JUDICIAL INTERVENTION IN ARBITRATION: ANALYSIS ON SECTION 34 UNDER ARBITRATION AND CONCILIATION ACT 1996

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ABSTRACT

There is a pressing legal ambiguity regarding the extent to which Indian Courts can intervene to modify arbitral awards, a question which has recently gained critical attention due to the ruling in Gayatri Balasamy v. ISG Novasoft Technologies Ltd. Although, both Arbitration and Conciliation Act and judicial precedents emphasize the need to restrict the role of courts, the judicial intervention continues to occur. At times such involvement supports the arbitral proceedings, but in other instances, it obstructs it and causes complications. The 2019 amendment to the Act was also aimed at curbing excessive interference and make India a more arbitration-friendly jurisdiction.

The paper aims to contribute to answer the question on whether Indian arbitration law should evolve towards judicial restraint. It deals with the problem of extent of the power of courts to modify an arbitral award under Section 34 of the Act. Additionally, it provides the effect this interference will have on arbitration and the implications it brings along. The analysis also extends to foreign jurisdictions and the mode of modification and setting aside in contrast to India's legislation. Further, it provides the sectorial impact considering construction and sports sector. Finally, it provides the authors point of view that while limited modification can prevent costly re-arbitrations and promote efficiency, it must be exercised with restraint to avoid undermining arbitration and party autonomy.

Keywords: Judicial Intervention, Modification of Arbitral Awards, Finality and Autonomy, Justice.

Introduction

Arbitration is widely known as an alternative dispute resolution that provides parties with faster and cost-effective forum for resolving disputes outside the courts. The objective of arbitration is the autonomy of the parties which reduces prolonged litigation matters. However, it has been subject to judicial intervention and has been a long-standing debate in the Indian jurisdiction, especially with regard to the Arbitration and Conciliation Act, 1996 **("the Act")**. While the Act provides court the power to set aside or challenge arbitral awards through Section 34[1] and 37,[2] the extent of such intervention remains contested. These provisions were made to ensure that arbitration remains credible without transforming courts into appellate bodies for arbitral decisions. Courts are often brought in to ensure that arbitration does not result in injustice, however, excessive interference undermines the independence of the arbitral process. There is an ongoing debate as to whether awards must be modified or not.

In the recent times, the Supreme Court's decision in the **Gayatri Balasamy v. ISG Novasoft Technologies Ltd[3]** brought this question into limelight again. The court examined the scope of judicial powers rather than merely setting them aside under section 34. Therefore, this paper also significantly relies on the judgment of the said case in order to analyse the modification of arbitral awards under section 34 as it changed the application of the section by recognizing a limited power of modification unlike all the earlier judgments.

Research problem

The point of debate in this study lies in defining the extent to which courts can modify an award under s.34 of the Act. Although it was formulated to limit court interference to specific grounds, conflicting judicial interpretations have created uncertainty about whether they possessed such powers. If such a power exists, then can it be applied only when the award can be severable as well as only a certain piece of it can be modified. Further, does the scope of power to set aside an award under s.34 include the power to modify an arbitral award and the extent of such power.

The main issue comes from the difference of the legislative intention of minimal judicial

[1] Arbitration and Conciliation Act, 1996, §34, No. 26, Acts of Parliament, 1996 (India).
[2] *Id.* at §37.
[3] 2025 SCC OnLine SC 986.

intervention under Sections 5 and 34, and the court's interpretation of the same. These sections were introduced with the idea to ensure that courts interfere less and thereby to uphold the finality of awards. It raises a few important questions:

- Does allowing courts to modify arbitral awards make the process efficient by correcting the errors and avoid need for fresh arbitration?
- Does such intervention violate the basic foundation of arbitration by reducing finality and party autonomy?
- Can Indian courts strike a balance between limited interventions while also fulfilling their obligation to secure justice?

