JUDICIAL MODIFICATION OF ARBITRAL AWARDS AND PARTY AUTONOMY: IMPLICATIONS OF EVOLVING JUDICIAL DISCRETION FOR THE GLOBAL ARBITRATION ECOSYSTEM

Rekha Saroha, Indian Institute of Law and Management

Rachit Sharma, Indian Institute of Law and Management

ABSTRACT

The Supreme Court of India's five-judge constitution bench ruling in Gayatri Balasamy v. ISG Novasoft Technologies Ltd. has reignited a fundamental jurisprudential debate: whether courts may modify arbitral awards, and at what cost to party autonomy. Situating itself between strict supervisory restraint and curative interventionism, the Court recognized a limited judicial power to correct manifest clerical or computational errors, sever void portions of awards, and controversially invoke the constitutional jurisdiction to do "complete justice" under Article 142 of the Constitution of India. The decision arrives at a moment when the Indian arbitration framework, post its 2015–2021 legislative overhaul, aspires to minimal judicial intervention and international competitiveness. Against this backdrop, the Court's assertion of a modificatory power absent express statutory authorization and expressly not recommended for incorporation by the Law Commission of India carries profound implications. This essay examines the conceptual tension between judicial modification of awards and the foundational principle of party autonomy, through a comparative prism encompassing English, Singaporean, and UNCITRAL arbitration frameworks. It further interrogates the increasingly expansive invocation of the public policy exception under Article V(2)(b) of the New York Convention as a parallel and often more corrosive threat to arbitral finality and cross-border enforceability. The essay argues that procedural flexibility, however well-intentioned, must operate within rigorously defined statutory confines; that the absence of express legislative authorization is constitutionally significant rather than merely inconvenient; and that a coherent global arbitration ecosystem demands greater convergence on the boundaries of post-award judicial intervention.

Keywords: Arbitration, Judicial Modification, Party Autonomy, Gayatri Balasamy, New York Convention, Public Policy Exception, Arbitral Awards, Section 34, Article 142, Comparative Arbitration Law.

1. Introduction

Arbitration's foundational compact with commercial parties rests on a single, non-negotiable premise: that the award rendered by a mutually chosen tribunal is final, binding, and insulated from appellate re-examination on the merits. This premise variously described as arbitral finality, the non-interventionist principle, and respect for party autonomy is not merely a procedural nicety but the very commercial proposition that makes arbitration preferable to litigation. Parties who consent to arbitration do so in large part because they wish to confine judicial authority over their dispute to the narrow corridors of procedural review and enforcement, not substantive reconsideration.

The Indian Supreme Court's unanimous five-judge constitution bench decision in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*[1] challenges this premise without fully abandoning it. Delivered in 2025, the decision articulates four categories of cases in which courts may modify rather than merely set aside arbitral awards: manifest clerical or computational errors; severance of void or invalid award portions; correction of outcomes that are inequitable or statutorily impermissible; and the exceptional exercise of the Indian Supreme Court's constitutional power under Article 142 to do "complete justice." While the Court characterized these as a "limited" modificatory jurisdiction, the boundaries it drew are neither self-applying nor impervious to expansive judicial interpretation in subsequent proceedings.

The timing and institutional context of the decision are significant. The Arbitration and Conciliation Act, 1996 ("ACA 1996"),[2] As amended in 2015, 2019, and 2021, it represents a sustained legislative effort to reduce court intervention and align India's arbitration law with international best practices. The Law Commission of India's 246th Report the proximate cause of the 2015 amendments expressly considered and declined to recommend a statutory power of modification.[3] Parliament's studied silence on modification, across three successive amendment exercises, is a legislative fact of interpretive consequence that the *Gayatri Balasamy* Court was obliged to, and did, engage with if not entirely resolve.

This essay proceeds as follows. Part II analyses the *Gayatri Balasamy* decision in doctrinal

[1] *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, 2025 SCC OnLine SC 515 (India).
[2] Arbitration and Conciliation Act, 1996, No. 26 of 1996 (India), as amended by the Arbitration and Conciliation (Amendment) Acts of 2015, 2019, and 2021.
[3] Law Commission of India, 246th Report on Amendments to the Arbitration and Conciliation Act 1996, at 37–41 (2014) [hereinafter Law Commission 246th Report].

detail. Part III examines the conceptual architecture of party autonomy and its relationship to finality. Part IV provides a comparative analysis of modification powers in the United Kingdom and Singapore. Part V interrogates the significance of parliamentary silence on modification. Part VI examines the public policy exception under Article V of the New York Convention as a parallel threat to arbitral finality. Part VII considers the systemic implications for India's arbitration ecosystem. Part VIII proposes a normative framework. Part IX concludes.

