CASE ANALYSIS: GAYATRI BALASAMY V. ISG NOVASOFT TECHNOLOGIES LIMITED (2025)

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ABSTRACT

This paper is an attempt to understand and analyse the Supreme Court's Constitution Bench decision in Gayatri Balasamy v. ISG Novasoft Technologies Limited, which has finally put to rest one of the most persistently contested questions in Indian arbitration law: can a court actually modify an arbitral award, or is it limited to simply setting it aside or leaving it alone? The Bench, by a 4:1 majority, held that courts can modify, but only within carefully drawn limits. The dissent by Justice Viswanathan is equally compelling and raises concerns that go beyond mere procedural disagreement. I have tried to present both sides objectively. The factual backdrop—a senior woman executive who faced workplace sexual harassment and then had to fight through multiple rounds of arbitration and court proceedings just to see some measure of compensation—also deserves attention, and this analysis ensures it is not reduced to a mere footnote in what is otherwise a technically dense judgment.

Keywords: Arbitration, Section 34, Modification of Award, Severability, UNCITRAL Model Law, Sexual Harassment, Article 142.

I. INTRODUCTION

There is something almost paradoxical about arbitration law in India. The Arbitration and Conciliation Act, 1996 was enacted precisely to reduce the role of courts—to give parties a faster, more final alternative to conventional litigation. And yet, for nearly three decades after its enactment, courts kept finding themselves drawn back in, sometimes correcting awards, sometimes modifying them, and almost always being accused of overstepping. The question of whether a court can modify an arbitral award as opposed to merely setting it aside became one of those unresolved doctrinal sores that everyone in arbitration practice knew about but that no authoritative pronouncement had cleanly addressed.

That changed on April 30, 2025, when the five-judge Constitution Bench delivered its judgment in *Gayatri Balasamy v. ISG Novasoft Technologies Limited.*[1] The case had an unusual dual character. On the surface, it was a high-stakes legal debate about the scope of sections 34 and 37 of the Arbitration Act.[2] Beneath the surface, it was the story of a woman who alleged she was sexually harassed by her CEO, lost her job, and then had to spend years fighting through arbitral proceedings and multiple rounds of judicial challenge just to recover what she was owed. The Constitution Bench's decision does justice to both dimensions, which is a mark of its depth and judicial balance.

The pre-existing legal position rested uncomfortably on the three-judge Bench decision in *Project Director, NHAI v. M. Hakeem* (2021),[3] which had flatly denied any modification power to courts under section 34. Several High Courts, however, had carved out their own approaches—some allowing limited corrections, others refusing to budge from the binary of 'set aside or affirm.' This inconsistency was itself a problem for parties choosing India as a seat of arbitration. The Constitution Bench was convened to resolve this impasse, and its answer—'yes, but narrowly'—is both principled and practically sensible.

II. LEGAL FRAMEWORK: RELEVANT STATUTORY PROVISIONS

Before going into the case, it helps to understand what the statute actually says or, in this instance, what it conspicuously does not say.

[1] Gayatri Balasamy v. ISG Novasoft Technologies Ltd., 2025 INSC 605.
[2] The Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).
[3] Project Director, National Highways Authority of India v. M. Hakeem, (2021) 9 S.C.C. 1.

A. Section 34 of the Arbitration and Conciliation Act, 1996

Section 34 is the provision that allows a party to challenge an arbitral award before a court. Subsection (1) creates the right to apply for setting aside; subsection (2) lists the grounds—incapacity, invalid agreement, violation of natural justice, conflict with public policy, and a few others. What section 34 does not say anywhere—and this is the crux of the controversy—is that a court may modify an award. The word simply does not appear.

There is, however, a proviso in section 34(2)(a)(iv) that has done a great deal of quiet legal work in this judgment. It says that where the decisions on matters submitted to arbitration can be separated from those not submitted, only the latter portion need be set aside.[4] The majority in *Balasamy* read this severability proviso as implying, necessarily, a power to retain and enforce the valid portion of an award which, functionally, is modification. Whether that reading is textually sound or represents creative interpretation is one of the central debates in this judgment.

B. Section 37 – Appeals

Section 37 provides for appeals against orders made under section 34. The appellate court stands in the shoes of the court below—meaning that whatever modification power (or lack of it) exists at the section 34 stage equally applies on appeal. The Division Bench of the Madras High Court in this very case exercised what it thought was its section 37 jurisdiction when it drastically reduced Ms. Balasamy's compensation. The Supreme Court disagreed, and in no uncertain terms.

