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Judicial Review Under Section 34 of the Arbitration & Conciliation Act, 1966: An Analysis of the Courts' Power to Modify Arbitral Awards

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Abstract

The Arbitration and Conciliation Act, 1996, serves as the cornerstone for dispute resolution in India, with Section 34 providing the framework for judicial review of arbitral awards. However, the scope of the court's powers under this provision, particularly whether it extends to modifying arbitral awards, has been a topic of judicial debate. While the Supreme Court in *McDermott International Inc. v. Burn Standard Co. Ltd.*[1] ruled against court modification of awards, subsequent rulings like *Gayatri Balaswamy v. ISG Novasoft Technologies Ltd.*[2] have suggested otherwise. This research paper delves into the practical implications of allowing courts to modify arbitral awards, contrasting the positions of various Indian High Courts and the Supreme Court. Additionally, the research offers a comparative analysis of the arbitration laws in other jurisdictions, where courts are empowered to modify arbitral awards. The paper thus critically examines the legislative intent behind Section 34 and argues for a reconsideration of the current legal framework in India to align with the broader objectives of efficient, speedy dispute resolution through arbitration.

Keywords: arbitral awards, arbitration, judicial review, modification, Section 34

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[1] *McDermott International Inc v. Burnt Standard Co Ltd*., [2006] 11 SCC 181.
[2] *Gayatri Balaswamy v. ISG Novasoft Technologies Ltd.,* (2015) 1 Mad LJ 5.

Introduction

Section 34 of the Arbitration and Conciliation Act, 1996 (*hereinafter* "the Act") outlines the limited grounds on which a party may seek to set aside an arbitral award.[3] While the provision authorizes courts to scrutinize the arbitration process, the extent of this power - particularly whether it includes the ability to modify an award, remains contentious. Over time, Indian courts have delivered divergent opinions, leading to a lack of clarity on the scope of judicial review under this section.

The Supreme Court's landmark decision in *McDermott International Inc. v. Burn Standard Co. Ltd*. (hereinafter "the McDermott case")[4] firmly held that Section 34 does not empower courts to modify arbitral awards. The Court emphasized that judicial intervention is supervisory and limited to setting aside an award on specific grounds, not correcting or altering it. However, the Madras High Court, in *Gayatri Balaswamy v. ISG Novasoft Technologies Ltd.*,[5] took a contrasting view, suggesting that the language of Section 34 could imply a broader scope that might allow for modification in certain cases, even if such power is not explicitly stated.

India promotes arbitration as a preferred mechanism for commercial dispute resolution due to its efficiency, finality, and reduced court interference. Sections 35 and 36 of the Act reinforce this objective by granting arbitral awards finality and enforceability akin to court decrees.[6] Judicial review under Section 34 is intentionally limited, permitted only in instances of procedural irregularity, bias, fraud, or violation of natural justice. Yet, challenges persist when an award contains defects that do not warrant complete annulment but still require correction. In such cases, a limited power to modify may serve justice better than outright setting aside, which often compels parties to restart the arbitral process - defeating the purpose of swift resolution.

While Section 34 presently offers only two remedies - setting aside or remitting the award - the absence of an explicit provision for modification has sparked debates. Some courts have adopted a purposive interpretation to justify limited modifications, while others adhere to a

[3] Arbitration & Conciliation Act, 1996, S. 34, No. 26, Acts of Parliament, 1996 (India).
[4] *McDermott International Inc v Burnt Standard Co Ltd, supra* note 1.
[5] *Gayatri Balaswamy v. ISG Novasoft Technologies Ltd., supra* note 2.
[6] Arbitration & Conciliation Act, 1996, S. 35 & 36, No. 26, Acts of Parliament, 1996 (India).

strict, literalist approach. The judiciary's caution stems partly from Section 5 of the Act, which bars court interference unless expressly permitted.[7] Consequently, courts have refrained from re-evaluating the merits of arbitral awards, even though parties frequently seek modifications instead of complete annulments.

This research paper critically examines the judicial uncertainty surrounding modification of arbitral awards under Section 34. It evaluates evolving judicial interpretations, especially the Supreme Court's rulings that have overridden earlier decisions allowing such modifications. By comparing the Indian framework with jurisdictions that have incorporated the UNCITRAL Model Law and empowered courts to modify awards, the paper highlights India's legislative silence on this issue. It further analyzes the intent behind Section 34 and Article 34 of the UNCITRAL Model Law to clarify the permissible scope of judicial intervention. The paper ultimately argues for a reconsideration of the current legal framework to align with the broader goal of promoting arbitration as a credible, speedy, and final dispute resolution mechanism.

Power of the Court to Review Arbitral Awards under Arbitration & Conciliation Act, 1966

The Arbitration and Conciliation Act, 1996, governs the landscape of arbitration proceedings in India and provides the legal framework for the time-bound resolution of disputes through arbitration. Section 34 of the Act outlines the scope and power that a Court of law can exercise while dealing with a challenge to set aside an arbitral award. While the statutory provisions seem to be rudimentary in nature, the extent and authority of the Court to interfere with arbitral awards under Section 34 of the Act has been a subject of debate, particularly in the absence of an exhaustive appellate remedy against arbitral awards. Section 34 of the Act outlines several grounds for challenging an arbitral award, including a party's incapacity, invalidity of the arbitration agreement, failure to properly notify the arbitration, the award addressing issues outside the scope of reference, non-compliance with the arbitration agreement's terms, the dispute's non-arbitrability under Indian law, and the award being contrary to Indian public policy.