2. The Gayatri Balasamy Decision: Mapping the Contours of Modification

The *Gayatri Balasamy* litigation arose from a commercial software services dispute in which an arbitral tribunal awarded damages to the respondent. The dispute reached the Supreme Court on the question of whether, in proceedings under Section 34 of the ACA 1996 (setting aside) or Section 37 (appellate jurisdiction), courts possess inherent or incidental powers to modify an award, as distinct from setting it aside in whole or in part. The constitution bench was constituted precisely because earlier division bench decisions had taken conflicting positions on this question.[4]

The Court resolved the conflict by articulating a nuanced, category-based approach. First, it held that courts can correct *manifest clerical or computational errors* in arbitral awards an uncontroversial proposition consonant with Section 33 of the ACA 1996 (which grants the tribunal itself a limited power of correction) and with international practice. Second, it held that where an award contains a clearly severable invalid portion for instance, a head of damages awarded on a basis expressly excluded by the parties' agreement courts may modify by excising that portion rather than setting aside the entire award. This reflects a recognition that the severability doctrine, already embedded in Section 16(2) of the ACA 1996 regarding arbitration agreements, should logically extend to the award itself.[5]

Third, and most contentiously, the Court held that modification is available where an award produces an outcome that is *inequitable or statutorily impermissible*. The parameters of this category resist easy definition. An award may be inequitable without being perverse; it may produce commercially unacceptable results without violating a mandatory statutory provision.

[4] See *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131 (India); *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49 (India).
[5] Arbitration and Conciliation Act, 1996, supra note 2, § 16(2) (separability of arbitration clause); § 33 (correction and interpretation of awards).

The Court's language, if read broadly, could permit modification wherever a court is dissatisfied with the distributive outcome of an award. This reading would effectively transform Section 34 proceedings into appellate review on the merits, which is precisely what the Supreme Court has repeatedly and emphatically held it is not.[6]

Fourth, and most jurisdictionally distinctive, is the Court's invocation of Article 142 of the Constitution, which empowers the Supreme Court to pass "such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it" as a source of modificatory authority in exceptional cases. Article 142 is a constitutional supplement, not a substitute for statutory jurisdiction. Its deployment in the arbitration context raises doctrinal concerns: the provision has historically been used to fill lacunae in executive or legislative action, not to override a considered parliamentary decision to withhold a particular judicial power from the statutory framework.[7]

The *Gayatri Balasamy* decision does not purport to create a general appellate jurisdiction over arbitral awards. The Court was careful to insist that modification is not available merely because the court disagrees with the award on the merits. Nevertheless, the categorical boundaries it erected are porous, and the invocation of Article 142 an inherently open-textured constitutional provision as a residual basis for modification risks transforming the exception into the rule in subsequent litigation.

3. Party Autonomy: Conceptual Architecture and Statutory Embodiment

Party autonomy is simultaneously the origin and the ultimate justification of international arbitration. In its substantive dimension, it encompasses the parties' freedom to determine the applicable law, the seat of arbitration, the composition of the tribunal, the procedural rules, and the scope of the arbitrable dispute. In its adjudicatory dimension, it encompasses the parties' acceptance of the tribunal's jurisdiction and, crucially, their submission to the finality of the resulting award. These two dimensions are inseparable: parties who submit to arbitration implicitly contract for a final and binding resolution, not a provisional determination subject to

[6] See *ONGC v. Saw Pipes Ltd.*, (2003) 5 SCC 705, ¶¶ 74–82 (India) (cautioning that Section 34 is not an appellate jurisdiction on the merits).
[7] India Const. art. 142; *Supreme Court Bar Association v. Union of India*, (1998) 4 SCC 409, ¶ 47 (India) (Article 142 cannot supplant substantive law).

court rewriting.[8]

The UNCITRAL Model Law on International Commercial Arbitration[9] on which the ACA 1996 is substantially based embodies this understanding. Article 5 of the Model Law provides that "in matters governed by this Law, no court shall intervene except where so provided in this Law," a formulation that treats the absence of an express power as a prohibition, not a gap to be filled by inherent jurisdiction. The grounds for setting aside an award under Article 34 of the Model Law are exhaustive and process-oriented: they speak to the arbitration agreement, the composition of the tribunal, the scope of the dispute, and public policy not to the substantive correctness of the award.

