BEYOND SETTING ASIDE: THE CONTOURS AND CONSEQUENCES OF MODIFYING ARBITRAL AWARDS POST-GAYATRI BALASAMY

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ABSTRACT

The five-judge Constitution Bench decision in Gayatri Balasamy v. ISG Novasoft Technologies Ltd. (2025) has inaugurated a new and contested chapter in Indian arbitration law. For nearly three decades after the enactment of the Arbitration and Conciliation Act, 1996, the received orthodoxy held that a court entertaining a petition under Section 34 could either set aside an award or dismiss the challenge-nothing more. The Constitution Bench has ruptured this binary, holding that courts possess a limited, ancillary power to modify an arbitral award in cases where (a) a part of the award is severable from an invalid portion, or (b) post-award interest requires adjustment. This paper subjects that ruling to critical doctrinal and comparative scrutiny. It argues that, while the majority's pragmatic impulse is understandable, the judgment's textual basis is fragile, its boundaries unworkably vague, and its long-term consequences for India's standing as an arbitration-friendly jurisdiction potentially grave. Drawing on comparative analysis of the United States, United Kingdom, and Singapore frameworks, and on a survey of the pre-Balasamy case law, the paper concludes with concrete legislative recommendations designed to achieve procedural efficiency without sacrificing the finality and party autonomy that are the bedrock of commercial arbitration.

Keywords: Arbitration, Section 34, Modification, Set Aside, Gayatri Balasamy, Finality, Judicial Review, UNCITRAL Model Law, India.

LIST OF ACRONYMS AND ABBREVIATIONS

A&C Act	Arbitration and Conciliation Act, 1996
AIR	All India Reporter
BALCA	Balasamy Constitution Bench
EAA	English Arbitration Act, 1996
FAA	Federal Arbitration Act (United States)
IAA	International Arbitration Act (Singapore)
NLUD	National Law University, Delhi
SCC	Supreme Court Cases
SIAC	Singapore International Arbitration Centre
UNCITRAL	United Nations Commission on International Trade Law
v.	Versus

LIST OF CASES

Indian Cases

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

2. Bharat Coking Coal Ltd. v. LK Ahuja & Co., (2004) 5 SCC 109.

3. Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd., (2022) 1 SCC 131.

4. Gayatri Balasamy v. ISG Novasoft Technologies Ltd., 2025 SCC OnLine SC 563 (Constitution Bench).

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

6. ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263.

7. Patel Engineering Ltd. v. North Eastern Electric Power Corporation Ltd., (2020) 7 SCC 167.

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

9. Renusagar Power Co. Ltd. v. General Electric Co., AIR 1994 SC 860.

10. S.S. Group Pvt. Ltd. v. Aaditiya J Garg, (2022) 8 SCC 536.

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

12. Union of India v. Col. L.S.N. Murthy, (2012) 1 SCC 718.

Foreign Cases

1. Downer Construction (Australia) Pty Ltd v. Energy Developments Ltd (No 3), [2007] NSWSC 8 (Australia).

2. GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC, 590 U.S. 432 (2020) (United States).

3. Hall Street Associates, LLC v. Mattel, Inc., 552 U.S. 576 (2008) (United States).

4. Lesotho Highlands Development Authority v. Impregilo SpA, [2005] UKHL 43 (United Kingdom).

5. PT Perusahaan Gas Negara (Persero) TBK v. CRW Joint Operation, [2015] 4 SLR 272 (Singapore).

I. INTRODUCTION

Arbitration is, at its core, a bargain: the parties trade the panoply of court-based procedural rights for speed, finality, and the expertise of a chosen adjudicator. The enforceability of that bargain depends, in no small measure, on how aggressively courts intervene after an award is rendered. A legal system that permits wide-ranging judicial review-correcting errors of fact, law, or even quantum-effectively converts arbitration into a preliminary round of litigation. Conversely, a system that forecloses all review leaves parties without recourse against an arbitrator who has been corrupt, exceeded her mandate, or violated the rules of natural justice.

India's Arbitration and Conciliation Act, 1996 ("A&C Act") was enacted with the explicit ambition of reducing court interference and aligning Indian practice with the UNCITRAL Model Law on International Commercial Arbitration.[1] Section 34, the primary mechanism for challenging a domestic award, lists exhaustive grounds on which a court may 'set aside' an award. The word 'modify' does not appear anywhere in the section. Yet, over time, courts began to wonder: must every defect-however minor, however severable-cause the entire award to collapse? Must a party litigate afresh merely because an arbitrator applied the wrong interest rate for the post-award period?

These were the questions that came to a head in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*[2] The matter arose from a software services dispute in which the arbitral tribunal had awarded a sum to ISG Novasoft, but had allegedly erred in computing interest. A two-judge bench of the Supreme Court referred the question-whether courts can modify an award under Section 34-to a larger bench. The Constitution Bench answered, by a four-to-one majority, in the qualified affirmative.