[7] Arbitration & Conciliation Act, 1996, S. 5, No. 26, Acts of Parliament, 1996 (India).

Judicial Support for the Modification of Awards

Several courts have supported the modification of arbitral awards. In *Tata Hydro-Electric Power Supply Co. Ltd. v. Union of India*,[8] the Court modified the duration for which interest was granted, while maintaining the original interest rate, exercising this power under Article 142 of the Constitution of India to ensure "the ends of natural justice, equity, and fair play."[9] The same reasoning was applied in the cases of *Krishna Bhagya Jala Nigam Ltd. v. G. Harischandra Reddy*[10] and *Royal Education Society v. LIS (India) Construction Co. (P) Ltd.*[11], where modifications to the interest rate were made. Another perspective adopted by the courts is that the phrase "recourse to a Court against an arbitral award" should not be limited to the mere act of seeking to set aside the award. In *Gayatri Balaswamy v. ISG Novasoft Technologies Ltd.*,[12] the Madras High Court held that recourse could also include seeking to modify the award. On appeal, the Division Bench affirmed that a reasonable reading of Section 34 would grant courts the authority to modify the award. Denying this power would result in a multiplicity of proceedings, which would contradict the legislative intent behind Section 34.

Allowing courts to modify arbitral awards offers several key benefits, including saving time and reducing costs for the parties involved. If the court were to set aside the award and send the matter back to the tribunal, it would result in additional proceedings, thereby unnecessarily prolonging the arbitration process and increasing expenses. Another benefit of modifying an award is that it eliminates the need for further judicial deliberation. Under Section 34, the court has already reviewed the evidence and made its decision after careful consideration. Therefore, modifying the award does not require additional thought or analysis by the court. By simply modifying the award rather than returning the case to the tribunal, courts can achieve practical advantages. However, this reasoning for modifying awards has been challenged by several other courts, and such modifications also come with potential drawbacks.

Judicial Opposition to Modification of Awards

[8] *Tata Hydro-Electric Power Supply Co. Ltd. v. Union of India.*, 2003 (4) SCC 172.
[9] INDIA CONSTI. Art. 142.
[10] *Krishna Bhagya Jala Nigam Ltd. v. G. Harischandra Reddy*, 2007 (2) SCC 720.
[11] *Royal Education Society v. LIS (India) Construction Co. (P) Ltd*, (2009) 2 SCC 261.
[12] *Gayatri Balaswamy v. ISG Novasoft Technologies Ltd., supra* note 2.

In the *McDermott*, the Court emphasized that Section 34 confers only a limited supervisory jurisdiction on the courts, explicitly restricting judicial intervention to a minimal role.[13] As a result, courts do not possess the authority to alter or modify an arbitral award. Similarly, in *Cybernetics Network Pvt. Ltd.*,[14] the Court noted that Section 34 of the 1996 Act diverges from Section 15 of the Arbitration Act, 1940, and that this departure was intentional. The deliberate omission of the provision for modification under the 1940 Act reflects the Legislature's clear intent, and reading a modification power into Section 34 would undermine the statutory framework. In *M/s. National Highways Authority of India v. M/s. Oriental Structural Engineers Pvt. Ltd.*,[15] the Court underscored that Section 34 outlines specific and limited grounds on which an award may be set aside, and this remedy must be used with restraint. Permitting courts to modify awards would dilute the finality accorded to arbitral decisions and effectively transform arbitration into another judicial tier, rather than a true alternative to litigation.

In the recent *NHAI* decision,[16] the Supreme Court reaffirmed that courts do not have the authority to modify arbitral awards under Section 34. First, the Court clarified that Section 34 mirrors the UNCITRAL Model Law on International Commercial Arbitration, 1985, which likewise does not grant courts the power to modify awards. Second, the Court held that the text of Section 34 is unambiguous and does not permit any implied judicial power of modification. Third, the Court highlighted that Sections 15 and 16 of the 1940 Act explicitly authorized courts to modify arbitral awards, and the absence of such provisions in the 1996 Act is intentional and significant. Lastly, the Court clarified that past instances where awards were modified under Article 142 of the Constitution do not constitute binding precedent for permitting such modifications under the 1996 Act. Hence, the Court emphasized that such decisions cannot be treated as precedents, as the Courts in those cases did not delve into the scope of powers under Section 34. Arguments from both sides were thoroughly weighed by the Court, and the extent of judicial authority under Section 34 was definitively clarified by the Court. This judgement assumes even greater significance given the length of time this issue

[13] *McDermott International Inc v Burnt Standard Co Ltd, supra* note 1.
[14] *Cybernetics Network (P) Ltd. v. Bisquare Technologies (P) Ltd*., 2012 SCC OnLine Del 1155.
[15] *National Highways Authority of India v. M/s. Oriental Structural Engineers Pvt. Ltd*, 2008 ILR DEL 17 970.
[16] *The Project Director National Highways v. M. Hakeem*, AIR 2021 SUPREME COURT 3471.

has been debated and the glaringly contradictory judgements that have been passed on the matter.