Scope of The Problem

The scope of the above problem does not only lie in the narrow reading of Sections 34 of the Act. It has broader implications such as:

- The uncertainty as to whether the judicial pronouncements that have recognised the modification of arbitral awards align with the legislative mandate.
- The terms "severability" and "manifest error" are used without clear statutory definitions in the judgment of the Constitution Bench. It would lead to inconsistent application and expand the scope of interpretation.
- The very purpose of arbitration is undermined by allowing courts to alter awards.

In light of these factors, the scope of the problem extends beyond mere statutory interpretation of the provisions and will also be covering implications of judicial intervention on the arbitration framework as a whole.

Literature Review

The article **"Gayatri Balaswamy and The Scope of Section 34: A New Era for Arbitral Award Intervention?"**[4] by Ishita Bhatia examines how the Supreme Court opened the door

[4] Ishita Bhatia, *Gayatri Balaswamy And The Scope Of Section 34: A New Era For Arbitral Award Intervention?*, VII IJLLR 8497 (2025).

for courts to make limited changes to arbitral awards. It explains the path away from the initial 'all or nothing' approach, where courts could only set aside awards towards a system that allows correction in limited situations. However, the paper does not fully address the intent of the legislature, particularly the bar on judicial interference under section 5 and mechanism under section 33. The authors also compare this development with practices in jurisdictions internationally, but it overlooks the fact that the power to modify comes from statutory language in many foreign jurisdictions, whereas in India it has been created judicially. Our paper takes the discussion forward by focusing on these gaps.

The paper "**Judicial Intervention in Arbitral Awards: A Practitioner's Thoughts"**[5] by Gourab Banerji examines the section 34 of the Act and the issues regarding arbitration in India. It analyses the evolution of judicial intervention, particularly the expansion of "public policy" in ONGC v. Saw Pipes, and offers a practitioner's view on the lack of guidelines for courts in setting aside awards. However, this paper does not address the power of limited judicial review to amend the award. Our paper extends this debate by analysing these developments along with the ambiguity and the risk for judicial overreach, thereby highlighting the need for legislative clarification.

The paper "**Judicial Interference v. Legislative Intent in Arbitration Cases: A Critical Analysis**"[6] by Rozaline Sherly A examines the conflict between the Act and judicial practice in India. It criticizes how the courts have over and over again extended their involved beyond the limited intervention that was the purpose and effect of section 5 of the Act and the UNCITRAL Model Law. This paper discusses about the judicial intervention in the appointment of arbitrators, interim measures, pre-referral jurisdiction and setting aside awards under section 34. Although it draws attention to the negative effects of excess-intervention to the party autonomy and the time-consuming nature of the proceedings, its analysis fails to discuss the recent debates over altering awards. Our paper builds on this debate by addressing the recent ruling of the Supreme Court, which is the first time to acknowledge a limited power of modification under section 34. This reflects a doctrinal change since previous decisions such as M. Hakeem held that the courts had the right to strike down but not to amend awards. In contrast to this paper, which largely criticizes the general overreach, our study lies in the middle

[5]Gourab Banerji, *Judicial Intervention in Arbitral Awards: A Practitioner's Thoughts on JSTOR*, 21 NLSIR 39 (2008).
[6] Rozaline Sherly A, *Judicial Interference v. Legislative Intent in Arbitration Cases: A Critical Analysis*, 10 IJIRT 1168 (2024).

ground.

Legal position

The point of issue is the conflicting judicial decisions on whether courts possess the power to modify. In the case of ***Mc Dermott International Inc. v. Burn Standard Co. Ltd & Ors.***[7], it limited the extent of intervention of the judiciary under the Act that courts cannot act as appellate bodies. They cannot re-evaluate evidence or revisit the conclusions reached by the arbitral tribunal. It does not extend to correcting factual or legal errors made by the arbitrator. The rate of interests can be reduced if there is a significant lapse of time.[8] It clarified that courts could intervene only in exceptional circumstances such as fraud or bias, but they had no authority to alter the substance of the award. However, this judgment left open the broader question of whether Indian courts could step in to modify an award.