The ruling has generated significant debate among practitioners, scholars, and policymakers. Proponents argue that it introduces a pragmatic safety valve: courts need not incinerate an entire award when only a limb of it is infected. Critics counter that the judgment displaces the unambiguous statutory text, opens the door to re-litigation of quantum, and signals to foreign investors that Indian courts may yet find occasion to rewrite deals.

This paper engages that debate systematically. Part II situates the judgment in the existing

[1]Statement of Objects and Reasons, Arbitration and Conciliation Act, 1996.
[2]Gayatri Balasamy v. ISG Novasoft Technologies Ltd., 2025 SCC OnLine SC 563.

literature. Part III states the research problem. Parts IV and V set out the objectives and hypotheses. Part VI analyses the statutory framework. Part VII surveys the pre-Balasamy case law. Part VIII examines the Constitution Bench opinion in detail. Part IX offers a critical analysis. Part X undertakes a comparative survey of three major arbitration jurisdictions. Part XI maps the practical implications. Part XII concludes with legislative recommendations.

II. REVIEW OF LITERATURE

The scholarly literature on judicial review of arbitral awards in India can be mapped along two axes: (a) the scope of 'public policy' as a ground for setting aside, and (b) the distinct question of whether modification, as opposed to setting aside, is permissible. The former has generated an enormous body of writing; the latter, until recently, received comparatively less focused attention.

The foundational doctrinal treatment of Section 34 is provided by O.P. Malhotra's The Law and Practice of Arbitration and Conciliation, which traces the legislative history of the provision and its relationship with the UNCITRAL Model Law. Malhotra argues that the legislature's decision to omit any modification power was deliberate, reflecting a policy choice in favour of minimal curial intervention. This view is echoed by Indu Malhotra in A Commentary on the Law of Arbitration (3rd ed., 2020), which remains the most comprehensive practitioner commentary on the A&C Act. The author notes that the court's power under Section 34 is 'supervisory, not appellate' and that modification would be inconsistent with that limited supervisory role.

A more nuanced position is advanced by Fali S. Nariman and Soli J. Sorabjee in their writings on the evolution of Indian arbitration law. Nariman, in particular, has warned against what he terms 'the creeping appellate syndrome'-the tendency of courts to review the merits of awards under the guise of public policy. He does, however, acknowledge that the total prohibition on modification can produce absurd results in cases involving plainly severable portions. This tension is at the heart of the Balasamy debate.

The comparative literature is rich. Gary Born's International Commercial Arbitration (3rd ed., 2021), the authoritative global reference, demonstrates that the prohibition on modification is, with limited exceptions, the dominant international norm. Born identifies the UNCITRAL Model Law as the primary source of this norm and notes that most Model Law jurisdictions-

including Singapore and Canada-have adhered strictly to a set-aside-only framework. The contrast with the United Kingdom's Section 68 and Section 69 approach, which permits appeals on questions of law and thus functional modification, is instructive.

From the policy perspective, the World Bank's Doing Business Reports and the reports of the High Level Committee chaired by Justice B.N. Srikrishna (2017) have consistently flagged excessive court intervention as a key structural weakness of Indian arbitration. The 2015 and 2019 amendments to the A&C Act were the legislative response, tightening the grounds of intervention and introducing strict timelines for Section 34 proceedings. The Balasamy judgment sits in some tension with this legislative trajectory.

The academic response to Balasamy itself has been rapid, though necessarily preliminary. Commentaries published in the Indian Journal of Arbitration Law and in Bar & Bench have generally welcomed the pragmatic dimension of the ruling but expressed concern about its scope. Akshay Sharma's note in the NLSIU Student Law Review identifies the textual difficulty with particular acuity: the court's invocation of the 'inherent power' doctrine to supplement an expressly worded statute is, at best, a fragile technique. These concerns form the springboard for the present inquiry.

III. STATEMENT OF THE RESEARCH PROBLEM

The core research problem of this paper can be stated as follows: The Constitution Bench's ruling in Gayatri Balasamy v. ISG Novasoft Technologies Ltd. has, for the first time, recognised a judicial power to modify an arbitral award under Section 34 of the A&C Act. The ruling is simultaneously a response to a genuine procedural inefficiency and a potential source of doctrinal instability. The research problem has three interrelated dimensions.

First, there is a textual dimension: Section 34 specifies that a court 'may set aside' an award. The power to modify is not mentioned. The majority's reasoning that modification is a lesser included power within set-aside, or that it flows from the court's inherent jurisdiction, is contestable as a matter of statutory interpretation. The paper examines whether this reasoning can withstand scrutiny under established canons of construction.

Second, there is a comparative dimension: the prohibition on modification is a foundational element of the UNCITRAL Model Law, upon which the A&C Act is explicitly modelled.

Leading arbitration jurisdictions-Singapore, Canada, and the United States (under the FAA)-have adhered to this prohibition. The paper examines whether the Indian departure is justified by unique domestic circumstances or represents an anomalous regression.