Section 34 of the A&C Act, 1996 mirrors this structure. The grounds for setting aside, as enumerated in Section 34(2), are exclusive: incapacity, invalidity of the arbitration agreement, want of notice, excess of mandate, procedural irregularity, non-arbitrability, and conflict with public policy. The section does not refer to modification the Supreme Court in *ONGC v. Saw Pipes Ltd.*[10] famously expanded the "public policy" ground to include "patent illegality," a development that drew sharp criticism for effectively re-introducing merits review by another name. The 2015 amendment to the A&C Act, 1996 sought to reverse this expansion by limiting patent illegality to domestic awards and expressly excluding it as a ground where the contravention is one "of a most basic nature."[11]

The relationship between judicial modification and party autonomy is not merely formal. Modification, unlike setting aside, is a court's affirmative substitution of its own distributive judgment for that of the tribunal. When a court sets aside an award, the parties revert to their pre-award position and may re-arbitrate (or litigate). When a court modifies an award, it produces a new binding instrument that neither party agreed to and that no tribunal they chose has rendered. This is categorically distinct from annulment: it is a court-authored award, and its production by a national court represents precisely the type of unilateral state intervention

[8] Gary B. Born, International Commercial Arbitration 84–92 (3d ed., Kluwer Law International 2021) (party autonomy as the organising principle of international arbitration).
[9] UNCITRAL Model Law on International Commercial Arbitration art. 5 (1985, as amended in 2006), U.N. Sales No. E.08.V.4.
[10] *ONGC v. Saw Pipes Ltd.*, (2003) 5 SCC 705 (India).
[11] Arbitration and Conciliation (Amendment) Act, 2015, No. 3 of 2016 (India), amending § 34(2)(b)(ii) and inserting § 34(2A).

that parties who choose international arbitration seek to avoid.[12]

4. Modification Powers in Comparative Perspective: England and Singapore

4.1 The English Arbitration Act 1996

The English Arbitration Act 1996 ("EAA 1996")[13] is the paradigm case of express statutory authorization of court modification. Section 67 (substantive jurisdiction) and Section 68 (serious irregularity) both empower courts to "remit the award to the tribunal, in whole or in part, for reconsideration" or to "set aside the award in whole or in part." Critically, Section 68(3)(b) additionally empowers courts to "declare the award to be of no effect, in whole or in part" but, more relevantly for present purposes, Section 69 the appeal on a point of law allows courts to "confirm the award," "vary the award," "remit the award," or "set aside the award in whole or in part."[14]

The power of variation under Section 69 EAA 1996 is carefully circumscribed. It is available only where: (a) the parties have not excluded it by agreement (and many institutional rules do exclude it); (b) the appeal is on a question of English law (not foreign law or facts); and (c) the court itself is satisfied on the merits of the legal question. Even within these constraints, English courts have been conservative in exercising the variation power, preferring remission to the tribunal where possible. The Law Commission's 2023 Review of the EAA 1996 recommended retaining the variation power but emphasized that it should be used sparingly.[15]

The contrast with the Indian position is instructive. In England, modification (variation) is: (i) expressly authorised by statute; (ii) available only on appeal on a point of law; (iii) subject to the parties' agreement to opt in (or not out); and (iv) exercised with demonstrated restraint by the courts. In India, post-*Gayatri Balasamy*, modification is judicially asserted without express statutory authorization, in the context of the setting-aside jurisdiction (not an appeal on law), cannot be excluded by agreement, and its restraint is self-imposed by the judiciary rather than legislatively constrained.

[12] Nigel Blackaby et al., Redfern and Hunter on International Arbitration ¶¶ 10.01–10.07 (6th ed., Oxford Univ. Press 2015).
[13] Arbitration Act, 1996 (U.K.), c. 23 [hereinafter EAA 1996].
[14] EAA 1996, supra note 13, §§ 67, 68, 69.
[15] Law Commission of England & Wales, Review of the Arbitration Act 1996, Law Com No. 415, at ¶¶ 12.1–12.38 (2023).