In ***Numaligarh Refinery Ltd v. Daelim Industrial Co. Ltd***[9], it was observed that court should not replace the arbitrator's decision with its own opinion.

The Court in ***Vedanta Ltd. v. Shenzen Shandong Nuclear Power Construction Co. Ltd***[10], had tacitly allowed modifications, particularly in the context of interest and computational adjustments.

This ambiguity was later resolved in ***Project Director, National Highways No. 45 E and 220 NHAI v. M Hakeem & Anr,***[11] which held that the awards can be set aside only within the limitations given under section 34 (2) and (3). Accordingly, an arbitral award cannot be either set aside or remanded to the arbitral tribunal beyond what the Act permits. Section 34 (4) allows the tribunal itself to address the issues and solve the defects that form basis for setting aside. According to this decision, judicial options are confined to either wholly or partly setting it aside or remitting the matter back to the tribunal for reconsideration.

Lastly and recently, the constitution Bench of five judges of Supreme Court examined the reasoning adopted in earlier cases and carefully assessed the scope of judicial authority under Section 34 in Gayathri Case.[12] Additionally, the Court also drew comparisons with arbitral

[7] (2006) 11 SCC 181.
[8] Pure Helium India (P) Limited v. Oil & Natural Gas Commission
[9] 2007 (8) SCC 466.
[10] (2019) 11 SCC 465.
[11] (2021) 9 SCC 1.
[12] 2025 SCC OnLine SC 986.

laws in several jurisdictions, including Singapore, UK, US, France and Australia, among others.

After this comparative and statutory analysis, the Court clarified that Indian courts possess only a narrow power to alter arbitral awards. This power, however, is not unfettered, and can be exercised only in four specific situations:

i. Severability: Where the invalid portion of an award can be separated from the valid portion, allowing the lawful part to stand.

ii. Clerical or Computational Errors: Where mistakes on the face of the record, such as arithmetical slips, typographical errors, or calculation mistakes, need to be corrected.

iii. Post-Award Interest: Where the interest awarded after the arbitral decision is unreasonable or disproportionate, and requires modification.

iv. Article 142 Powers: Where the Supreme Court invokes its extraordinary constitutional authority to do "complete justice." The Court stressed that this final ground must be exercised sparingly and with great caution.

Analysis

The legislative intent behind section 34 of the Act is to permit courts to set-aside on certain specific grounds. Under section 34(2) of the Act, an arbitral award may be challenged set aside on the following grounds:

1. Incapacity of the party

An award will not be enforceable against a party who lacks the legal capacity to safeguard their own interests, such as a minor or a person of unsound mind, unless represented by a legal guardian.

2. Invalid arbitration agreement

The case of ***State of UP v. Allied Constructions***[13] held that the award maybe set aside if the arbitration agreement itself is not legally valid. The validity of such an agreement is

[13] State of UP v. Allied Constructions, 7 SCC 396 (2003).

decided in accordance with the law selected by the parties or the governing law of contract.

3. **Absence of proper notice or denial of opportunity to present the case**

   Where a party is not duly informed about the appointment of the arbitrator or the conduct of the proceedings or was prevented from presenting their case, that award can be set aside. Courts have annulled where ex-parte hearings occurred.[14]

4. **Exceeding the scope of reference**

   Awards beyond the terms of reference may be partially or wholly set aside. Section 16 requires parties to object to excess jurisdiction.

5. **Improper tribunal composition**

   Annulment is permitted for tribunal misconduct, non-compliance with agreed procedures or the violation of statutory provisions.

6. **Non- arbitrable disputes**

   If the matter dealing with public rights, criminal liability and insolvency cannot be referred to arbitration while contractual rights may be arbitrated.

7. **Awards against public policy**

   Arbitral awards obtained through fraud, corruption, misrepresentation, or those contrary to justice, morality or fundamental legal principles can be set aside. This also includes those awards that infringe public interest, violate statutes or are so unfair that they shock the conscience of the court ensuring that it is at par with both law and societal norms.

