The Indecision in Modification of Awards under Section 34 and 37 of the Arbitration and Conciliation Act

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Introduction

On 19th February 2025, a five-judge Constitution Bench of the Hon'ble Supreme Court reserved its judgment in a batch of matters to determine whether Indian courts possess the power to modify an arbitral award under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996[1] ("**A&C Act**"). This issue arose from conflicting judicial opinions and the absence of explicit statutory provisions authorising such modifications. The matter was originally referred to the Constitution Bench in February 2024 by a two-judge Bench which recognised inconsistencies in precedent set by the Hon'ble Supreme Court and various High Courts.

Traditionally, the power of courts under Section 34 has been limited to either setting aside or upholding an arbitral award. However, in practice, the Hon'ble Supreme Court has occasionally modified arbitral awards either on grounds of equity or with party consent, often invoking Article 142 of the Constitution to do "complete justice." This divergence between the statutory framework and judicial practice underscores a critical tension in Indian arbitration jurisprudence that warrants close examination.

Statutory Framework under Sections 34 and 37

Section 34 of the A&C Act provides limited and specific grounds for setting aside an arbitral award. These include incapacity of a party, invalidity of the arbitration agreement, violation of principles of natural justice, excess of jurisdiction, patent illegality, and conflict with public policy. Importantly, the provision does not contemplate any form of modification or alteration of the award by a court. It merely permits either annulment or affirmation of the award.

Section 37 allows appeals against orders passed under Section 34 but does not expand the appellate court's jurisdiction to include modification powers. Judicial scrutiny under Section 37 is similarly confined to ensuring that the grounds under Section 34 were correctly applied, without re-evaluating the merits of the case or altering the award itself. The legislative intent, guided by the UNCITRAL Model Law[2], is to uphold arbitral finality and minimal judicial interference.

A&C Act reflects a legislative intent to minimize judicial intervention in arbitral proceedings, marking a departure from the broader supervisory powers conferred upon courts under the Arbitration Act, 1940 ("**1940 Act**"). Under Sections 15 and 16 of the 1940 Act, courts were expressly empowered to modify an arbitral award and remit it to the arbitral tribunal upon satisfaction of specified conditions. In contrast, the A&C Act limits judicial recourse to an application for setting aside an award under Section 34, thereby reinforcing the principle of minimal judicial interference in arbitration.

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[1] *Arbitration and Conciliation Act, 1996, Act No. 26 of 1996*
[2] *UNCITRAL Model Law on International Commercial Arbitration, 1985*

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Judicial Interpretations and Conflicting Precedents

A. Restrictive Judicial Interpretation

In McDermott International Inc. v. Burn Standard Co. Ltd.[3], the Hon'ble Supreme Court explicitly stated that courts cannot correct errors committed by an arbitral tribunal or interfere with the award on merits. Instead, courts are limited to either upholding the award or setting it aside, leaving the parties free to initiate fresh arbitral proceedings if necessary. This position was reaffirmed in Project Director, NHAI v. M. Hakeem[4], where the Hon'ble Supreme Court held that modification is beyond the jurisdiction of courts under Section 34, as the provision does not contemplate an appellate review of the award's reasoning or findings. The Hon'ble Supreme Court noted that allowing modification would be akin to permitting courts to rewrite an award, which contradicts the foundational principle of arbitration as a party-driven dispute resolution mechanism.

Similarly, in S.V. Samudram v. State of Karnataka[5], the Hon'ble Supreme Court reiterated that courts cannot intervene in the merits of an arbitral award. The ruling emphasized that the primary object of arbitration is to provide finality to disputes, and any power of modification would disrupt the balance between party autonomy and judicial oversight. The Court warned that allowing modification would create a backdoor route for courts to engage in a merits-based review, which would be contrary to the fundamental principles of arbitration law.

A principal argument against permitting modification of arbitral awards is the potential for judicial overreach, wherein courts may be seen to exercise discretion beyond their intended supervisory role. It is contended that enabling modifications may blur the distinction between arbitration and litigation, encouraging parties aggrieved by an award to routinely approach courts for alterations, thereby resulting in protracted legal proceedings and delayed enforcement, which would defeat the very object of alternative dispute resolution.