4.2 Singapore: The International Arbitration Act 1994

Singapore's international arbitration framework, governed by the International Arbitration Act 1994 ("SIAA")[16] and supplemented by the UNCITRAL Model Law (which forms the First Schedule to the SIAA), adopts a position closer to the Model Law purist approach than the English framework. The SIAA does not expressly confer a general power of modification on Singapore courts. However, under Article 34(4) of the Model Law (as incorporated), courts may, where appropriate and if requested by a party, suspend setting-aside proceedings and remit the matter to the arbitral tribunal to allow it to resume proceedings or take such other action as the tribunal considers will eliminate the grounds for setting aside.[17]

The Singapore Court of Appeal in *CRW Joint Operation v. PT Perusahaan Gas Negara (Persero) TBK*[18] and subsequent decisions have maintained a strong pro-enforcement, minimal-intervention posture. Notably, in *BXS v. BXT*[19] The Court of Appeal declined to endorse any inherent power to modify awards outside the express grounds of the SIAA, emphasizing that the expressio unius principle applies to the statutory grounds of intervention. What is not listed is excluded. Singapore's recent Arbitration (Amendment) Act 2024[20] did not introduce any general modification power, a deliberate legislative choice consistent with Singapore's brand as a maximally arbitration-friendly seat.

The comparative picture, therefore, is one in which modification powers are explicitly legislated where they exist (England) and deliberately withheld where they do not (Singapore, the UNCITRAL Model Law). India's post-*Gayatri Balasamy* position judicially asserted modification in the absence of, and arguably contrary to, legislative intent is an outlier within this framework. It is a position that merits sustained scrutiny, not because modification is inherently impermissible, but because its doctrinal legitimacy depends entirely on the authority from which it is derived.

---

[16] International Arbitration Act, 1994 (Singapore), Cap. 143A [hereinafter SIAA]; UNCITRAL Model Law on International Commercial Arbitration, First Schedule to SIAA.

[17] SIAA, supra note 16, art. 34(4) (Model Law); see also Singapore High Court, Intraline Resources Sdn Bhd v. The Owners of the Ship or Vessel *'Hua Tian Long'*, [2010] 4 SLR 1 (illustrating remission as preferred remedy over setting aside).

[18] *CRW Joint Operation v. PT Perusahaan Gas Negara (Persero) TBK*, [2011] 4 SLR 305 (Singapore Court of Appeal).

[19] *BXS v. BXT*, [2019] SGHC 141, ¶ 39 (Singapore) (expressio unius principle applied to statutory grounds of intervention).

[20] Arbitration (Amendment) Act 2024 (Singapore), amending SIAA §§ 24, 29A.

5. The Significance of Parliamentary Silence: A Constitutional Argument

The absence of a modification power from the ACA 1996 is not an oversight. The Law Commission of India's 246th Report (2014), which provided the intellectual basis for the Arbitration and Conciliation (Amendment) Act 2015, expressly considered whether courts should be empowered to modify arbitral awards. The Commission's recommendation was negative: in the interests of finality and minimal intervention, the Commission concluded that no modification power should be incorporated.[21] Parliament gave legislative effect to this recommendation. The 2019 amendment, which introduced the Arbitration Council of India and expedited timelines, also did not introduce any modification power. The 2021 amendment similarly did not. Three successive legislative exercises, informed by the same policy objective of reducing court intervention and enhancing India's attractiveness as an arbitration seat, each declined to confer modification jurisdiction on courts.

The principle of expressio unius est exclusio alterius the expression of one thing is the exclusion of the other has been applied in Indian statutory interpretation to precisely this type of legislative silence. In *State of Maharashtra v. Hindustan Construction Company*[22]The Supreme Court held that where a statute confers specific powers, and the legislative history discloses active consideration and rejection of additional powers, courts may not supplement the statutory grant by exercising inherent jurisdiction. The *Gayatri Balasamy* Court acknowledged this argument but held that Article 142 transcends the ACA 1996 an assertion that, while formally correct as a matter of constitutional hierarchy, conflates the source of power with the *wisdom* of its exercise. The fact that Article 142 can technically override a statutory framework does not mean it should routinely supplement that framework on a matter that Parliament has deliberately chosen not to address.