There are two competing perspectives on whether courts have the authority to modify awards. On one hand, there is the maxim of *omne majus continent in se minus*, which recommends that the power to strike down in section 34 includes lesser power to amend it. Especially in cases involving a public law aspect, courts must be empowered to adjust compensation or modify the rate of interest without initiating fresh proceedings.

[14] Vijay Kumar v. Bathinda Central Cooperative Bank, 2023 PHHC 043401.

On the other hand, the contrary view is that recognising such a power would undermine the finality and autonomy of arbitration as judicial orders could replace awards. Reading a power of modification into section 34 could contradict both the express wording and the legislative intent. The recent ruling of Supreme Court in the Gayatri Balaswamy Case changed this notion and added the scope to modify arbitral awards. This was done by a bench of 5 judges holding precedential weight. While it was aimed at speeding up arbitration in India, it blurs the thin line between judicial activism and judicial overreach. The reason behind this is that though the Court attempted to confine the scope of modification to a few narrow scenarios, it still left several gaps and ambiguities.

To begin with the severability situation, the distinction between modification and severing, as rightly held by Justice Vishwanathan's dissent is that modification implies varying or changing while severing refers to separating an award from the rest. These concepts are interchangeable since the method of literal interpretation requires the language to be understood in its natural and literal meaning.[15] Allowing modification under the guise of severability stretches the legislative language beyond its intended purpose.

The primary aim of Section 34 is to enable courts to quash awards and not to re-evaluate the merits of a case. Whereas, Modification involves judicial evaluation of the substance of the award. This point was also illustrated by the Madras HC in the same case, that reduced compensation on the grounds that it appeared excessive as per the facts. Such intervention goes beyond Section 34, which does not empower courts to engage with the factual or evidentiary aspects of a dispute.

Further, the Court relied on practices in foreign countries to justify allowing modification, overlooking the fact that these jurisdictions have express statutory provisions authorizing such powers unlike India. For instance countries like Singapore,[16] UK,[17] and USA[18] mention explicitly about varying or modifying the arbitral awards. The Court held that allowing modifications would save time and costs by avoiding fresh arbitrations. However, such choices

[15] Alekhya Reddy. T, *Literally Interpreting The Law- A Appraisal of The Literal Rule of Interpretation in India*, MANUPATRA, (last visited Sep. 20, 2025).
[16] 49(8)(b) of Singapore Arbitration Act 2001 states "the court may by order vary the award" https://sso.agc.gov.sg/Act/AA2001?ProvIds=P19-
[17] Section 10(b) of Arbitration Act 2025 states "the court may by order vary the award" https://www.legislation.gov.uk/ukpga/2025/4
[18] Sections 9, 11, 12 of USA Arbitration Act mention about modification. https://www.govinfo.gov/content/pkg/USCODE-2017-title9/html/USCODE-2017-title9.htm

are policy matters, and it is Parliament that should decide them, since it is the legislative authority. This is different from cases where gaps in law exist, for instance ***Vishaka v. State of Rajasthan***[19] and ***Rudul Sah v. State of Bihar***[20] as there is no gap in the current provision as the legislative intent to not modify is very clear.

Arbitration is opted mainly for the principle party autonomy, finality of arbitral award and parties want to avoid regular court proceedings. If courts are allowed to change awards, such as post-award interest, it cuts against the main reasons. It means that a judge, who was not part of the arbitral process, can step in and alter something that tribunal has already decided. This also weakens the finality of arbitral awards, which is one of the main strengths of arbitration. It also affects the binding nature of awards as an award debtor could try to reopen the case in court if modification exists.

The recent judgment in Gayathri Balasamy case merely states that the power should be used "with great care and caution," but this phrase gives no real boundaries. The result is twofold: it clogs the already overburdened judicial system and undermines the foundation of speedy resolution of arbitration. Whereas, the earlier positions of the court stick to the setting aside based on the minimal ground mentioned under the section 34 upholding legislative intent.