B. Judicial Expansion via Article 142

Despite this restrictive approach, there are notable exceptions where the Hon'ble Supreme Court has modified arbitral awards under Article 142. In Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co.[6], the Court reduced the rate of interest awarded by the tribunal, holding that exorbitant interest would amount to unjust enrichment. Likewise, in Oriental Structural Engineers Pvt. Ltd. v. State of Kerala[7], the interest rate was altered to achieve a just and equitable outcome.

In Shakti Nath v. Alpha Tiger Cyprus Investment No. 3 Ltd. & Ors.[8] the Hon'ble Supreme Court adjusted contractual obligations set forth in an award, citing the need to secure complete justice. These decisions reflect a pragmatic approach that sometimes conflicts with the statutory text but aims to deliver equitable outcomes under exceptional circumstances, using extraordinary jurisdiction.

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[3](2006) 11 SCC 181
[4](2021) SCC Online SC 473
[5](2024) 3 SCC 623
[6](2019) 11 SCC 465
[7](2021) 6 SCC 150
[8](2020) 11 SCC 685

Comparative Jurisprudence

Globally, jurisdictions that follow the UNCITRAL Model Law have adopted varied approaches. In the United States, Section 11 of the Federal Arbitration Act allows courts to modify arbitral awards in limited situations such as clerical errors, evident material miscalculations, or decisions beyond the scope of submission. Similarly, in Canada, courts may modify awards to correct technical defects that do not alter substantive rights.

In the United Kingdom, Section 67 of the Arbitration Act, 1996 permits courts to vary or remit an award if the tribunal exceeded its jurisdiction. Section 69 allows appeal on points of law, albeit subject to party agreement and limited to significant errors. Singapore and Hong Kong, by contrast, follow a strictly non-interventionist approach, disallowing any judicial modification of arbitral awards in international arbitrations, though some flexibility exists in domestic matters.

India, despite being a signatory to the UNCITRAL Model Law, currently does not empower its courts to modify arbitral awards, apart from limited corrections by the arbitral tribunal under Section 33. This places India in a somewhat rigid and isolated position compared to other arbitration-friendly jurisdictions.

Business and Procedural Implications

The ambiguity surrounding the modification powers of Indian courts has significant commercial implications. First, it undermines confidence in the predictability of arbitration outcomes. Most foreign investors and multinational corporations are wary of uncertain judicial practices, and the lack of a statutory framework for modification tends to increase the risk of "forum shopping" - where the aggrieved parties approach every forum and avenue available to them to expedite dispute resolution - often complicating and elongating the dispute resolution procedure.

Commensurately, the inability to correct minor errors without setting aside the entire award results in inefficiency. It forces parties to reinitiate arbitration proceedings, increasing litigation costs and delaying dispute resolution. This inefficiency detracts from arbitration's core promise of speed and finality.

Lastly, relying solely on Article 142 for modifications would burden the Hon'ble Supreme Court with resolving commercial disputes under constitutional principles, a task that should ideally be left to a well-defined statutory mechanism.

Towards Legislative and Judicial Clarity

Recognizing these difficulties, the Vishwanathan Committee Report dated 07.02.2024 has recommended amending Section 34 to explicitly provide courts with limited powers to modify arbitral awards. The Vishwanathan Report has 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."

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Such an amendment would align India's arbitration regime with international standards, preserve arbitral autonomy, and reduce dependency on Article 142. Moreover, it would bring predictability and consistency to judicial intervention, benefiting both domestic and foreign commercial actors. However, the court's dependency on its jurisdiction on Article 142 begs the question as to whether the Supreme Court's use of Article 142 to modify arbitral awards can withstand constitutional scrutiny? It is vital to understand that ultimately, in the Absence of legislative authorization, repeated recourse to Article 142 in commercial matters could blur the line between constitutional adjudication and judicial overreach.

This legal ambivalence leads to further interpretative questions: Should the Supreme Court exercise restraint and leave the field open for legislative action, or does the need for "complete justice" justify an exception in commercial arbitration disputes? Is the power under Article 142 meant to offer curative relief only in situations of constitutional or fundamental rights violations—or can it also be wielded to supplement statutory inadequacies in technical domains like arbitration?

In decisions such as Delhi Judicial Service Assn. v. State of Gujarat, the Hon'ble Court has elevated Article 142 as forming part of the basic structure, noting that ordinary statutes cannot curtail its operation. Yet, other cases such as A.B. Bhaskara Rao v. CBI caution that Article 142 cannot override express legal prohibitions. Thus, while Article 142 has served as a constitutional safety valve to bridge gaps in law, especially where fundamental rights or social justice concerns are implicated, it remains debatable whether such elasticity should extend into procedural arbitration jurisprudence.