Beyond the observations made by the judiciary, there are other significant considerations that merit attention. One central issue is whether, if courts have the authority to wholly set aside an arbitral award, they should also be permitted to modify it - particularly when all the necessary evidence is already available before them. However, enabling courts to alter awards could encourage the losing party to routinely file applications under Section 34, thereby increasing the caseload of regular courts. This concern was acknowledged by the Supreme Court in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. and Ors.*[17], where it emphasized that the Arbitration and Conciliation Act, 1996 was enacted with the objective of lessening the judiciary's workload. Judicial pronouncements, as cited earlier, consistently underline that the scope of the courts' intervention under Section 34 is purposefully limited - to correct errors made by the arbitrator, not to re-evaluate or modify decisions. Granting modification powers would run contrary to the Act's framework and legislative intent and thus cannot be permitted.

Analysis of the Power of the Court to Review the Award

The relationship between the judiciary and arbitration is complex, particularly concerning the power of courts to review arbitral awards. This chapter investigates the delicate balance that courts must maintain when intervening in arbitration, a process designed to be efficient and final. This analysis highlights the inherent tension between upholding the sanctity of arbitral awards and addressing potential errors or injustices that may arise within them. Through this exploration, this chapter seeks to illuminate the evolving nature of judicial authority in the context of arbitration and its implications for the broader legal landscape.

Judicial Constraints on the Arbitral Tribunal's Findings

In this backdrop, it is incumbent to refer to the decision of the Hon'ble Supreme Court in *Larsen Air Conditioning and Refrigeration Company v. Union of India and Ors*[18] wherein the

[17] *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd and Ors.,* AIRONLINE 2021 SC 443.
[18] *Larsen Air Conditioning and Refrigeration Company v. Union of India,* (2021) 9 SCC 1.

Supreme Court set aside the order of the Allahabad High Court modifying the rate of interest awarded by the arbitrator. The High Court observed that Section 34 of the Arbitration and Conciliation Act does not confer any authority upon the Court to alter or amend an arbitral award. The Supreme Court further held, while the award may be severed in parts, each severed part must be dealt with in total, provided such severance does not impact the remaining award.

While considering the "appellate nature" of the provision contained in Section 34, the Supreme Court in *National Highways Authority of India v. M. Hakeem*[19] held that an award can be set aside only on the grounds mentioned in sub-sections (2) and (3) of Section 34. It further remarked, "Quite obviously, if one were to include the power to modify an award in Section 34, one would be crossing the Lakshman Rekha and doing what ought to be done according to the justice of a case. In interpreting a statutory provision, a Judge must put himself in the shoes of Parliament and ask whether Parliament intended this result. Parliament intended that no power to modify an award exists in Section 34 of the Act. It is only for Parliament to amend the provision above in the light of the experience of the Court in the working of the Arbitration Act, 1996 and bring it in line with other legislations the world over."[20]

The Arbitration and Conciliation Act, 1996, is primarily modelled on the UNCITRAL Model Law on International Commercial Arbitration, as adopted by the United Nations Commission on International Trade Law. Under Article 34 of the Model Law, the only permitted remedy against an arbitral award is through an application for its setting aside; notably, it does not grant courts the authority to amend or modify the award. This interpretation has been consistently affirmed by the Supreme Court while clarifying the extent of judicial review under Section 34 of the Act. In the *McDermott* case[21], the Court emphasized that its role under Section 34 is limited to supervisory oversight, intended merely to safeguard the fairness of the arbitral process. The judgment further clarified that intervention is warranted only if the illegality is fundamental to the award or if the breach of public policy is so egregious that it shocks the conscience of the Court.

[19] *National Highways Authority of India v. M. Hakeem, supra* note 16.
[20] *Id.*
[21] *McDermott International Inc v Burn Standard Co Ltd, supra* note 1.

The narrow scope for challenging an arbitral award is grounded in the reasoning that the modus operandi in arbitration is to ensure the least interference from the courts. In this regard, the decision of the Supreme Court in *K. Sugumar v. Hindustan Petroleum Corporation Limited*[22] deserves reference, wherein it was observed that the arbitral award reflects the view taken by the arbitrator upon consideration of the evidence and material before him. So long as the conclusion is plausible and reasonable, it ought not to be interfered with. The parties choose to avail themselves of an alternative dispute resolution mechanism, and they must accept the wisdom of the arbitrator. Unless the perversity or misconduct is apparent on the face of the award, interference was held to be unjustified.

Early Approach of the High Courts to Modify Arbitral Awards

Although courts have consistently affirmed that their authority under Section 34 is limited and does not extend to modifying an arbitral award or replacing the tribunal's reasoning with their own, there have been numerous cases where courts have taken a divergent approach and, to some degree, interpreted and altered the contents of the arbitral award.

The decision of the Supreme Court in *Tata Hydro Electric Power Supply Company Limited. v. Union of India*[23] is a stark example of a case where the Supreme Court, even though it set aside the High Court's order, also modified a part of the arbitral award while upholding the award passed by the arbitrator. The question was whether the parties had raised a dispute as to whether a 'Current Transformer' was a 'meter' that was not 'correct,' for which any contest would lie before an Electrical Inspector under S. 26 (6) of the Indian Electricity Act, 1910, thereby rendering it non-arbitrable.[24] The arbitrator ruled that C.T. was not a meter and therefore, the dispute was arbitrable. The High Court, however, ruled against the appellant and held that the C.T. was an apparatus, making the dispute non-arbitrable, and set aside the arbitrator's decision. The Supreme Court found that, "if there is no dispute as to whether the meter is defective or not, there is nothing which prevents the parties from referring their other disputes to arbitration for determining the liability of the consumer in such cases." Since neither party had contested that the C.T. was defective before the arbitral tribunal, the bar of Section 26 did

[22] *K. Sugumar v. Hindustan Petroleum Corporation Limited*, (2020) 12 SCC 539.
[23] *Tata Hydro Electric Power Supply Company Limited. v. Union of India*, *supra* note 8.
[24] *Id.*

not apply, and thus, the High Court's decision to set aside the award was incorrect. However, in the process, the Court modified the award to grant a lesser interest on the damages. It can be presumed that, in light of equity, the Court reduced the damage award because the charge incurred during the pending litigation would be excessive. However, the Court had noted no submissions to this effect in its judgement, and why it seemed equitable to make such a modification. Therefore, there was no explicit discussion on the power of Courts to modify awards.