The following shall be the implications if courts start modifying arbitral awards relying the grounds given by the recent judgment.

1. **Interpretation of the words 'manifest errors' and 'severable'**

   The interpretation of 'manifest' and 'severable' will play an important role to determine the modification. The word manifest errors in the judgment was not even defined leaving room for ambiguity which will definitely be called before courts to be dealt in further cases.

2. **Risk of judicial burden**

   Terms like "manifest error"[21] are ambiguous which could lead to more challenges as parties might try to take advantage of this uncertainty leading to more clogging of the judicial system and undermining the goal of speedy justice of arbitration. Additionally, proceedings

[19] AIR 1997 SC 3011.
[20] (1983) 4 SCC 141.
[21] Para 47 of Gayatri Balasamy v. ISG Novasoft Technologies Ltd., (2025) 7 SCC 1.

may take longer time as it needs factual scrutiny as well.

3. Need for legislative clarification

This judgment will likely push lawmakers to revisit s.34 of the Act as it has acknowledged that courts have power to an extent to modify awards. This is much needed as it would formally define the extent without any ambiguity. It would help in reducing inconsistent interpretations to ensure uniform practice across jurisdictions.

4. Strategic shifts

Earlier, parties usually approached the court on the assumption that an award either had to be upheld or set aside. The parties approaching courts under section 34 will no longer argue in the same way as earlier as this judgment changes this assumption by recognizing court's ability to modify parts of an award without disturbing the whole.

For a party filing a challenge, this means that the petition has to now show whether those defects can be carved out by the court while leaving the rest of the award or can they not be separated. On the contrary, the parties were of the opinion that limited modifications shall only be allowed to preserve the award rather than setting aside.

Accordingly, this calls for a change in the way pleadings and reliefs are structured, as they do not have to be presented in strictly absolute terms.

5. Concerns regarding judicial overreach under Article 142

The authority of Supreme Court given in Article 142 to do "complete justice" in arbitration matters, although intended to be exercised on in rare situations may raise concerns of excessive intervention. The presence of this power as a residual remedy can also introduce a degree of uncertainty while appeals or challenges to awards are still pending. While Article 142 intervention is rare, the judgment explicitly allows its use for modifying awards, which may encourage parties to approach the Supreme Court when they believe lower courts' refusals have caused manifest injustice.

Sectorial Impact

The infrastructure and construction sector is one of the areas where arbitration is used very

frequently in India. Large infrastructure projects usually involve contracts between private companies and government authorities and these contracts contain arbitration clauses. The high financial stakes in such projects lead parties to often challenge arbitral awards before courts under Section 34 of the Act. As a result, the way courts interpret Section 34 has a direct impact on how disputes in this sector are resolved.

In the case of ***Consolidated Construction Consortium Ltd v. Software Technology Parks of India***, the arbitral award was challenged under Section 34 of the Act. A Single Judge set aside the award by adopting a different interpretation of the contractual clause relating to liquidated damages. However, the Division Bench reversed this decision and upheld the decision taken in the tribunal. Further, the matter reached the Apex Court, it affirmed the Division Bench's reasoning and held that the Single Judge went past the limited jurisdiction available under s.34. It stated that an interpretation of clause in the contract in a different point of view from the arbitral tribunal is valid but that does not place the challenge to the arbitral award among 4 corners of s.34. The SC therefore dismissed and reiterated that judicial interference with arbitral awards must remain minimal.[22]

However, there can be times when there is need to interfere and make a call in order to prevent injustice. Especially, in such sectors with large sums of money involved, even a small change can have major financial consequences. A recent example can be seen in the case of ***Mumbai Metropolitan Region Development Authority v. Mumbai Metro One (P) Ltd,*** where the court observed that it cannot act as an appellate authority to reassess evidence or replace the court's point of view of the contract with that of the arbitrator. However, it clarified that interference is permissible where an award is contrary to the terms of the contract, suffers from patent illegality, or violates the public policy. Applying this, the court partly interfered with the arbitral award. It upheld certain findings of the tribunal but set aside specific portions of the award that were inconsistent with the contract.[23]