C. The UNCITRAL Model Law and Its Influence

India's arbitration statute draws heavily from the UNCITRAL Model Law on International Commercial Arbitrations,[5] and Article 34 of that Model Law—like section 34 of the Indian Act—makes no room for modification. Justice Viswanathan's dissent leaned hard on this pedigree: if the international template was deliberately silent on modification, why should courts read in a power that legislators chose not to confer? The majority had an answer for this too, but the dissent's concern about India's international arbitration credibility is not one that

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[4]The Arbitration and Conciliation Act, 1996, § 34(2)(a)(iv).

[5]U.N. Comm'n on Int'l Trade Law, UNCITRAL Model Law on International Commercial Arbitration, U.N. Doc. A/40/17, Annex I (1985), as amended by A/61/17, Annex I (2006).

can simply be brushed away.

III. THE CASE: FACTS, ISSUES, AND ARGUMENTS

A. Facts of the Case

Gayatri Balasamy was appointed Vice President (M&A Integration Strategy) at ISG Novasoft Technologies Limited on April 27, 2006. Within three months of joining, on July 24, 2006, she resigned alleging that she had been sexually harassed by the company's CEO, Krishna Srinivasan. The resignation never took effect. What followed was a deteriorating relationship between Ms. Balasamy and ISG, punctuated by three successive termination letters issued by the company against her.

Ms. Balasamy then filed criminal complaints under the Indian Penal Code, 1860 and the Tamil Nadu Prohibition of Harassment of Women Act, 1998[6] against the CEO and the company's Vice President. ISG hit back with criminal proceedings of its own—defamation and extortion charges against her. The Supreme Court, in this tangle of mutual litigation, directed the parties to submit their civil disputes to arbitration.

The arbitral tribunal eventually awarded Ms. Balasamy Rs. 2 crore in compensation. She did not think that was enough. She approached the Madras High Court under section 34, arguing that the tribunal had inadequately addressed her claims. A single judge agreed in part and enhanced the award by Rs. 1.68 crore, holding that ISG had failed to constitute a committee as required by the *Vishaka* guidelines[7] to deal with workplace sexual harassment complaints. That enhancement did not survive the Division Bench. On appeal under section 37, the Division Bench slashed the additional amount to a paltry Rs. 50,000—a reduction that the Supreme Court later described as 'arbitrary and disproportionate.' Ms. Balasamy filed a Special Leave Petition before the Supreme Court, and a three-judge Bench, recognising the unsettled state of the law on modification, referred the matter to a Constitution Bench.

B. Questions of Law Referred

1. Whether the powers under sections 34 and 37 of the Arbitration and Conciliation

[6]Tamil Nadu Prohibition of Harassment of Women Act, 1998, T.N. Act 22 of 1998 (India).
[7]Vishaka v. State of Rajasthan, (1997) 6 S.C.C. 241.

Act, 1996 include the power to modify an arbitral award?

2. If such a power exists, can it be exercised only where the award is severable and only a part thereof is liable to be modified?

3. Does the power to set aside, being the larger power, necessarily include the lesser power of modification, and if so, to what extent?

4. Can the power to modify be read into the power to remit an award under section 34(4) of the Act?

C. Submissions of the Parties

1. Appellant – Gayatri Balasamy: The appellant's argument was, at its core, a practical one: why should a party be forced to go through the cost and delay of fresh arbitral proceedings when a court can simply fix the error that has crept into part of an award? If the court has the power to wipe out an award entirely, surely it has the lesser power to correct only the defective portion? She also relied on Article 142 of the Constitution[8]—the Supreme Court's power to do complete justice—to argue that modification was available in appropriate cases. On the specific facts, she contended that ISG's failure to constitute an Internal Complaints Committee under the *Vishaka* framework was a statutory default that directly contributed to her suffering, and that the original Rs. 2 crore award was wholly inadequate. The Division Bench's further reduction to Rs. 50,000 was, she said, indefensible.

2. Respondent – ISG Novasoft Technologies Limited: ISG's position was more formalistic but not without force. Section 34, they argued, is a closed provision—it says what it says, and what it says is that courts may set aside or not set aside. Any departure from this text would effectively convert courts into appellate bodies over arbitral tribunals, which is precisely what the Act and the UNCITRAL Model Law it rests on was designed to prevent. They leaned heavily on *NHAI v. M. Hakeem* as controlling authority. ISG also raised a slippery slope concern: once courts are permitted to 'correct' arithmetical errors, who is to stop them from characterising broader substantive disagreements as 'manifest errors'?

[8]INDIA CONST. art. 142.

IV. OBITER DICTA – NOTABLE OBSERVATIONS OF THE COURT

Beyond the operative holding, the Constitution Bench made several observations that, while not strictly binding, are important enough to note.

On Article 142: The Court was careful to say that Article 142 is an exceptional power—it cannot be used as a routine bypass of section 34's limitations. Its invocation to modify an award is justified only in rare circumstances where litigation must be brought to an end, not as a general appellate tool. This is a sensible clarification because the Court's earlier, piecemeal use of Article 142 to modify awards had been one of the sources of doctrinal confusion.

