overstressed, it may compromise justice. The role of courts, therefore, is not to disrupt this balance but to sustain it through carefully calibrated intervention, ensuring that arbitration remains both effective and legitimate within the broader legal system.