Similarly, in *Hindustan Zinc Limited v. Friends Coal Carbonisation*,[25] the Hon'ble Supreme Court set aside the Rajasthan High Court's order and restored the trial court's judgment, which had modified the award passed by the arbitrator. The Supreme Court did not specifically address the issue of whether the Court has the power to modify the award. Still, it affixed a seal of approval on the decision of the trial court to modify the award. Similarly, in *Krishna Bhagya Jala Nigam Limited v. G. Harischandra Reddy,*[26] the Supreme Court reduced the amount awarded to meet the ends of equity, keeping in mind the long-standing dispute between the parties and the piling cost of litigation. The Courts, in these cases, modified the award without discussing whether it had the power to modify or interfere with the award. It is evident from the Apex Court's rulings that the Court modified the order even though it did not address the use of the word "set aside" in Section 34.

Reassessing the Authority of the Courts to Modify or Sever Awards

In *Angel Broking Ltd v Sharda*,[27] the parties approached the Court under Section 34 of the Act to correct a minor error committed by the arbitrator, rather than to set aside the entire award The Court referred to a Division Bench decision of the Delhi High Court in *Puri Constructions v. Larson and Tubro*,[28] which held, "There is no specific power granted to the Court to itself allow the claims originally made before the arbitral tribunal where it finds the arbitral tribunal erred in rejecting such claims. If such a power is recognized as falling within the ambit of

[25] *Hindustan Zinc Limited v. Friends Coal Carbonisation*, 2006 AIR SCW 2146.
[26] *Krishna Bhagya Jala Nigam Limited v. G. Harischandra Reddy*, *supra* note 10.
[27] *Angel Broking Ltd v Sharda,* (2024) ibclaw.in 70 SC.
[28] *Puri Constructions v. Larson and Tubro,* MANU/DE/1316/2015.

Section 34(4) of the Act, then the Court will be acting no different from an appellate court, which would be contrary to the legislative intent behind Section 34 of the Act."[29]

In contrast, in *Union of India v. Modern Laminators Limited*,[30] the High Court discussed the modification of the award, reasoning that the counterclaims were not thoroughly discussed. Hence, the Court modified the award by partially setting aside the award. Here, the court simply equated 'partial setting aside' with an inclusive power to make modifications to the original award. It noted that if speedy disposal is the aim of the new Arbitration statute in India, then refusing to modify an award will force parties to undergo another round of arbitration, thereby increasing litigation costs. To this end, the doctrine of severability is codified in terms of Section 34(2)(a)(iv) of the Act, which allows the High Court to separate matters submitted to arbitration from those not submitted. In contrast, modification must mean to modify, revise, or vary an award.

Based on this reasoning, in *M/s. J.K. Fenner (India) Ltd v M/s. Neyveli Lignite Corporation*,[31] the High Court ruled that the Supreme Court's decision in *McDermott* did not directly address the issue of modification. Relying on the Madras High Court's decision in *Gayatri Balaswamy v. ISG Novasoft Technologies*,[32] the Court held that, in line with international practice, the power to set aside should also include the power to modify. In this context, the judgments emphasized that while the first part of Section 34(1) constitutes the essence of the provision, the subsequent clauses define its procedural structure and the types of relief a court may provide. As such, the method or procedure for claiming a remedy should not restrict the substantive right granted by the statute. The reasoning is that if courts are confined solely to setting aside an award, it could result in outcomes more unfavorable to the parties than what they initially expected when opting for arbitration. Thus, not reading "modification" as part of the remedy to "set aside" creates a mischief in law. To this extent, it was also argued by the High Court in *Gayatri Balaswamy* that even though the High Court is not an appellate court, it nonetheless exercises power as a revisional court as under Section 115 of the Code of Civil

[29] *Id.*
[30] *Union of India v. Modern Laminators Limited,* AIR 2009 (NOC) 1432 (DEL).
[31] *M/s. J.K. Fenner (India) Ltd v M/s. Neyveli Lignite Corporation,* 2020 (5) CTC 579.
[32] *Gayatri Balaswamy v. ISG Novasoft Technologies Ltd., supra* note 2.

Procedure, 1908. Such revisional courts have the power to correct patent illegality, including the power to modify the award.

To this end, the Supreme Court in *Project Director NHAI v. M. Hakeem*[33] held that the power to modify awards would amount to exercising appellate authority, which has not been conferred upon the High Courts under Section 34. The Court also noted that it had indeed been possible for the Supreme Court to modify an award as done in *Ssangyong Engineering & Construction Co. v. NHAI*[34], but this was only possible because "the power used was the power to do complete justice between the parties, which is a power relatable to the Constitution vested only in the Supreme Court of India as a final court of last resort under Article 142 of the Constitution of India."[35] Uniquely, the Delhi High Court in *NHAI v. Trichy Thanjavur Expressway*,[36] referred to the *M. Hakeem* decision and held that the power to partially set aside an award does not necessarily mean that the award must be modified. So long as the court sets aside an independent claim that is not dependent or entrenched with another claim, the Court is allowed to partially set aside the award. In this context, the Court clarified that when certain portions of an award are found to be unsustainable or capable of being separated, annulling those parts would not be considered a modification of the award.