Notably, while Article 142 is often described as a "residual" or "inherent" power, judicial pronouncements such as Prem Chand Garg v. Excise Commissioner, U.P., and A.R. Antulay v. R.S. Nayak, have laid down that this provision cannot be used to make orders inconsistent with express statutory or constitutional provisions. Thus, a crucial legal tension emerges: Does the invocation of Article 142 for modifying an arbitral award amount to judicial legislation, particularly when the legislature has consciously omitted any such modification powers under the A&C Act?

Article 142(1) enables the Supreme Court to pass such decree or make such order as is necessary for doing "complete justice" in any cause or matter pending before it. However, it warrants examination whether this extraordinary constitutional power can be employed to circumvent the legislative restrictions embedded in Section 34 or 37. Is such invocation consistent with the constitutional role of the Court to interpret the law rather than to rewrite it?

While the statutory framework under Sections 34 and 37 of the A&C Act is clear in limiting the court's power to setting aside or affirming arbitral awards, an open-ended question arises: Can the Hon'ble Supreme Court, by invoking its inherent powers under Article 142 of the Constitution of India, modify an arbitral award to achieve complete justice even when such modification lies outside the statutory contours of the A&C Act?

Despite these statutory limitations, the Supreme Court has, in select cases, exercised its extraordinary powers under Article 142 of the Constitution of India to modify arbitral awards. Article 142 empowers the Supreme Court to pass any order necessary to do "complete justice" in any cause or matter pending before it. Such modifications have typically been limited to aspects like interest rates, the quantum awarded, or the effective date of the award. The Court has clarified that when it modifies an award, it does so not under

the A&C Act, but under its constitutional powers in Article 142, and such powers are to be used sparingly and only in extraordinary situations. Importantly, these orders are not to be treated as routine precedents for lower courts or as an extension of the statutory powers under Sections 34 and 37.

The forthcoming judgment in "Gayatri Balasamy v. ISG Novasoft Technologies" is expected to be a turning point. Should the Court decide to uphold a strict reading of Section 34, it must clearly delimit the boundaries of Article 142-based intervention. Alternatively, if limited modification is permitted, the Court should articulate well-defined principles and thresholds for its application to prevent abuse.

However, until a definitive ruling is issued, the prevailing view is that courts do not have unfettered or routine power to modify arbitral awards under the Arbitration Act. Their powers are limited to setting aside or remitting awards, except when the Supreme Court invokes Article 142 for "complete justice" in exceptional case.

Conclusion

The discourse surrounding the judicial modification of arbitral awards in India brings to the forefront a persistent tension between the principle of finality in arbitration and the judiciary's responsibility to ensure substantive justice. While Sections 34 and 37 of the A&C Act, clearly restrict judicial intervention to setting aside or affirming an award, the Hon'ble Supreme Court has, in a few exceptional cases, invoked its extraordinary jurisdiction under Article 142 to modify awards. This practice, lacking an express statutory foundation, underscores the urgent need for legislative clarity and doctrinal consistency.

Accordingly, the introduction of a limited statutory mechanism permitting judicial modification, mirroring frameworks found in arbitration-friendly jurisdictions like the United States and the United Kingdom would reconcile existing judicial trends with the underlying legislative scheme. Such a reform would reduce the current reliance on Article 142, foster predictability, and uphold the core principles of party autonomy and arbitral finality. In doing so, it would also reinforce investor confidence and bolster India's credibility as a pro-arbitration jurisdiction.

Nevertheless, until such reform is implemented, or the Supreme Court issues a definitive ruling, the prevailing legal position remains that courts do not possess the inherent or routine authority to modify arbitral awards under the A&C Act. Their powers are confined to setting aside or remitting the award back to the tribunal. The invocation of Article 142 is therefore constitutionally permissible only in rare and compelling circumstances where "complete justice" is demonstrably required.

In this context, a calibrated and principled approach is critical one that allows for the rectification of manifest errors without compromising the finality of arbitral awards or inadvertently converting judicial review into a merits-based appellate process. The impending resolution of this issue, particularly through the judgment in Gayatri Balasamy v. ISG Novasoft Technologies, is likely to play a pivotal role in shaping the contours of arbitration law in India, with far-reaching implications for both jurisprudential coherence and commercial certainty.

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