This case demonstrates that when utmost necessary judicial interference is justified. Here, there was patent illegality and violation of public policy and thereby, if court does not interfere to modify then that will lead to injustice. One such limited modification cannot be seen as

[22] Consolidated Construction Consortium Ltd. v. Software Technology Parks of India, (2025) 7 SCC 757 (India).
[23] Mumbai Metropolitan Region Development Authority v. Mumbai Metro One (P) Ltd., 2026 SCC OnLine Bom 1479 (India).

decreasing arbitration finality.

Another one such sector is the sports sector. It has also relied on arbitration to resolve contractual conflicts as seen in the ***BCCI v. Kochi Cricket Pvt. Ltd. and BCCI v. Rendezvous Sports World***.[24] The dispute arose after the cricket board terminated the franchise agreement with the team. It was taken before arbitration tribunal, where it concluded that termination was wrongful and awarded substantial damages to the franchise owners.

The award was subsequently challenged before the Bombay HC under Section 34 of the Act. However, the Court denied to meddle with the arbitral award and reiterated that the extent of review by judiciary under s.34 is extremely restricted. It observed that mere dissatisfaction with the tribunal's interpretation cannot justify setting aside an arbitral award. It can be seen in the position taken by the Supreme Court in McDermott case that where the Court emphasised that the arbitrator is the final judge of both the quality and quantity of evidence.[25]

Hence, it can undermine the finality of the arbitration process and convert it into a less efficient dispute resolution process in case the courts begin encroaching upon it increasingly and interfering with the arbitral awards obtained. The manner in which Section 34 is interpreted and applied by courts in real-life can affect number of sectors where arbitration is the most chosen way to resolve disputes. The businesses in such sectors can begin to feel that the dispute just may drag on even after the arbitral process is over and end up in many years in court. Further, this can lead to delay in receiving compensation granted by the arbitral award which can affect the financial stability of businesses, particularly if they depend on timely payments to continue operations.

On the other hand, when courts maintain a limited scope of interference under Section 34, as seen in metro dispute above, it strengthens the finality of arbitral awards. This can increase confidence among companies and investors, especially in sectors where projects involve large investments and long-term commitments. This also reduces misuse of the power conferred by the Act as seen in the above cases.

Global Perspective

Section 34(1) of the Act resonates closely with Article 34 of the UNCITRAL Model Law on

[24] BCCI v. Kochi Cricket (P) Ltd., (2018) 6 SCC 287 (India).
[25] McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181 (India).

International Commercial Arbitration[26]. Both provisions provide for setting aside of the award as the only remedy against such award and neither grants the courts the authority to modify or change the award. As per the Model Law, court may set aside an arbitral award only on certain grounds such as lack of legal capacity, invalid agreement or no proper notice regarding the arbitrator appointment or if the matters fall outside the agreement's scope. However, if the orders on issues within the jurisdiction of the tribunal can be separated from those beyond it, only the portion exceeding the tribunal's mandate may be set aside. Courts may also interfere where the subject matter of the dispute cannot be resolved by arbitration under domestic law or where the award is against public policy of the state.

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) provides limited grounds for refusing recognition or enforcement of an arbitral award by a domestic court. However, it does not regulate the grounds for setting aside, leaving that matter to domestic laws.

A number of countries have adopted the Model Law into their frameworks such as United Kingdom, UAE, Sri Lanka, China, Germany, Australia and Singapore. Although they have incorporated it, they have also introduced modifications either at the time of adoption or through amendments.

United Kingdom

In the UK Arbitration Act 1996, an application on grounds of lack of substantive jurisdiction is governed by section 67[27]. Substantive jurisdiction concerns issues such as the existence and validity of the arbitration agreement, the proper constitution of the arbitral tribunal, and the decisions fall within the scope of the arbitration agreement as provided under section 30 (1)[28] and 82 (1)[29]. It states that challenging the tribunal's substantive jurisdiction, it has the power to modify or annul it in whole or in part.