Legitimizing High Courts' Power to Modify an Award

The Supreme Court in *Deep Industries Ltd. v. ONGC*,[37] held that the High Court, in exercise of its constitutional supervisory powers under Article 227, has the power to correct any subordinate tribunal for erroneous determination of law. This power includes the authority to meet the ends of justice.[38] Such an authority is analogous to the Supreme Court's power to make decisions in keeping with principles of equity. Therefore, there exists no constitutional bar on the court's authority to alter an award when doing so is necessary to ensure complete justice. However, the condition imposed by the arbitration statute to limit interference by the

[33] *Project Director NHAI v. M. Hakeem, supra* note 16.
[34] *Ssangyong Engineering & Construction Co. v. NHAI,* AIR 2019 SUPREME COURT 5041.
[35] *Id.*
[36] *NHAI v. Trichy Thanjavur Expressway,* 2023 SCC OnLine Del 5183.
[37] *Deep Industries Ltd. v. ONGC*, AIRONLINE 2019 SC 1958.
[38] INDIA CONSTI. Art. 227.

High Court must be at the forefront while exercising jurisdiction under Article. 227.[39] To this end, it is hereby argued that the Supreme Court has technically barred High Courts from any form of modification under Section 34. Instead, when a particular claim within an award can be separated from the whole, and that portion needs correction due to being arbitrary, lacking principles of natural justice, or conflicting with established legal precedents, the High Court may exercise its authority under Article 227 along with Section 34 to alter the award in order to serve the ends of justice. The Supreme Court's overly cautious approach could result in problems like the continuation of injustices and the allowance of legal anomalies. This strategy could lead to inconsistent decisions by several arbitral tribunals, as seen above, diminishing trust in the arbitral process, and complicating the implementation of the law. Considering the specifics of each case, a flexible judicial strategy ensures that justice is not compromised in favour of an inflexible concept.

As defenders of justice and equity, the Courts, including High Courts, are essential in ensuring that the arbitral procedure abides by these values. Limiting the scope of interference preserves the autonomy of arbitration; however, when an arbitrator takes a position that is demonstrably irrational or at odds with accepted legal norms, the High Court has a constitutional mandate to step in. High Courts must be given the power to use their discretion instead of rigidly following a regulation that might not consider the specifics of each case. When there is a legitimate fear of unfairness, High Courts ought to have the authority to intervene and ensure that arbitrators' rulings follow the law and do not set unfavourable precedents. This also informs the arbitrators that their rulings and decisions can be challenged for ignoring settled precedents, as seen in the *Tata Hydro Electric case,* and thereby promotes a greater sense of responsibility in the arbitration process. If High Courts are declared to have the power to change awards under Section 34, it will enable more specialised resolution of complicated cases. This adaptability guarantees that the legal system can successfully address the unique requirements of every disagreement. Modifying awards also helps improve the efficiency of the dispute settlement process by streamlining it and encouraging prompt and economical resolution.

[39] *Id.*

Maintaining consistency in arbitration decisions and guaranteeing adherence to public policy requires striking a balance between autonomy and responsibility. High Courts must be allowed to intervene in circumstances where two plausible viewpoints exist, in order to remedy errors that go beyond reasonable interpretations. This helps to reduce the likelihood of arbitrators arriving at irrational conclusions that go against the principles of justice. This guarantees that the arbitral process respects social norms and functions within the broader legal system. For example, the case of *Patel Engineering Limited v. North Eastern Electronic Power Corporation Limited*[40] highlights the importance of the High Court in protecting public policy, particularly when two plausible views lead to outcomes contrary to fundamental legal principles. The principle of non-interference, which emphasises arbitral autonomy, can undermine the role of the High Courts in safeguarding public interest. In cases where two plausible views might lead to unjust enrichment, intervention is necessary to rectify the immediate injustice and prevent the establishment of problematic precedents that can impact future cases. Upholding public policy principles is crucial for the integrity of the legal system and for preserving public trust in the arbitration process. High Courts should prioritise fairness and justice over strict adherence to procedural rules, especially when two plausible views exist. In cases where an award may lead to unlawful enrichment, non-intervention could allow unjust enrichment to prevail, contrary to the principles of fairness, equity, and public policy.

Uniquely, in *Ajanta LLP v. Casio Keisanki Kabushiki Kaisha D/B/A Casio Computer Company Limited*,[41] the Supreme Court detailed the importance of a review authority vested in constitutional courts. Consider a situation in arbitration where the arbitrator adopts a consent decree, thereby creating an estoppel by judgment. However, later it is found that the compromise so reached was vitiated by fraud, misrepresentation, or mistake. In such situations, the High Court is constitutionally empowered to rectify the consent decree to ensure that it is free from clerical or arithmetical errors to bring it in conformity with the terms of the compromise. Undoubtedly, the Court can entertain an application under Section 151 of the CPC, 1908, for alterations or modifications of the consent decree. Comparably, when the same

[40] *Patel Engineering Ltd v. North Eastern Electronic Power Corporation Ltd.,* AIRONLINE 2020 SC 559.
[41] *Ajanta LLP v. Casio Keisanki Kabushiki Kaisha D/B/A Casio Computer Co. Ltd,* MANU/SC/0143/2022.

grounds are mentioned in Section 34 of the Arbitration and Conciliation Act, then even the High Courts must be seen to have the power to modify the consent decree.