The Article 142 jurisprudence itself cautions against precisely this deployment. In *Supreme Court Bar Association v. Union of India*[23]The Court held that Article 142 cannot be used to supplant substantive law or to do what the relevant statute expressly or by necessary implication prohibits. The deliberate legislative choice not to confer modification jurisdiction is, on this analysis, not a lacuna inviting Article 142 intervention but a substantive statutory

[21] Law Commission 246th Report, supra note 3, at 38–39 (expressly declining to recommend modification power on finality grounds).
[22]*State of Maharashtra v. Hindustan Construction Co.*, (2010) 4 SCC 518, ¶ 22 (India).
[23]*Supreme Court Bar Association v. Union of India*, (1998) 4 SCC 409, ¶¶ 45–49 (India).

position that Article 142 cannot override. The *Gayatri Balasamy* Court's reliance on Article 142 to carve out a modificatory power is, therefore, doctrinally vulnerable to challenge on this very ground.

6. The Public Policy Exception: Article V of the New York Convention and Arbitral Finality

The 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention")[24] It is the cornerstone of the international arbitral enforcement system. Its Article V provides an exhaustive list of grounds on which enforcement of a foreign award may be refused, including where enforcement would be contrary to the public policy of the enforcing state. This public policy exception contained in Article V(2)(b) is intended to be a narrow, residual defense invocable only where enforcement would violate the most fundamental norms of the enforcing state's legal system.[25]

The drafting history of Article V(2)(b) makes clear that a restrictive interpretation was intended. The travaux préparatoires of the New York Convention reveal that the drafters rejected broader formulations of the public policy defense precisely because they feared it would be deployed as an appellate mechanism to re-examine awards on the merits.[26] The UNCITRAL Secretariat's Guide to the New York Convention endorses a transnational or international conception of public policy, under which domestic law standards that fall below an internationally acceptable threshold should not be invoked to resist enforcement.[27]

In practice, however, the public policy exception has proven stubbornly resistant to conceptual discipline. National courts across jurisdictions including India have invoked public policy to refuse enforcement of foreign awards in circumstances that fall well short of the "most basic notions of morality and justice" standard endorsed by the United States Supreme Court in *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*[28] and the English Court of Appeal

[24] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 3 [hereinafter New York Convention].
[25] New York Convention, supra note 24, art. V(2)(b); see Emmanuel Gaillard & John Savage, Fouchard Gaillard Goldman on International Commercial Arbitration ¶ 1696 (Kluwer Law International 1999) (public policy as a narrow, exceptional ground).
[26] UNCITRAL Secretariat, Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 228–236 (U.N. 2016) [hereinafter UNCITRAL Guide].
[27] UNCITRAL Guide, supra note 26, at 228 (transnational conception of public policy endorsed).
[28] *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth Inc.*, 473 U.S. 614, 638 (1985).

in *Westacre Investments Inc. v. Jugoimport-SPDR Holding Co. Ltd.*[29]

The Indian judiciary's engagement with the public policy exception has been particularly chequered. The Supreme Court in *ONGC v. Saw Pipes*[30] expanded the domestic public policy ground under Section 34 to include "patent illegality" a standard that invited courts to examine whether the arbitrator had correctly applied Indian law. This development was widely criticized as incompatible with the finality principle and with India's obligations under the New York Convention. The 2015 amendment partially corrected this by adding the proviso to Section 34(2)(b)(ii) that "an award is in conflict with the public policy of India only if (i) the making of the award was induced or affected by fraud or corruption...; (ii) it is in contravention with the fundamental policy of Indian law; or (iii) it is in conflict with the most basic notions of morality or justice." The exclusion of "patent illegality" from international awards in Section 34(2A) represented a deliberate effort to align India's enforcement posture with the transnational norm.[31]

However, the public policy exception under the New York Convention (Article V(2)(b)) is distinct from the domestic setting-aside ground (Section 34) a distinction that Indian courts have not always maintained with precision, in *Renusagar Power Co. Ltd. v. General Electric Co.*[32]The Supreme Court correctly applied a narrow conception of international public policy to the enforcement context. But subsequent decisions have blurred the line between domestic and international public policy, importing the expansive Section 34 jurisprudence into Article V(2)(b) analysis. This conflation is constitutionally and normatively problematic: it allows national idiosyncrasies of domestic public policy law to contaminate the international enforcement framework, undermining the Convention's project of universal enforceability.