Third, there is a consequentialist dimension: even if the modification power can be defended as a matter of positive law, its exercise may produce perverse incentives. Parties who anticipate judicial modification may be less inclined to negotiate, or may strategically challenge awards in the hope of securing a better deal from a court. The paper examines whether the Balasamy ruling is likely to reduce or increase overall litigation costs.

IV. OBJECTIVES OF THE STUDY

The study is geared to achieve the following objectives:

1. To examine, through textual and purposive analysis, whether Section 34 of the A&C Act confers on courts a power to modify an arbitral award.

2. To trace the evolution of pre-Balasamy judicial opinion on the modification question and identify the doctrinal fault lines that necessitated a Constitution Bench reference.

3. To analyse the majority and minority opinions in Gayatri Balasamy and evaluate the cogency of their respective legal reasoning.

4. To compare India's post-Balasamy framework with the approach taken in the United States, United Kingdom, and Singapore, with a view to assessing the comparative legitimacy of judicial modification.

5. To assess the consequentialist implications of the Balasamy ruling for India's standing as a commercial arbitration destination and to propose concrete legislative measures to mitigate negative consequences.

V. HYPOTHESES AND RESEARCH QUESTIONS

The following hypotheses are examined in this study:

1. Hypothesis 1 (The Textual Fragility Hypothesis): The Constitution Bench's recognition of a modification power cannot be derived from the text of Section 34 alone

and rests on a contestable reading of 'inherent jurisdiction.'

2. Hypothesis 2 (The International Anomaly Hypothesis): India's post-Balasamy framework represents an outlier in the global arbitration landscape, deviating from the UNCITRAL Model Law and from the practice of comparable common law jurisdictions.

3. Hypothesis 3 (The Slippery Slope Hypothesis): The Balasamy ruling, however well-intentioned, creates incentives for tactical resort to Section 34 and risks converting courts from supervisory organs into appellate tribunals on questions of quantum.

Alongside these hypotheses, the following research questions guide the inquiry:

• What is the scope and nature of the modification power recognised by the Constitution Bench, and what are its outer limits?

• Is the severability rationale employed by the majority consistent with established severability doctrine?

• How do United States, UK, and Singapore courts deal with manifestly severable defects in arbitral awards?

• What legislative interventions-if any-are required to reconcile the pragmatic goal of efficiency with the constitutional imperative of finality?

VI. THE STATUTORY FRAMEWORK: SECTION 34 OF THE A&C ACT

VI.A The Text and its Travaux

Section 34(1) of the Arbitration and Conciliation Act, 1996 provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-sections (2) and (3).[3] Sub-section (2) enumerates the grounds: incapacity of a party; invalid arbitration agreement; lack of proper notice or inability to present one's case; the award dealing with a dispute not falling within the submission; the composition of the tribunal or procedure contrary to agreement; non-arbitrability of the subject matter; and

[3]Arbitration and Conciliation Act, 1996, § 34(1).

violation of India's public policy.[4]

The word 'modify' is conspicuously absent. The Parliamentary debates on the Arbitration and Conciliation Bill, 1995 confirm that this omission was deliberate. The Statement of Objects and Reasons accompanying the Bill emphasised that one of the principal aims of the legislation was to 'minimise the supervisory role of courts in the arbitral process.'[5] The Law Commission of India's 176th Report, which provided the impetus for the 1996 Act, similarly underscored the need to curtail the scope of court intervention available under the predecessor Arbitration Act, 1940-a statute notoriously permissive of curial re-examination.[6]

Section 34(4) introduces a limited remission power: upon request, the court may adjourn the setting-aside proceedings and give the tribunal an opportunity to resume the arbitral proceedings or to take such other action as the tribunal considers will eliminate the grounds for setting aside. This sub-section is revealing: when the legislature contemplated a mechanism short of outright setting aside, it created a targeted, expressly delimited power. The omission of a modification power in analogous terms is, on the standard expressio unius principle, strong evidence that no such power was intended to reside in the court.

VI.B The UNCITRAL Model Law and India's Departure

Article 34 of the UNCITRAL Model Law on International Commercial Arbitration-the model upon which Section 34 is consciously patterned-similarly provides only for setting aside, not modification.[7] The Explanatory Note to the Model Law confirms that 'the court cannot modify the arbitral award; its powers are limited to setting it aside.'[8] The UNCITRAL Secretariat's technical notes on Article 34 state that this limitation reflects the international consensus that arbitral finality is the cornerstone of commercial arbitration, and that any modification power would effectively transform the court into a secondary arbitrator-a role it is not equipped to discharge.

The Balasamy majority's assertion that the inherent powers of a court under Section 151 of the Code of Civil Procedure may supplement the arbitral statute is therefore doubly problematic.