The High Court's power under Section 34 is limited to ensuring the arbitral award meets basic legal and procedural standards, with interference justified only in cases of arbitrator misconduct. However, in the *K. Sugumar case,* the Hon'ble Supreme Court modified the award, while in the *Hindustan Zinc. Limited case,* the District Court modified the award, and this modification was subsequently upheld by the Supreme Court. Hence, it can be seen that in long-standing judicial practice, High Courts have been seen as empowered under Section. 34, analogous to their constitutional power to supervise all tribunals below it, to even modify awards.

While the judicial review of arbitral awards under Indian law is framed within a narrow scope to uphold the integrity of arbitration, the evolving interpretations by the courts underscore the need for a balanced approach that allows for limited modifications to ensure justice and equity. Ultimately, reconciling the powers of the High Courts with the statutory framework will enhance the efficacy of and public trust in the arbitral process.

Decoding the Legislative Intent of Section 34

The earlier discussion of conflicting rulings by the High Courts and the Supreme Court highlights the absence of judicial clarity on the courts' power to modify arbitral awards. The reliance on the McDermott case appears legally questionable and does not support the conclusion that courts lack the authority to correct an arbitrator’s errors. In this context, examining the intent behind Section 34's enactment could help clarify its purpose and shed light on the meaning of "setting aside" in the provision.

While deliberating upon Section 34, one may rely upon the legislative affairs foregoing the enactment of Section 34 to argue that it does not contemplate a power to modify arbitral awards. This is because the 1996 statute, which is a replica of the UNCITRAL Model Law on International Commercial Arbitration, speaks only about setting aside the award, whereas Section 15[42] of the former Arbitration Act of 1940 explicitly conferred upon Courts the power

[42] The Arbitration Act, 1940, S.15, No.10, Acts of Parliament, 1940 (India).

to modify an award. In this sense, the 1996 statute makes a radical departure, apparently implying that it aimed to limit the Courts' jurisdiction to interfere with arbitral awards.

A literal interpretation of Section 34 is flawed for two reasons. First, the omission of Section 15 was not the product of careful legislative deliberation but rather a hasty adoption of Article 34 from the Model Law. This is evident from the 76th Law Commission Report[43], which, when reviewing the Arbitration Act of 1940, described Section 15 as "salutary" and advocated for its retention to bridge the gap left by the Arbitration Act of 1899[44], the precursor to the 1940 Act, which did not allow courts to amend or alter awards. The 76th Law Commission's recommendation to retain Section 15 was not disregarded in the 176th[45] or 246th Law Commission Reports[46], both of which suggested amendments to the Arbitration Act of 1996. Secondly, the legislative history of the Model Law itself reveals that the doctrine of severability was inherently included in Article 34.[47] The UNCITRAL Secretariat's Draft Article 41, concerning recourse against arbitral awards, clearly stated that "a court may, where appropriate, set aside only a part of the award, provided that this part can be separated from the other parts."[48] This provision was adopted without objection during the Fifth and Sixth Sessions of the Working Group on International Contract Practices, affirming the applicability of severability in the context of setting aside arbitral awards.[49]

Interestingly, during the Seventh Session of the UNCITRAL Working Group,[50] when the Secretariat introduced a simplified draft concerning the mechanisms for challenging arbitral awards, any reference to "partial setting aside" was quietly removed from the Model Law without any recorded discussion or justification. As a result, the revised Article 34(1) merely refers to an "application for setting aside." Relying on the absence of an explicit provision in

[43] Law Commission of India, Sixth Report on Arbitration Act, 1940 (Law Com No. 76, 1978).
[44] Hitoishi Sarkar, *Do Indian Courts have the Power to Modify an Arbitral Award?*, SOCIAL SCIENCE RESEARCH NETWORK (2021).
[45] Law Commission of India, The Arbitration Act & Conciliation Amendment Bill, 2001 (Law Com. No. 176, 2001).
[46] Law Commission of India, Amendments to Arbitration and Conciliation Act, 1996 (Law Com. No. 246, 2014).
[47] Howard M. Holtzmann And Joseph Neuhaus, A Guide To The Uncitral Model Law On International Commercial Arbitration: Legislative History And Commentary (Wolters Kluwer, 2015).
[48] United Nations General Assembly, Report of the Working Group on International Contract Practices on the Work of its Fifth Session (1983).
[49] *Id.*
[50] United Nations General Assembly, Report of the Working Group on International Contract Practices on the Work of its Seventh Session (1983).

Article 34 to assert that courts lack the authority to partially set aside or modify awards is therefore flawed. An unintentional omission by the drafters should not be mistaken as a deliberate legislative decision. Regrettably, the Arbitration and Conciliation Act, 1996, which closely follows the Model Law, also adopted this omission without further scrutiny by Indian lawmakers.