The relationship between public policy and modification is also direct and underexplored. If a court modifies an award (rather than setting it aside), the modified award will seek enforcement in foreign jurisdictions under the New York Convention. A court in a foreign jurisdiction may decline to recognise the modified award on the ground that the modifying court acted in excess of the supervisory jurisdiction permissible under the New York Convention since Article V(1)(e) allows refusal where the award "has been set aside or suspended by a competent

[29]*Westacre Investments Inc. v. Jugoimport-SPDR Holding Co. Ltd.*, [2000] QB 288, 302–303 (Eng. C.A.).
[30]*ONGC v. Saw Pipes Ltd.*, (2003) 5 SCC 705, ¶ 74 (India).
[31] Arbitration and Conciliation (Amendment) Act, 2015, supra note 11, § 34(2)(b)(ii) (proviso) and § 34(2A).
[32]*Renusagar Power Co. Ltd. v. General Electric Co.*, (1994) Supp 1 SCC 644 (India) (applying narrow, international conception of public policy to enforcement proceedings).

authority of the country in which, or under the law of which, that award was made." A court-modified award occupies an ambiguous space: it is neither the original award nor one that has been "set aside" in the conventional sense. Foreign courts may decline to enforce it for want of a clear basis in Convention law.[33]

7. Systemic Implications for India's Arbitration Ecosystem

India's aspirations to become an international arbitration seat have been consistently expressed at the legislative, executive, and judicial levels. The establishment of the Mumbai Center for International Arbitration (MCIA) in 2016,[34] The institution of the Arbitration Council of India under the 2019 amendment, and the Supreme Court's exhortations to minimize court intervention in arbitral proceedings all reflect a coherent strategy to position India as a competitive alternative to Singapore, London, and Hong Kong as a preferred seat for international commercial arbitration.

The *Gayatri Balasamy* decision creates systemic risks for this strategy. First, it introduces uncertainty into the post-award phase: parties who obtain an award in India now face the prospect not merely of setting aside (which they could plan for by agreement on narrowed grounds or expedited procedures) but of modification by a court that may substitute its view of appropriate relief for that of the chosen tribunal. This uncertainty increases the time and cost of finalizing dispute resolution and may deter sophisticated commercial parties from choosing India as a seat.[35]

Second, the invocation of Article 142 as a residual modificatory power is particularly concerning for foreign parties. Article 142 is a provision unique to the Indian constitutional system and is not anticipated by any international arbitration framework or convention. A foreign party that has agreed to Indian-seated arbitration has not, by that agreement, consented to the Indian Supreme Court's exercise of constitutional discretion to rewrite the award it receives. The incorporation of Article 142 into the arbitration modification framework represents a form of unilateral state intervention that cannot be excluded by party agreement

[33] New York Convention, supra note 24, art. V(1)(e); see also *Dallah Real Estate & Tourism Holding Co. v. Ministry of Religious Affairs of Pakistan*, [2010] UKSC 46, ¶ 26 (UK Supreme Court on enforcement of awards affected by supervisory court action).
[34] Mumbai Centre for International Arbitration, About MCIA, https://www.mcia.world (last visited Apr. 10, 2026).
[35] Siddharth Bhattacharya, Judicial Modification of Arbitral Awards in India: Gayatri Balasamy and Its Aftermath, 41(2) Arb. Int'l 183, 197 (2025).

precisely the type of intervention that the New York Convention framework seeks to constrain.

Third, the decision's impact on the doctrine of kompetenz-kompetenz must be noted. The principle that the arbitral tribunal has the power to rule on its own jurisdiction codified in Section 16 of the ACA 1996 is a cornerstone of arbitral autonomy. A court's power to modify an award effectively allows it to revisit jurisdictional boundaries post-award without reference back to the tribunal, thereby undermining the tribunal's authority over its own mandate in the enforcement phase.[36]

8. Towards a Coherent Framework: The Boundaries of Permissible Judicial Intervention

The foregoing analysis does not argue that arbitral awards must be impervious to any form of judicial engagement beyond enforcement. Arbitration, particularly in its institutional and ad hoc forms, is imperfect, and tribunals do make clerical errors, exceed their mandates, and occasionally produce outcomes that are technically severable into valid and invalid components. The legal system must provide a mechanism to address these failures without requiring the wholesale re-litigation of disputes.

The normative argument, rather, concerns the *source* and *scope* of such mechanisms. Where a legislature has carefully considered and expressly authorized a modificatory power as in England its exercise by courts, within the legislatively defined parameters, is unobjectionable and serves the legitimate interests of finality and justice simultaneously. Where a legislature has deliberately withheld such a power as India's Parliament appears to have done courts must resist the temptation to supplement the statutory framework through inherent or constitutional jurisdiction. The boundary between gap-filling and law-making is crossed when courts exercise powers that legislatures have specifically and repeatedly declined to confer.