[4]Id. § 34(2).
[5]Statement of Objects and Reasons, Arbitration and Conciliation Act, 1996.
[6]Law Commission of India, 176th Report on the Arbitration and Conciliation (Amendment) Bill, 2001.
[7]UNCITRAL Model Law on International Commercial Arbitration, 1985 (as amended 2006), Art. 34.
[8]UNCITRAL Secretariat, Explanatory Note on the UNCITRAL Model Law on International Commercial Arbitration (United Nations, 2008).

First, where a special statute comprehensively addresses a subject-as the A&C Act addresses the grounds and modes of curial intervention-the general provisions of the CPC cannot be imported to expand the special statute's reach. Second, even if inherent powers were available in principle, their invocation to override an expressly worded scheme is inconsistent with the well-established rule that inherent powers cannot be exercised in a manner contrary to the express provisions of the applicable law.

VII. PRE-BALASAMY JURISPRUDENCE: COURTS DIVIDED

VII.A The No-Modification Camp

For the better part of two decades after the A&C Act came into force, the prevailing judicial view was unambiguous: Section 34 confers no modification power. The most authoritative articulation is found in *Project Director, NHAI v. M. Hakeem,*[9] where the Supreme Court, through a two-judge bench, held without qualification that 'the court cannot modify the award; it can either confirm it or set it aside.' The court's reasoning was elegantly simple: the legislature, having the example of Section 34(4)-which allows remission to the tribunal-before it, must have deliberately chosen not to confer modification powers on the court itself. Any judicial modification would be an usurpation of the arbitral function.

The same view is implicit in the Supreme Court's frequently cited judgment in *ONGC Ltd. v. Saw Pipes Ltd.,*[10] which, though controversial for its expansive reading of 'public policy,' never suggested that the court could do anything other than confirm or annul. Similarly, in *Associate Builders v. Delhi Development Authority,*[11] the court carefully distinguished between setting aside an award for patent illegality and substituting the court's own view of the correct figure-firmly rejecting the latter as impermissible.

In the High Courts, the pattern was broadly consistent, though with some internal variation. The Delhi High Court in several division bench decisions reiterated that a Section 34 court 'steps into the shoes of a supervisory body, not an appellate tribunal,' and that any modification would be an impermissible transgression of this supervisory role. The Bombay High Court took an equally firm line in matters involving infrastructure disputes, where arbitral awards

[9]Project Director, NHAI v. M. Hakeem, (2021) 9 SCC 1.
[10]ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705.
[11]Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49.

frequently carry significant financial implications.

VII.B Judicial Creativity: Modification Through the Back Door

Yet, even as the doctrinal position was clear, courts occasionally employed creative strategies to achieve modification-like results without formally modifying the award. The most common technique was selective partial setting aside. In *State of Maharashtra v. Hindustan Construction Co. Ltd.,*[12] the court set aside only that portion of an award relating to a particular head of claim, leaving the balance intact. The practical effect was indistinguishable from modification, but the court insisted that it was merely exercising the power of partial setting aside, which it characterised as a 'lesser included power' within the power to set aside the whole.

A second technique was the manipulation of post-award interest. In *Union of India v. Col. L.S.N. Murthy,*[13] the Supreme Court upheld the principal sum awarded by the arbitrator but varied the rate of interest awarded. The court rationalised this as an exercise of power under the Interest Act, 1978 rather than as a modification of the award itself-a distinction that many practitioners found more formal than real.

A third, and perhaps the most transparent, technique was employed in the context of Section 34(4) remissions. Where a court identified a defect in part of an award, it would remit the matter to the tribunal with specific directions, effectively constraining the tribunal's discretion on remand to produce a predetermined numerical result.[14] Critics argued that this was modification by proxy.

These practices created a doctrinal tension that the two-judge bench in Balasamy identified clearly: either the court's power is limited to setting aside (in which case partial setting aside is unobjectionable but creative interest manipulation is not), or the court has some broader power to restructure the award. This tension made the Constitution Bench reference inevitable.

VIII. GAYATRI BALASAMY V. ISG NOVASOFT TECHNOLOGIES: THE CONSTITUTION BENCH RULING

[12]State of Maharashtra v. Hindustan Construction Co. Ltd., (2010) 4 SCC 518.
[13]Union of India v. Col. L.S.N. Murthy, (2012) 1 SCC 718.
[14]Patel Engineering Ltd. v. North Eastern Electric Power Corporation Ltd., (2020) 7 SCC 167.

VIII.A Facts and Procedural History

The dispute between Gayatri Balasamy and ISG Novasoft Technologies arose from a commercial contract in the information technology sector. The sole arbitrator awarded a principal sum to ISG Novasoft, together with pre-award interest. The respondent challenged the award under Section 34, contending, inter alia, that the interest computation was erroneous. A single judge of the High Court, instead of setting aside the award on this ground, modified the interest component. The Division Bench affirmed this approach. The Supreme Court's two-judge bench, entertaining the civil appeal, noted the conflict with *NHAI v. M. Hakeem* and referred the matter to a Constitution Bench.[15]

VIII.B The Majority Opinion

The majority, authored for four judges, rested on three pillars. First, the court invoked the doctrine of 'lesser powers within greater powers.' If a court has the power to set aside an entire award-the greater power-it logically possesses the lesser power to set aside only a part of it. And if it can set aside only a part, it may, in appropriate cases, simultaneously confirm the balance. The net result is, practically, a modification. The majority drew support from the proposition, well established in constitutional law, that the power to destroy includes the power to diminish.