It must be recalled that Section 34 provides for two remedies: setting aside and remission. A restrictive interpretation of "setting aside" under Section 34 would imply that the doctrine of severability does not apply to it. However, such an interpretation seems unsustainable, considering that both the Model Law[51] and the 1996 Act[52] acknowledge the application of severability while remitting arbitral awards under Section 34(4). It would therefore, be unreasonable to reject the partial setting aside of an award while selectively applying the doctrine of severability solely in cases of remission. Moreover, if we adhere strictly to the interpretation of "setting aside," it would effectively mean declaring the award null and void. An essential threshold for deeming something void is that it must be beyond cure, which implies that any arbitral award that is wholly set aside must be impossible to cure by modification. The Supreme Court in *Karnail Singh v. State of Haryana*[53] explained that "void" means ineffectual, nugatory; it has no legal effect whatsoever, and no rights can be obtained under it or grow out of it. In legal terms, something void is treated as if it never existed, but it is incorrect to claim that every arbitral award must be invalidated due to minor, rectifiable flaws raised in a setting aside application.

It is true that in cases where a party is under incapacity or has not been served with proper notice, the arbitral award may justifiably be set aside in its entirety. However, even within such situations, the need to set aside the entire award should depend on the specific circumstances. For instance, consider a case where a party actively participates in the arbitral proceedings, leads evidence, and cross-examines the claimant's witnesses, but due to valid reasons is unable to present evidence or arguments specifically concerning their counterclaims. If the opportunity to present their case on the counterclaims was denied or impaired, would it not be

[51] Pieter Sanders, The Work Of Uncitral On Arbitration And Conciliation (Kluwer Law International, 2004).
[52] *K.K. John v. State of Goa*, 2003 Supp (3) SCR 937.
[53] *Karnail Singh v. State of Haryana*, 2019 SCC ONLINE P&H 704.

more just, fair, and in line with the objectives of the 1996 Act to consider setting aside only the portion of the award relating to the counterclaims, rather than annulling the award in its entirety?

Position in Other Jurisdictions

In the United States, an arbitral award may be modified by courts only under specific circumstances, such as deficiencies in the award's form, rulings beyond the arbitrator's remit, or errors in calculations or evidence, although courts do not have the authority to retract or revise the award.[54] In the United Kingdom, courts have the authority to set aside an award in cases of lack of jurisdiction or significant deficiencies, and may also do so on grounds of law, provided the parties have not waived this right.[55] In Singapore, parties can appeal against an award based on specific questions of law or factual errors, and the courts also possess the power to set aside awards.[56] Therefore, jurisdictions such as the USA, UK, and Singapore empower courts to modify or set aside awards solely to rectify deficiencies.

The laws of global arbitration hubs like the UK, US, Hongkong and Singapore are primarily based on the UNCITRAL Model Law, which grants express statutory powers to modify arbitral awards.[57] This legislative action may serve as a compensatory measure for the omission of the phrase "set aside only a part of the award" from Article 34 of the Model Law. Although the Model Law does not explicitly mention "modification of an award," the legislative bodies of these countries have interpreted "setting aside" to encompass the power to modify awards, allowing parties to seek alternative remedies rather than complete annulment.[58]

In the UK, Sections 67 and 69 of the English Arbitration Act of 1996 permit courts to vary awards when the challenge pertains to substantive jurisdiction or arises from questions of law. However, Section 69 is non-mandatory, and parties often contract out of its application, facing numerous procedural restrictions.[59] It could be argued that, unlike India, where courts exercise

[54] Federal Arbitration Act, 9 U.S.C. (2018).
[55] Arbitration Act, 1996, No.23 , Acts of Parliament, 1996 (United Kingdom).
[56] International Arbitration (Amendment) Act, 2002, No. 28, Acts of Parliament, 2002 (Singapore).
[57]Nigel Blackaby, Redfern And Hunter On International Arbitration, (Oxford University Press, 2015).
[58] Howard M. Holtzmann And Joseph Neuhaus, *supra* note 47.
[59] Arbitration Act, 1996, S. 67 & S.69, No.23 , Acts of Parliament, 1996 (United Kingdom).

supervisory jurisdiction over arbitral awards, UK courts function as appellate bodies with the authority to modify awards. However, as established in *Surya Dev Rai v. Ram Chandra Rai,*[60] this supervisory jurisdiction in India resembles a revisional jurisdiction, which includes the power to correct patent illegalities.

In Singapore, the the Singapore Arbitration Act mirrors the Indian Act's language by focusing on "setting aside" awards, which may imply a lack of judicial power to modify awards under Section 48, but this is countered by Section 47, which provides for actions including setting aside, varying, and remitting awards.[61] Additionally, Section 51, applicable to both Sections 48 and 49, explicitly mentions the power to vary awards, reinforcing that the authority to set aside encompasses the power to modify.[62]

In the United States, Section 11 of the Federal Arbitration Act empowers courts to modify and correct awards to effectuate intent and promote justice between parties.[63] The U.S. Supreme Court, in *Hall Street Associates LLC v. Mattel Inc*.,[64] reaffirmed the courts' power to modify or correct arbitral awards.