Several concrete reforms would operationalize this framework in the Indian context. First, if the *Gayatri Balasamy* categories of modification are to be preserved as a matter of policy, they should be incorporated into the ACA 1996 by parliamentary amendment, with precisely defined parameters, limitations, and a mechanism for party agreement to exclude the power. This would provide certainty, align India with the English model, and remove the doctrinal

[36] Arbitration and Conciliation Act, 1996, supra note 2, § 16 (competence-competence); Julian D.M. Lew, Loukas A. Mistelis & Stefan M. Kröll, Comparative International Commercial Arbitration ¶¶ 14.01–14.15 (Kluwer Law International 2003).

vulnerability of relying on Article 142. The 4th Report of the High Level Committee to Review the Institutionalization of Arbitration Mechanism in India (Srikrishna Committee, 2017) could be revisited in this connection.[37]

Second, the relationship between the domestic public policy ground (Section 34(2)(b)) and the international public policy exception (Article V(2)(b) of the New York Convention) must be legislatively clarified. India should codify a bifurcated public policy standard: a broader standard for domestic awards (as currently in Section 34(2A)) and a strictly international standard aligned with UNCITRAL's guidance and the *Renusagar* formulation for internationally seated awards sought to be enforced in India. This would align India's enforcement posture with the Convention's object and purpose.[38]

Third, the Indian judiciary must develop a coherent jurisprudence on the enforceability of court-modified awards under the New York Convention. The ambiguity created by *Gayatri Balasamy* regarding the Convention status of modified awards are they "set aside," "suspended," or neither? should be resolved by the Supreme Court in subsequent decisions or by the legislature in a prospective amendment, specifying that a court-modified award is to be treated as the original award for Convention enforcement purposes.[39]

9. Conclusion

The *Gayatri Balasamy* decision is a significant moment in the evolution of Indian arbitration law, and not entirely an unwelcome one. It's recognition that courts may correct clerical errors and sever void award portions reflects doctrinal common sense and is consistent with the best comparative practice. Its insistence that modification is not available merely on disagreement with the award's merits preserves the core of the non-interventionist principle.

What the decision cannot escape is the constitutional and interpretive problem created by its reliance on Article 142 as a residual modificatory authority in the absence of and despite the deliberate non-enactment of a statutory power. The implications of this reliance are felt not

[37] Report of the High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India (Srikrishna Committee 2017) [hereinafter Srikrishna Report].
[38] Renusagar Power Co. Ltd., supra note 32; UNCITRAL Guide, supra note 26, at 229 (international public policy standard).
[39] New York Convention, supra note 24, art. V(1)(e); see Christopher R. Drahozal, Public Policy and International Commercial Arbitration, 33 Am. Rev. Int'l Arb. 1, 18–22 (2022) (enforcement implications of award modification).

merely in the domestic arbitration ecosystem but in India's international arbitral credibility, in the enforceability of India-seated awards under the New York Convention, and in the doctrinal integrity of the party autonomy principle that animates the entire arbitration project.

Party autonomy, properly understood, is not merely the freedom to appoint a tribunal and define the scope of the dispute. It is the freedom to receive a final, binding resolution from that tribunal a resolution that courts protect but do not rewrite. The erosion of this freedom, whether through expansive modification jurisdiction or through promiscuous invocation of the public policy exception, diminishes the commercial value of arbitration as an institution and risks relegating India to the periphery of an increasingly competitive global arbitration market.

The path forward requires legislative action, not judicial improvisation. Parliament must decide as a matter of deliberate policy and with clear statutory language s" whether India wishes to adopt an English-style modification power, maintain the Singapore-style minimal-intervention approach, or craft a distinctive Indian framework. Judicial creativity, however well-intentioned, is no substitute for the clarity, predictability, and democratic legitimacy that only statutory expression can provide.

BIBLIOGRAPHY

I. Cases

Gayatri Balasamy v. ISG Novasoft Technologies Ltd., 2025 SCC OnLine SC 515 (India).

ONGC v. Saw Pipes Ltd., (2003) 5 SCC 705 (India).

Renusagar Power Co. Ltd. v. General Electric Co., (1994) Supp 1 SCC 644 (India).

State of Maharashtra v. Hindustan Construction Co., (2010) 4 SCC 518 (India).

Supreme Court Bar Association v. Union of India, (1998) 4 SCC 409 (India).

Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49 (India).

Ssangyong Engineering & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 (India).