On Pendente Lite Interest: The Court held that courts cannot touch the rate of pendente lite interest awarded by a tribunal; that goes to the merits of the award and would constitute impermissible appellate review. Post-award interest, on the other hand, can be adjusted in exceptional circumstances, since it relates to enforcement rather than the substance of the dispute.

On Parliamentary Intervention: Perhaps the most practically significant observation is the Court's open invitation to Parliament to legislate a clearer, more circumscribed modification power.[9] The majority's implication is unmistakable: the current position, arrived at by judicial interpretation, is workable but not entirely satisfactory. A statutory amendment would provide greater certainty.

On Employer Accountability: The Court's remarks on ISG's failure to constitute an Internal Complaints Committee under the *Vishaka* guidelines carry a warning that employers would do well to heed. The Court treated the ICC failure not as a peripheral fact but as a substantive breach with serious legal consequences, one that directly informed the restoration of Ms. Balasamy's enhanced compensation.[10]

V. RATIO DECIDENDI

The majority judgment, authored by Chief Justice Sanjiv Khanna, rests on four essential

[9] Law Commission of India, 246th Report on Amendments to the Arbitration and Conciliation Act, 1996 (2014).
[10] Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013 (India).

propositions:

First, courts under sections 34 and 37 do possess a limited power of modification. This power is not merits review by another name—it is strictly confined to correcting clerical, computational, or typographical errors, and to severing and removing invalid portions of an award where the remainder can stand on its own.

Second, the textual basis for this power lies in the severability proviso to section 34(2)(a)(iv). By permitting only the tainted portion to be set aside where submissions are separable, the proviso necessarily implies the validity and therefore the enforceability of the untainted remainder. Retaining and enforcing that remainder is, the Court held, functionally a modification.

Third, there is an absolute bar on merits review. A court cannot correct what it perceives as an error in the tribunal's reasoning, re-evaluate the evidence, or substitute its own assessment of compensation quantum for the tribunal's. The dissent's concern that any modification power risks expanding into merits review is precisely why these boundaries were drawn with such care.

Fourth, post-award interest may be modified in exceptional circumstances; pendente lite interest may not. The former relates to enforcement; the latter is part of the award's substance.

Justice Viswanathan's dissent argued that section 34 permits only setting aside or remission—nothing more. In his view, the UNCITRAL Model Law framework forecloses modification, and Article 142 cannot override a statutory scheme designed to insulate arbitral awards from judicial interference. The dissent is the more textually faithful reading, but the majority's approach is more practically workable, even if it involves a degree of interpretive licence.

VI. RELIEF GRANTED

Applying its own holding, the Supreme Court restored the single judge's enhancement of Rs. 1.68 crore to Ms. Balasamy. The Division Bench's reduction to Rs. 50,000 was set aside as arbitrary and unjustifiable. The Court directed payment of the enhanced award along with applicable interest within the time specified in the order. It bears emphasis that the Division Bench had no jurisdiction to re-examine the adequacy of compensation—that was a merits question, and section 37 gives no appellate power over the merits. Its reduction of the award

was, in a sense, the clearest illustration in this very case of exactly the kind of judicial overreach the majority's holding was designed to prevent.

VII. CRITICAL ANALYSIS: MODIFICATION POWER VS. FINALITY OF AWARDS

The table below summarises how the *Balasamy* judgment changes the landscape relative to the pre-existing position:

Aspect	**Pre-Balasamy Position**	**Post-Balasamy Position**
Scope of Section 34	Binary: courts could only set aside or affirm an award in its entirety (per Hakeem).	Courts have a narrow implied power of modification rooted in the severability proviso to section 34(2)(a)(iv).
Nature of Modification	No modification at all; clerical errors had to go back to tribunal under section 33.	Correction of clerical, computational, and typographical errors permitted; severance of bad from good portions of an award allowed.
Merits Review	Inconsistent: some High Courts had allowed 'manifest error' modifications, others had not.	Merits review is categorically prohibited. Courts cannot reassess evidence or substitute their view on compensation quantum.
Pendente Lite Interest	Inconsistent High Court practice.	Pendente lite interest is untouchable; it forms part of the award's substance.
Post-Award Interest	Divided opinion.	May be adjusted in exceptional circumstances as it concerns enforcement, not the award's substance.
Use of Article 142	Used ad hoc by the Supreme Court to modify awards without clear doctrinal basis.	Available only in rare cases to conclusively end litigation; cannot be used to circumvent section 34's limits.