Similarly, Hong Kong's Arbitration Ordinance, largely adopting the provisions of the UNCITRAL Model Law, allows for modifications. Section 81 of the Ordinance aligns with Article 34 of the Model Law. The High Court of Hong Kong, in *Brunswick Bowling & Billiards Corporation v. Shanghai Zhonglu Industrial Co Ltd*,[65] clarified that if an award is partially set aside, it essentially constitutes a modified award, provided that the defect is separable from the rest of the award. This interpretation aligns with India's doctrine of severability as applied in *R.S. Jiwani and Western GECO*.[66]

In the broader context, the language of Section 34(1) of the Indian Arbitration and Conciliation Act supports the interpretation that courts have the authority to modify awards. This section is divided into two parts: the first confers a right to recourse against an award, while the second

[60] *Surya Dev Rai v. Ram Chandra Rai,* AIR 2003 SUPREME COURT 3044.
[61] International Arbitration (Amendment) Act, 2002, S.47 & 48, No. 28, Acts of Parliament, 2002 (Singapore).
[62] International Arbitration (Amendment) Act, 2002, S.51, No. 28, Acts of Parliament, 2002 (Singapore).
[63] Federal Arbitration Act, 9 U.S.C. § 11 (2018).
[64] *Hall Street Associates LLC v. Mattel Inc,* 552 U.S. 576.
[65] *Brunswick Bowling & Billiards Corporation v. Shanghai Zhonglu Industrial Co Ltd*, [2011] 1 HKLRD 707.
[66] Hitoishi Sarkar, *supra* note 44.

prescribes the form of application for setting aside. The first part's substantive right should not be constrained by the second part's procedural requirements. Thus, the connection of the term "only" between the two parts should be interpreted as encompassing the rights to set aside, modify, enhance, vary, or revise an award, rather than being limited solely to the setting aside of an award.

Vishwanathan Committee Report

The Report of the Expert Committee to Examine the Working of the Arbitration Law and Recommend Reforms in the Arbitration and Conciliation Act, 1996 ("Vishwanathan Report"), submitted to the Law Ministry on February 7, 2024, also makes specific recommendations empowering courts to modify or vary awards.

The Vishwanathan Report has recommended that courts be clothed with powers to vary arbitral awards, albeit only in exceptional circumstances to meet the ends of justice. This would enable a Court to provide a quietus to the matter, so as to avoid further litigation. The Vishwanathan Report recommended: *"An express provision incorporated in the Act is likely to streamline the process, saving time, effort, and resources for all the parties involved. Thus, granting the Courts the authority to modify awards within well-defined limits would help strike a balance between preserving finality of the arbitral process and ensuring fairness."*[67]

Way Forward

A core aim of the Arbitration and Conciliation Act, 1996, is to limit judicial interference in arbitral proceedings. Granting courts the power to modify arbitral awards appears to contradict this objective, as it could potentially increase judicial interference. Arbitration is intended to offer a quicker, more streamlined process for dispute resolution, with limited judicial involvement under Sections 34 and 37 of the Act. Expanding court powers to modify awards could undermine this efficiency, weaken the finality of arbitration, and possibly affect the integrity of the process.

[67] Saurabh Seth, *Modifying Arbitral Awards: Judicial Conundrum*, BAR & BENCH (2024).

However, allowing courts to modify awards could provide a means to correct errors without the need to completely set aside an award. The current legal framework only permits courts to uphold or annul an award, which may result in injustice by forcing parties to restart arbitration proceedings, even when the error is minor and correctable. There is no empirical evidence suggesting that granting courts modification powers would diminish confidence in arbitration. In fact, jurisdictions like the United Kingdom and Singapore, which allow courts to modify or vary awards, continue to thrive as prominent arbitration hubs without any erosion of trust in their systems.

The Supreme Court's decision to refer the matter of award modification to a larger bench underscores the complexity of this issue, warranting a detailed examination. The Viswanathan Committee has already recommended legislative amendments to allow courts to modify awards in exceptional circumstances. However, the lack of clarity on what constitutes "exceptional circumstances" raises concerns about potential overreach in judicial powers.

Any power to modify or vary an arbitral award must be explicitly conferred by statute. Courts should refrain from interpreting Section 34 in a manner that introduces this power when the legislature has chosen to exclude it. The Indian law is modeled after the UNCITRAL Model Law, which does not provide for such modification powers, and the Indian legislature has purposefully aligned its laws with international standards. The judiciary should respect this legislative intent and avoid overstepping its boundaries by reading the power of modification into Section 34. At the same time, it would be wise for Parliament to contemplate amending Section 34, as suggested by the Viswanathan Committee Report, by incorporating a clear framework that allows for the modification of arbitral awards in defined situations, thereby aligning India’s arbitration framework with global standards.

Ultimately, whether the power to modify awards is granted through judicial interpretation or legislative reform, the evolution of India's arbitration framework must prioritize efficiency, fairness, and alignment with global standards to sustain its credibility as a competitive arbitration jurisdiction.

Conclusion

An examination of Section 34 of the Arbitration and Conciliation Act, 1996, highlights notable ambiguities and inconsistencies in how courts have interpreted their authority to alter arbitral awards. While the Act aims to facilitate efficient dispute resolution, the current limitation on judicial intervention hampers this objective, often forcing parties to resort to lengthy and cumbersome arbitration processes. The contrasting views among Indian courts, particularly the divergent rulings in *McDermott* and *Gayatri Balaswamy*, highlight the need for a more coherent legal framework that allows for modifications of awards to correct genuine errors, while still upholding the finality and predictability that arbitration offers.

By comparing India's position with jurisdictions that adopted the UNCITRAL Model Law, this paper advocates for legislative reconsideration of Section 34 to align with international standards and enhance the efficacy of the arbitration process. A balanced approach that empowers courts to modify awards when appropriate can not only preserve the integrity of arbitration but also promote fairness and accountability in dispute resolution. As the landscape of arbitration continues to evolve, it is imperative for Indian law to adapt accordingly, ensuring that the spirit of the Arbitration and Conciliation Act is upheld in practice.