CRW Joint Operation v. PT Perusahaan Gas Negara (Persero) TBK, [2011] 4 SLR 305 (Singapore).

BXS v. BXT, [2019] SGHC 141 (Singapore).

Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth Inc., 473 U.S. 614 (1985).

Westacre Investments Inc. v. Jugoimport-SPDR Holding Co. Ltd., [2000] QB 288 (Eng.).

Dallah Real Estate & Tourism Holding Co. v. Ministry of Religious Affairs of Pakistan, [2010] UKSC 46.

II. Legislation and International Instruments

Arbitration and Conciliation Act, 1996, No. 26 of 1996 (India) (as amended in 2015, 2019, and 2021).

Arbitration Act, 1996 (U.K.), c. 23.

International Arbitration Act, 1994 (Singapore), Cap. 143A.

Arbitration (Amendment) Act 2024 (Singapore).

Constitution of India, 1950, art. 142.

Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 3 [New York Convention].

UNCITRAL Model Law on International Commercial Arbitration (1985, as amended in 2006), U.N. Sales No. E.08.V.4.

III. Books and Monographs

Born, Gary B. International Commercial Arbitration (3d ed., Kluwer Law International 2021).

Blackaby, Nigel et al. Redfern and Hunter on International Arbitration (6th ed., Oxford Univ. Press 2015).

Bose, Mihir. The Law and Practice of Arbitration in India (3d ed., Wolters Kluwer 2022).

Lew, Julian D.M., Loukas A. Mistelis & Stefan M. Kröll. Comparative International Commercial Arbitration (Kluwer Law International 2003).

Poudret, Jean-François & Sébastien Besson. Comparative Law of International Arbitration (2d ed., Sweet & Maxwell 2007).

IV. Journal Articles and Reports

Bhattacharya, Siddharth. Judicial Modification of Arbitral Awards in India: Gayatri Balasamy and Its Aftermath, 41(2) Arb. Int'l 183 (2025).

Brekoulakis, Stavros. The Notion of the Superiority of Arbitration Agreements over Jurisdiction Agreements, 24(3) J. Int ' l Arb. 341 (2007).

Drahozal, Christopher R. Public Policy and International Commercial Arbitration, 33 Am. Rev. Int'l Arb. 1 (2022).

Gaillard, Emmanuel. Thirty Years of Lex Mercatoria: Towards the Selective Application of Transnational Rules, 10(2) ICSID Rev. 208 (1995).

Law Commission of India, 246th Report on Amendments to the Arbitration and Conciliation Act 1996 (2014).

Law Commission of England & Wales, Review of the Arbitration Act 1996, Law Com No. 415 (2023).

Srikrishna Committee, Report of the High Level Committee to Review the Institutionalization of Arbitration Mechanism in India (2017).

UNCITRAL Secretariat, Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (U.N. 2016).

The International Unification of Law A Symposium Unification of Law in Easte by Pete-1968

Submitted to National Law Institute University Bhopal on 2026-04-0915-25 5453145

Submitted to National Law Institute University Bhopal on 2026-04-1518-16 5494757

ONLINE RESOURCES

https://dhcdiac.nic.in/wp-content/uploads/2021/07/diac-journal-24042021-revised-435696-xmS9P6Pa.pdf

https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1225&context=nlsir

http://probono-india.in/Indian-Society/Paper/825_Case%20Compilation%20on%20Article%20142.pdf

https://www.ijlra.com/public/uploads/763160504.pdf

https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/2016_guide_on_the_convention.pdf

https://www.scobserver.in/reports/courts-power-to-modify-an-arbitral-award-judgement-summary/

https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1148&context=cilj

https://www.whitecase.com/insight-our-thinking/investing-india-legal-reform-dispute

https://www.iadclaw.org/assets/1/19/Disputes_that_Raise_Public_Policy_Issues_-_Special_Problems_in_International_Disputes.pdf?4084

http://ijal.in/sites/default/files/Vol9Issue1/Guiqiang_Liu-Limitation_Period_for_the_Recognition_and_Enforcement_of_Foreign_Arbitral_Awards.pdf

https://dx.doi.org/10.1016/j.adro.2020.07.019

https://austlii.edu.au/cgi-bin/viewdoc/au/cases/sa/SAWCRP/1994/281.html

https://core.ac.uk/download/pdf/33901529.pdf

https://lib.dr.iastate.edu/cgi/viewcontent.cgi?article=2203&context=aglawdigest