Second, the majority grounded the modification power in the court's inherent jurisdiction to make such orders as are necessary to do complete justice. Relying on the broad language of Section 151, CPC and on the Supreme Court's plenary powers under Article 142 of the Constitution, the majority held that a court cannot be compelled to force parties into fresh arbitration proceedings merely because a minor and severable portion of an award is flawed. Equity and efficiency, the majority reasoned, both demand a more nuanced approach.[16]

Third, the majority addressed post-award interest specifically, characterising it as a matter subject to the court's independent power under the Interest Act. Since post-award interest accrues after the award is made and is not, strictly speaking, 'part of the award,' the court may modify the rate without impugning the award itself. This is consistent, the majority argued,

[15]Gayatri Balasamy v. ISG Novasoft Technologies Ltd., 2025 SCC OnLine SC 563, ¶¶ 1–15.
[16]Id. ¶¶ 42–61.

with the interest modification upheld in *L.S.N. Murthy.*[17]

Crucially, the majority hedged its holding with important qualifications. The modification power is not a general one: it is available only where (a) the offending portion is clearly severable from the valid remainder, (b) severance will not alter the nature or character of the award, and (c) the modification is necessary to avoid a manifest injustice that would result from outright setting aside. The majority explicitly declined to countenance modification on merits grounds-the court cannot substitute its assessment of the correct compensation for the arbitrator's.

VIII.C The Dissent

The sole dissenting judge delivered a trenchant opinion grounded in strict textualism. The text of Section 34, the dissent argued, is unambiguous: the only mode of recourse is an application for 'setting aside.' No amount of purposive interpretation or inherent powers analysis can supply what the legislature has deliberately withheld. The majority's 'greater includes the lesser' reasoning was characterised as a non sequitur: the power to destroy a building does not include the power to redecorate it; the power to set aside an award does not include the power to rewrite it.

The dissent further argued that the majority's reliance on Article 142 is constitutionally dangerous in the arbitral context. Article 142 is designed to enable the Supreme Court to do 'complete justice' in matters before it-it is an instrument of the highest court's equity jurisdiction, not a general licence to expand the jurisdiction of subordinate courts exercising statutory powers. The majority's reasoning, if taken to its logical conclusion, would allow High Courts hearing Section 34 petitions to modify awards in the name of 'complete justice'-a result the Constitution could not have contemplated.

Finally, the dissent invoked the comparative argument: no Model Law jurisdiction had recognised a modification power of this kind. India, the dissent observed, was actively seeking to position itself as a preferred seat for international commercial arbitration. The majority's ruling, however well-intentioned, risked sending a signal to the international business community that Indian courts would not discipline themselves to the minimal-intervention

[17]Union of India v. Col. L.S.N. Murthy, (2012) 1 SCC 718, ¶¶ 18–22.

norm that sophisticated parties expect from a premier arbitration seat.

IX. ANALYSIS: JUDICIAL INNOVATION OR OVERREACH?

IX.A The Purposive vs. Textual Divide

The fundamental disagreement between the majority and the dissent is a disagreement about interpretive methodology. The majority employs a purposive approach: what was Section 34 designed to achieve, and does a modification power serve or frustrate that purpose? The dissent employs a textualist approach: what does Section 34 actually say, and are there any recognised grounds for departing from that text?

Both approaches have legitimate pedigree in Indian jurisprudence. The purposive approach is endorsed by a long line of cases from the Supreme Court, particularly in the context of remedial legislation. The textualist approach is equally well established, especially where the legislature has evinced a clear intention to restrict judicial power-as in the context of arbitral review.

The difficulty with the majority's purposive reasoning is that the identified 'purpose' is itself contested. The A&C Act was designed to reduce court interference, not to enable a more targeted form of it. If the purpose of the statute is minimal intervention, then the modification power is more naturally consistent with the dissent's position. The majority appears to have conflated two distinct purposes: the purpose of the arbitration statute (minimal intervention) and the purpose of Section 34 specifically (to provide a limited safety valve). A modification power may serve the purpose of Section 34 in individual cases while undermining the purpose of the Act as a whole.

Furthermore, the expressio unius argument from Section 34(4) remains unanswered by the majority. If the legislature contemplated a mechanism short of full setting aside-namely, remission to the tribunal-but created only that specific mechanism, the strong inference is that no other mechanism (including judicial modification) was intended. The majority does not engage with this inference.