In ***Dallah Real Estate and Tourism Holding Company v. Ministry of Religious Affairs Government of Pakistan***[30], the court observed that proceedings under section 67 involves re-examination of the jurisdictional issue. The approach differs significantly from the position

[26] UNCITRAL Model Law on International Commercial Arbitration, 1985, art. 34.
[27] Arbitration Act, 1996, c.23, §68, (UK).
[28] *Id.* at 30(1).
[29] *Id.* at 82(1).
[30] Dallah Real Estate and Tourism Holding Company v. The Ministry of Religious Affairs, Government of Pakistan [2010] UKSC 46, at Paragraph 26.

adopted by Indian courts where section 35 does not reassess evidence or re-evaluate the merits of the case. For instance, in ***Maharashtra State Electricity Distirbution Co. Ltd v. Datar Switchgear Ltd***[31], the court emphasised that an arbitral tribunal works as the ultimate authority on evidentiary matters. So the factual conclusions reached by the tribunal based on the evidence presented are not subject to scrutiny by courts as if they were appellate bodies.

It is pertinent to note that the power of courts to modify an award was integrated in the original statute itself and not introduced through amendments later, which shows that the legislature deliberately considered the possibility of judicial modification of awards in exceptional cases. Despite that, even in jurisdictions such as UK where courts enjoy this power, it is exercised cautiously. Judicial intervention is controlled and courts maintain oversight to prevent unnecessary challenges to arbitral awards.

USA

In the US, the Federal Arbitration Act (FAA), 1925 puts forth that a court must confirm an award except when it is modified under the provisions sections 10[32] and 11[33] of the Act. Section 10 sets put specific circumstances under which an award may be vacated, and section 11 identifies the limited situations in which a court can modify or correct the award.

In ***Hall Street Associates, LLC v. Mattel***[34], the Supreme Court addressed whether parties could contractually expand the scope of judicial review of arbitral awards. The arbitration agreement in that case allowed a federal district court to overturn the award if the findings of the arbitrator were found to be erroneous. The court held that such standards of review are not allowed under the FAA and that sections 10 and 11 set forth the statutory grounds on which an arbitral award may be vacated or modified. This ruling ensured that the judicial intervention in arbitration is deliberately limited and be confined to the scope set by the statute, so that parties do not expand the extent of review through contractual arrangements.

Singapore

The Singapore Arbitration Act, 2001 similarly allows modification of awards. Article 49(8)[35] provides that upon hearing an appeal, the court may allow, alter it terms, wholly or partly to

[31] Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd,2003 (2) BOMCR 81.
[32] Federal Arbitration Act, 9 U.S.C., §10.
[33] *Id.* at 11.
[34] In Hall Street Associates, LLC v. Mattel, 552 U.S. 576(2008).
[35] Arbitration Act, 2001 (No.37 of 2001), Art. 49(8) (Sing.).

set aside. In the ***Oxley Consortium Pte Ltd v Geetex Enterprises Singapore Ltd***[36], the interpretation of the contractual phrase "refund all moneys paid by the purchaser" was examined. It was held that this should be read as referring only to amounts paid directly to the vendor and not to payments made by purchaser to third parties. On this basis, the Court of Appeal disagreed with the earlier findings on this issue and exercised authority under section 49(8)(b).

Further, a procedural irregularity will not amount to a breach of natural justice. Only those violations that cause serious prejudice to a party's rights may justify a finding that the principles of natural justice have been violated, which could lead to the setting aside as per section 24 of the Act[37]. However, in practise, courts apply this standard with restraint and the threshold for establishing such a breach remains exceptionally high.

China

The framework governing arbitration is the Arbitration Law of the People's Republic of China, 1995. Under this, courts can annul a domestic arbitral award on certain grounds. One such ground arises when the arbitral tribunal is constituted improperly or when the arbitral proceedings are conducted in a manner that violates the procedural rules. It also distinguishes between domestic and foreign-related awards. As per Articles 58[38] and 70[39] this may occur of the respondent is not informed of the appointment of arbitrator or was prevented from presenting its case for reasons beyond its control.