Employer Obligations (ICC)	Treated as separate from arbitral proceedings; compliance failures not always factored into compensation.	Failure to constitute an Internal Complaints Committee carries substantive legal consequences and can materially affect compensation quantum.
International Standing	Uncertainty undermined India's credibility as an arbitration-friendly seat. Statute silent; law made entirely by courts.	Limited, predictable modification power intended to reconcile correction with finality. Parliament encouraged to codify a clear modification power.

VIII. SIGNIFICANCE OF THE JUDGMENT

A. Doctrinal Significance: The most immediate impact of *Balasamy* is the resolution of a question that had remained judicially unsettled for over two decades. High Courts across India—Bombay, Delhi, Calcutta, Madras—had all grappled with modification questions and come to different answers. A five-judge Constitution Bench decision now binds them all.

B. Institutional Significance: India has long aspired to be a destination of choice for international commercial arbitration. That aspiration requires, at minimum, that courts behave predictably. The uncertainty about modification power was a real obstacle—foreign parties and their counsel could not confidently advise on what would happen if an Indian court got involved with an award. *Balasamy* narrows that uncertainty considerably.

C. Social Significance: Cases like this one remind us that 'arbitration law' is not a hermetically sealed technical field; it is law that operates on real people with real grievances. Ms. Balasamy alleged she was sexually harassed, lost her employment, and then had to fight for nearly two decades through criminal proceedings, arbitration, and multiple judicial hearings. The restoration of her enhanced compensation is, on one reading, just a legal correction. On another, it is a statement that the courts will not allow procedural technicalities to become a shield behind which employers escape liability for workplace misconduct.

IX. LEGAL PRINCIPLES EXAMINED

Doctrine of Severability: The principle that an invalid portion of a legal instrument may be

separated out, leaving the valid remainder operative, has roots in constitutional jurisprudence.[11] *Balasamy* transplants it cleanly into the arbitration context.

Minimal Judicial Intervention: The Act, read alongside the UNCITRAL Model Law, is built on the premise that courts should stay out of arbitration as much as possible. The majority was at pains to show that its limited modification power is consistent with that premise—it is corrective, not supervisory in the full sense.

Natural Justice: The Court's finding that the Division Bench's reduction of the award to Rs. 50,000 was arbitrary ties into the principle that a party cannot be subjected to an irrational or grossly disproportionate outcome without reason.

Finality of Arbitral Awards: The modification power, as the Court stressed, is in service of finality—not a detour around it. By allowing courts to fix clerical errors rather than forcing parties back into fresh arbitration, the judgment actually reduces the total volume of proceedings.

X. COMPARATIVE CASE ANALYSIS

A. Project Director, NHAI v. M. Hakeem (2021): *Hakeem* was the high-water mark of the 'no modification' school. Justice Nariman's reasoning was tight and textually compelling: section 34 says set aside; it does not say modify; therefore courts cannot modify.

B. Hindustan Zinc Ltd. v. Friends Coal Carbonisation (2006): This earlier decision allowing an arithmetical error to be corrected foreshadowed *Balasamy's* holding.[12]

C. Vishaka v. State of Rajasthan (1997): The *Vishaka* judgment is technically about public law and workplace safety, not arbitration. But it is indispensable to understanding why the compensation figures in this case are what they are. ISG's failure to constitute an Internal Complaints Committee was not a minor administrative oversight; it was a direct breach of the guidelines that the Supreme Court itself had laid down.

[11] See R.M.D. Chamarbaugwalla v. Union of India, A.I.R. 1957 S.C. 628.
[12] Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 S.C.C. 445.

XI. CONCLUSION

The *Gayatri Balasamy* judgment is one of those rare decisions that manages to do something procedurally significant while also being attentive to the human story behind the litigation. Chief Justice Khanna's majority has drawn a narrow but workable line: courts may correct, but they may not review. That line will undoubtedly be tested in the years ahead, as lawyers argue about where correction ends and review begins. But the line is now drawn, and its coordinates are reasonably clear.

Justice Viswanathan's dissent deserves respect. It is the more faithful reading of the statute and the more cautious position on India's international obligations under the UNCITRAL framework. But the majority's approach is more responsive to arbitration as it actually functions—not as a hermetically sealed system, but as one that occasionally produces imperfect awards that justice requires correcting without the enormous cost of starting over.

At the level of the individual, Gayatri Balasamy's case is a sobering reminder of what workplace harassment can cost a person—not just emotionally, but in years of litigation, layers of proceedings, and uncertainty about whether the legal system will ultimately respond. That the Supreme Court, at the end of that long journey, restored her enhanced compensation and made clear that ISG's statutory failures had consequences—that, for what it's worth, is also a form of justice. The judgment will be studied, argued over, and cited for years. What it stands for, at bottom, is a court trying in good faith to reconcile the competing demands of arbitral finality, practical correction, and human accountability.

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