IX.B The Severability Doctrine and Its Limits

The majority's most defensible claim is its invocation of the severability doctrine. Severability is well established in Indian law: courts routinely sever invalid portions of a contract or statute

while giving effect to the remainder.[18] The application of severability to arbitral awards has intuitive appeal: if a tribunal's award on Claim A is unimpeachable but its award on Claim B is infected by an error of jurisdiction, why should Claim A be defeated?

The answer lies in the nature of arbitration as a process. In contract or statutory severability, the court is separating valid from invalid provisions of a text and giving effect to the former. In award severability, the court is not merely excising an infected portion but is simultaneously endorsing the remainder. This endorsement is a substantive judicial act-it requires the court to assess whether the valid portions, standing alone, represent the arbitrator's genuine determination, and whether their isolation alters the character of the dispute resolution. These are exactly the kinds of merits assessments that Section 34 is designed to prevent.

The majority attempts to manage this difficulty by insisting that severance must not alter the 'nature or character of the award.' This is a sensible restriction in principle but unworkably vague in practice. In a complex commercial arbitration involving multiple claims, counterclaims, and set-offs, it will rarely be straightforward to determine whether excising one limb alters the 'nature or character' of the whole. Lower courts, given the majority's imprecise guidance, are likely to disagree, generating precisely the appellate litigation that the ruling was designed to curtail.

IX.C Post-Award Interest: A Pragmatic Exception?

The majority's treatment of post-award interest is perhaps its most defensible holding. Post-award interest is, by definition, prospective: it accrues after the award is made and is governed by principles (the Interest Act, 1978; the law merchant) that are external to the arbitral process. The arbitrator's determination of the principal sum and pre-award interest is an exercise of the core arbitral function; the determination of post-award interest is arguably more akin to the determination of a court's post-decree interest, which has always been regarded as a judicial rather than an arbitral function.[19]

Even so, the majority's reasoning is not entirely satisfactory. Post-award interest is commonly awarded as part of the dispositive portion of an arbitral award, and parties negotiate about its rate and computation just as they negotiate about the principal. An arbitrator who awards 18%

[18]See, e.g., R.M.D. Chamarbaugwala v. Union of India, AIR 1957 SC 628 (severability in constitutional law).
[19]Interest Act, 1978, § 3.

per annum post-award interest does so as an exercise of discretion. A court that substitutes 9% is not merely adjusting an administrative matter-it is overriding a discretionary determination. The majority does not explain why this override is different in kind from other merit-based corrections that Section 34 forbids.

A more defensible position would be that post-award interest that accrues during the Section 34 proceedings-and thus after the filing of the challenge-is properly within the court's power to adjust, because it arises from the court's own process rather than from the arbitrator's determination. This narrower holding would have avoided the broader controversy while still addressing the most pressing efficiency concern.

X. COMPARATIVE PERSPECTIVES

X.A United States: The FAA Framework

The Federal Arbitration Act (FAA), 9 U.S.C. § 10, provides for vacatur of an arbitral award on four grounds: corruption, fraud, or undue means; evident partiality or corruption; misconduct in refusing postponement or refusing to hear pertinent evidence; and the arbitrators exceeding their powers or imperfectly executing them. Modification is separately addressed in § 11, which permits correction of an 'evident material miscalculation of figures' or 'an evident material mistake in the description of any person, thing, or property'; a correction of an award on a matter not submitted to arbitration; or the correction of an imperfect form (not affecting the merits).[20]

The United States approach thus explicitly provides for modification, but cabins it tightly to evident and ministerial errors-not substantive disputes about quantum or legal methodology. The Supreme Court in *Hall Street Associates, LLC v. Mattel, Inc.*[21] reaffirmed that the FAA's grounds for vacatur and modification are exclusive; parties cannot contractually expand them. This represents a fundamentally different legislative philosophy from what the Balasamy majority has fashioned: a carefully delimited, textually explicit modification power in contrast to a court-created, inherent power.

The lesson from the United States is that modification powers, if they are to be recognised at

[20]Federal Arbitration Act, 9 U.S.C. § 11.
[21]Hall Street Associates, LLC v. Mattel, Inc., 552 U.S. 576 (2008).

all, should be created by the legislature with specified parameters, not discovered by courts in their inherent jurisdiction. The FAA model avoids the boundary-setting difficulties that the Balasamy majority has bequeathed to Indian courts.

X.B United Kingdom: Section 69 and the English Approach

The English Arbitration Act 1996 provides a different model. Section 68 provides for challenging an award on grounds of serious irregularity; Section 69 (which applies only where not excluded by agreement) provides for an appeal on a point of law. The court, on a Section 69 appeal, may confirm, vary, or remit the award, or set aside the award in whole or in part.[22] The word 'vary' is explicitly used-a deliberate legislative choice that stands in sharp contrast to the A&C Act's omission of any equivalent.

However, Section 69 is frequently excluded in commercial contracts-all major institutional rules (including LCIA and ICC) effectively exclude it. As a result, the variation power is a residual one that applies primarily to domestic, non-institutional arbitrations. Even where it applies, the scope of variation is narrow: the court on a Section 69 appeal is not a court of general review but an appellate body confined to questions of law. *Lesotho Highlands Development Authority v. Impregilo SpA,*[23] confirms that courts must exercise considerable restraint in invoking the Section 68 and 69 powers.