With regard to the ground of lack of reasons that is the award does not explain the reasoning behind its decision, it is still not a statutory ground for setting aside in China. But this does not indicate that arbitrators work under a flexible standard regarding the reasoning of their decisions. Several arbitral institutions mandate that awards have sufficient reasoning and during the review process by the secretariat, draft awards are often returned if they are lacking. They require arbitrators to provide a detailed justification before it is finalized.

Germany

German Arbitration Law (Book 10 ZPO) follows the Model Law, they cannot modify awards

[36] Oxley Consortium Pte Ltd v Geetex Enterprises Singapore Ltd, [2021] SGCA 71.
[37] *supra*, note 35 at §24.
[38] Arbitration Law of People's Republic of China, 1995, Art. 58 (China).
[39] *Id.* at 70.

but remittal and setting aside is permitted. The grounds for refusing enforcement of foreign arbitral awards are similar to those recognised under the New York Convention.

Recommendations

We agree that, in practice, a rigid "set aside or nothing" approach forces parties into costly re-arbitration for issues as minor as an interest rate. Limited modification avoids such waste as tribunals tend to restart hearings without direction, adding time and expense without altering the outcome. However, this will only make sense depending on how carefully courts implement it and only if they honor the restraint set by the Supreme Court. Instead, if modification becomes a backdoor for re-evaluating or tactically delaying the process then it will completely ruin the said fundamentals of the arbitration.

For clerical or computational errors, a coherent path for the Court would have been to strengthen the role of section 33,[40] as it already provides for correction of errors with regards to computation, any errors with respect to typos or anything clerical or other errors with similar nature made in an award,[41] therefore we believe there was no need of a judicial intervention for the same.

This disagreement also come from relying on the s.5 of the Act,[42] which restricts intervention from judiciary except where the statute expressly permits, implying that the legislative intent behind this provision was to keep arbitration away from judicial overreach. When courts carve out additional powers that the Act does not expressly provide, they dilute this legislative choice and reopen the very door Section 5 sought to close.

In essence, the actual risk is not merely regarding the legal rules but also the actions of the persons themselves. Arbitration will cease to be the recourse having final word, if parties and lawyers are aware that an award can be altered by the courts. They do not have to seek a court's intervention to get an award cancelled but may simply seek minor modifications that will be of benefit to their clients. Arbitrators will also tend to not be so cautious because they are aware that a judge can rectify everything later. In the long term, arbitration may lose its autonomy and turn into another pre-court procedure.

[40] *supra*, note 1 at §33.
[41] *Id.* at 33(1)(a).
[42] *Id.* at 5.

Conclusion

The controversy of judicial interference on arbitration continues to test the borders between justice and party autonomy. The paper has considered how Indian courts have addressed Section 34 of the Act and how a conflicting case laws has served to leave us in the uncertainty as to whether the courts can in fact modify arbitral awards or not.

The Supreme Court is in essence attempting to prevent unnecessary re-arbitration, but in practice it introduces certain grey matters which may contribute to an increase litigation and the affect the finality aspect of the awards. The comparison of other nations has indicated that even the modification powers can be effective only exist the law openly outlines it in statutes and that the law remains yet to be detailed in India. Thereby, leading to the risk of the judicial overreach and undermining the autonomy of the parties as individuals choose arbitration because it is fast, certain, and independent from litigation.

That said, from the analysis it is clear that a limited judicial intervention for modification may be useful to avoid injustice but this shall only be done with legislative clarity otherwise it shall lead to undermining the foundation of arbitration. The step forward must be to codify the court's scope in intervention and strike a middle ground between ensuring justice while upholding the finality and autonomy as these are major reasons why arbitration is considered. India will be one step closer to becoming an arbitration-friendly jurisdiction only when it implements such steps.