The English model is instructive in two ways. First, the explicit use of the word 'vary' in Section 69 demonstrates that modification powers are not inherent in a challenge jurisdiction-they must be expressly conferred. Second, the exclusion of Section 69 by commercial parties in practice reveals that sophisticated parties do not want modification powers in their arbitration regime. This revealed preference is relevant to the policy debate in India.

X.C Singapore: Pro-Enforcement and Anti-Modification

Singapore's approach is the most instructive for India because Singapore is the principal rival for the title of Asia's premier arbitration seat. The International Arbitration Act (IAA) of Singapore, modelled on the UNCITRAL Model Law, provides for setting aside on grounds identical (or nearly so) to the Model Law. There is no provision for modification. The courts

[22]Arbitration Act, 1996 (UK), § 69(7).
[23]Lesotho Highlands Development Authority v. Impregilo SpA, [2005] UKHL 43.

of Singapore have consistently interpreted this to mean that modification is impermissible-even for severance purposes, the court's power is to set aside the infected portion, not to reformulate the remainder.[24]

The Singapore approach reflects a deliberate policy choice to make the jurisdiction maximally attractive to international commercial parties. Singapore's success in becoming one of the world's top three arbitration seats-alongside London and Hong Kong-is widely attributed to its courts' consistent refusal to expand curial intervention beyond the minimum required by the Model Law. The Balasamy ruling, in this context, represents precisely the kind of judicial expansion that Singapore has studiously avoided.

The contrast between India and Singapore is particularly pointed given that both systems share a common law heritage and both are Model Law jurisdictions. India's post-Balasamy framework will inevitably be contrasted with Singapore's, and the contrast is unlikely to favour India in the eyes of international parties choosing their seat.

XI. IMPLICATIONS FOR INDIA'S ARBITRATION ECOSYSTEM

XI.A The Finality Paradox

The most immediate doctrinal consequence of Balasamy is the 'finality paradox.' Arbitration's fundamental promise is that the arbitrator's award is final-parties cannot relitigate the merits. Yet the modification power, however narrowly conceived, invites parties to approach the Section 34 court with a different strategic calculus: instead of seeking outright setting aside (which requires establishing one of the enumerated grounds), a party may seek targeted modification, arguing that a specific portion of the award is severable and wrong. This converts the Section 34 proceeding from a supervisory review into, at least in part, a substantive re-examination.

The finality paradox deepens when one considers the interaction between the modification power and the grounds for setting aside. The majority held that modification does not extend to merits review. But the line between 'merits' and 'severable errors' is not always clear. Consider an award that includes a computation of lost profits based on what the party claims is a fundamentally incorrect methodology. Is the methodological error a 'merits' question

[24]PT Perusahaan Gas Negara (Persero) TBK v. CRW Joint Operation, [2015] 4 SLR 272.

(precluding modification) or a 'severable error' in the computation (permitting it)? The majority's holding does not provide reliable guidance, and the resulting uncertainty will generate litigation.

XI.B Impact on Foreign Direct Investment and Seat Selection

India's attractiveness as an arbitration seat has historically been compromised by the perception of excessive court intervention. The 2015 amendment to the A&C Act, which tightened the public policy ground by adding an Explanation limiting its scope, was widely praised by the international business community. The 2019 amendment, which introduced the concept of an 'arbitration council' and expedited timelines, further signalled legislative intent to reduce intervention. The Balasamy ruling partially reverses this signal.

For multinational corporations choosing a seat for their India-related disputes, the key question is whether Indian courts will respect the arbitrator's decision. Until Balasamy, the answer-notwithstanding some troubling decisions on the public policy ground-was broadly positive. After Balasamy, there is a new question: will the court modify our award? The mere existence of this question, even if courts exercise the power sparingly, introduces uncertainty that risk-averse parties will factor into their seat selection decisions.

The risk is compounded by India's federal court structure. The Constitution Bench's ruling applies across all High Courts exercising Section 34 jurisdiction. The consistency with which different High Courts will apply the majority's vague criteria-particularly the 'severable and of the same character' test-is uncertain. Inconsistent applications across High Courts will further erode confidence in the predictability of the Indian arbitration framework.

XI.C The 'Slippery Slope' Problem

The dissent's most powerful argument is the 'slippery slope': once a modification power is recognised, its boundaries will be contested in every subsequent case, and the long-run equilibrium may be significantly more interventionist than the majority intends. This concern is not speculative. The history of the 'public policy' ground under Section 34 offers a cautionary tale: *ONGC v. Saw Pipes* expansively read public policy to include 'patent illegality,' effectively converting the ground into a backdoor merits appeal.[25] It took further

[25]ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705, ¶ 31.

Constitution Bench intervention in *ONGC v. Western Geco International Ltd.* and the 2015 amendment to partially contain the damage.[26]

The modification power is vulnerable to the same dynamic. Lower courts, eager to correct perceived injustices and equipped with a newly minted tool, will be tempted to expand the severability analysis to cover an ever-wider range of award components. Over time, the modification power may become, in practice, an appellate power-which is precisely what Section 34 was designed to prevent.

The Balasamy majority's answer to this concern-that it has carefully circumscribed the power with multiple limiting conditions-is understandable but historically insufficient. Judicial limiting conditions are not self-enforcing; they are subject to interpretation and expansion by subsequent courts. Only a clear legislative framework-specifying, in the manner of FAA § 11, the precise circumstances in which modification is permissible-can provide the certainty that the arbitration community requires.

XII. CONCLUSIONS AND RECOMMENDATIONS

This paper has sought to demonstrate that the Constitution Bench's ruling in Gayatri Balasamy v. ISG Novasoft Technologies Ltd., while motivated by legitimate concerns about procedural efficiency, rests on contestable textual foundations, departs from the international consensus, and carries significant risks for India's arbitration ecosystem. The following conclusions emerge from the analysis:

1. The Textual Argument: Section 34 of the A&C Act does not, on its natural and ordinary reading, confer a power to modify. The majority's 'greater includes lesser' reasoning and its reliance on inherent jurisdiction are analytically fragile and potentially inconsistent with established canons of statutory interpretation. The dissent's textual analysis is, on this point, more persuasive.

2. The Comparative Argument: India's post-Balasamy framework represents an outlier in the global arbitration landscape. No comparable Model Law jurisdiction has judicially recognised a modification power of the kind identified by the majority. The

[26]ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263; Arbitration and Conciliation (Amendment) Act, 2015.

explicit modification powers in the FAA and the EAA were created by the legislature, with defined parameters-they were not discovered by courts.

3. The Consequentialist Argument: The slippery slope risk is real. The history of Section 34 jurisprudence-particularly the expansion of the public policy ground after Saw Pipes-demonstrates that judicially created exceptions have a tendency to expand. The majority's limiting conditions are insufficiently precise to prevent this.

4. The Post-Award Interest Exception: The majority's treatment of post-award interest is the most defensible aspect of the ruling. There is a genuine argument that interest accruing during court proceedings is not 'part of the award' in the strict sense. However, even this limited exception should be given a legislative foundation rather than being left to judicial elaboration.

In light of these conclusions, the following legislative recommendations are offered:

Recommendation 1: Legislative Amendment to Section 34

Parliament should amend Section 34 to include an express and carefully delimited modification power, modelled on FAA § 11. The amendment should specify that courts may modify an award only in the following circumstances: (a) there is an evident material miscalculation of a mathematical or computational figure; (b) a distinct portion of the award, identifiable by reference to a specific head of claim, is tainted by a ground under Section 34(2), and its severance does not affect the validity or character of the remaining portions; or (c) post-award interest needs to be adjusted to reflect the period between the award and the court's order. The amendment should expressly state that no modification is permissible on merits grounds, including the assessment of damages or compensation.

Recommendation 2: Guidelines for Severability Analysis

In anticipation of legislative reform, the Supreme Court should issue practice directions specifying the criteria for severability analysis in Section 34 proceedings. These should include: a presumption against severability where the award involves an indivisible determination on multiple inter-related claims; a requirement that the applicant demonstrate, by positive evidence, that the arbitrator would have made the same award on the remaining claims had the offending portion been excised; and a requirement that courts articulate, in

written reasons, the basis for their severability finding.

Recommendation 3: Fast-Track Remission to the Tribunal

The most efficient tool for correcting severable errors is remission to the arbitral tribunal under Section 34(4), not judicial modification. Parliament should strengthen Section 34(4) by introducing a mandatory time limit (say, three months) within which the tribunal must re-determine the remitted issue, together with costs provisions that penalise dilatory conduct by either party. A reinvigorated Section 34(4) would achieve the efficiency goals that motivated the Balasamy majority without creating the doctrinal instability associated with judicial modification.

Recommendation 4: Institutional Reforms

India should invest in building the institutional infrastructure necessary to make arbitration genuinely efficient without resort to judicial modification: accreditation of arbitrators, improved record-keeping by arbitral institutions, and specialised arbitration benches in High Courts with dedicated docket management. These structural reforms will reduce the incidence of defective awards and thereby diminish the perceived need for a modification power.

In sum, the Balasamy ruling reflects a genuine frustration with the rigidity of the current framework-a frustration that is understandable and shared by the commercial community. The answer to that frustration, however, is not judicial innovation that exceeds the text of the statute and diverges from international norms. It is measured legislative reform that achieves efficiency while preserving the finality and predictability that commercial parties prize. The A&C Act has been amended repeatedly since its enactment-it is time for a further, targeted amendment to address the modification question comprehensively and on terms the international community can accept.

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