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THE GAYATRI BALASAMY DOCTRINE: A STRUCTURAL ANALYSIS OF THE JUDICIAL POWER TO MODIFY ARBITRAL AWARDS IN INDIA

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I. INTRODUCTION: THE JUDICIAL CROSSROADS IN INDIAN ARBITRATION

A. The Evolution of Judicial Intervention under the 1996 Act

The legal framework governing arbitration in India has historically oscillated between judicial deference and heavy-handed intervention. The Arbitration and Conciliation Act, 1996 (the Act), modelled largely on the UNCITRAL Model Law on International Commercial Arbitration, was designed to foster a globally competitive arbitration regime by minimizing judicial involvement. The legislative intent behind the 1996 Act was a decisive move away from the overly interventionist Arbitration Act of 1940, which contained explicit provisions (Sections 15 and 16) granting courts the power to modify or remit awards.

The cornerstone of the 1996 Act is the foundational principle of Minimal Judicial Intervention, enshrined in Section 5. This provision stipulates that judicial intervention is permitted only to the extent explicitly provided within Part I of the Act. Consequently, courts were traditionally restricted in setting aside proceedings under Section 34 to either upholding or completely rejecting an award, but not altering its substance. This strict limitation was seen as essential to upholding the finality of the arbitral award and preserving party autonomy, the two critical differentiating factors between arbitration and traditional litigation.

B. The Genesis of Conflict: Pre-Balasamy Doctrinal Inconsistency

Prior to the landmark 2025 ruling, Indian jurisprudence regarding modification was highly fragmented, plagued by a significant "doctrinal inconsistency". One stream of judgments,

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exemplified by decisions such as Project Director, NHAI v. M. Hakeem (2021), rigorously adhered to the text of the 1996 Act, holding that Section 34 restricted courts strictly to setting aside awards, affirming that the power to modify was consciously excluded by the legislature. However, a counter-stream of judicial decisions sought pragmatic solutions by invoking the Supreme Court's extraordinary constitutional powers. These judgments, including Hindustan Zinc Ltd. v. Friends Coal Carbonisation (2006), occasionally employed Article 142 of the Indian Constitution to achieve "complete justice," thereby creating an early, albeit inconsistent, path for modification, particularly concerning issues of interest or quantum. This tension meant that the limits of judicial intervention remained ambiguous, forcing the issue to a Constitution Bench for definitive resolution.

C. The Catalyst Case: Gayatri Balasamy v. M/S ISGNovasoft Technologies Limited (2025)

The specific facts of the case provided the necessary context for the Supreme Court to formally articulate the modification doctrine. The dispute originated from an employment conflict between Gayatri Balasamy, Vice President (M&A Integration Strategy), and ISGNovasoft Technologies Ltd. Following her resignation on July 24, 2006, Balasamy filed criminal complaints alleging sexual harassment by the CEO, while the company counter-filed complaints of defamation and extortion.

The matter was ultimately referred to arbitration, where the tribunal awarded Balasamy ₹2 crore as compensation. Balasamy later moved the Madras High Court under Section 34, arguing that the tribunal had overlooked several of her claims. Crucially, the appellate history showed judicial discomfort with the quantum: the Madras High Court first altered the compensation and, subsequently, a Division Bench further reduced the additional compensation granted by the single judge from ₹1.6 crore to ₹50,000, deeming the initial amount "excessive and onerous". This appellate focus on balancing fairness in the quantum of damages, rather than strictly reviewing procedural integrity, clearly demonstrated a judicial willingness to act as an appellate body on damages. This underlying discomfort with the specific monetary award, stemming from a sensitive, non-commercial personal dispute, provided the Supreme Court with the necessary context to rationalize equitable intervention through the formal creation of the modification doctrine, irrespective of the long-term impact on commercial finality.

II. ANALYSIS OF THE DOCTRINAL SHIFT: THE LIMITED POWER TO MODIFY (THE MAJORITY VIEW)

A. The Majority Rationale: Statutory Interpretation and Implied Power

The Constitution Bench of the Supreme Court, in a 4:1 majority decision delivered on April 30, 2025, ruled that Indian Courts possess limited powers under Sections 34 and 37 of the Act to modify arbitral awards in specific circumstances. The majority judgment, authored by Chief Justice Sanjiv Khanna, focused on two key areas of interpretation to justify this significant shift.

First, the court confronted the argument that the legislature's omission of the modification power in the 1996 Act (unlike the 1940 Act) constituted a deliberate prohibition. The Court emphatically rejected this position, stating that "silence in the 1996 Act... should [not] be read as a complete prohibition" on modification. This finding structurally reversed decades of understanding regarding the legislature's intent to maintain strict boundaries for judicial oversight.

Second, the cornerstone of the majority's statutory reasoning was the reliance on the Latin maxim *omne majus continet in se minus*, meaning "the greater contains the lesser". The argument posited that if a court possesses the greater power to set aside an entire award (judicial rejection), it must inherently possess the lesser power to set aside the award in part or modify the offending segment. This concept of implied power was derived primarily from the proviso to Section 34(2)(a)(iv), which permits the court to set aside only a part of the award if the grounds for setting aside apply only to that part and it is clearly severable.

The majority's utilization of the omne majus maxim represents a calculated judicial move to re-assert a degree of paternalistic supervision over arbitral tribunals. By equating the power to set aside (a supervisory check on procedural integrity) with the power to modify (an appellate check on substantive correctness), the court effectively positioned itself as the ultimate arbiter of the outcome, rather than simply the guardian of the process.

B. The Permissible Modalities of Modification Under the Act

The majority outlined distinct, yet limited, situations where modification may be permissible under the implied power derived from Sections 34 and 37:

- Severability of the Award: Modification is permissible when the invalid portion of the award is clearly severable, both legally and practically, from the rest. This modality strictly adheres to the proviso under Section 34(2)(a)(iv).
- Correction of Apparent Errors: The court may intervene to correct manifest errors, such as clerical, computational, or typographical mistakes. The court explicitly cautioned that such intervention should not involve delving into the merits of the dispute or substituting the court's judgment for the arbitrator's findings on facts.
- Modification of Post-Award Interest: Modification is permitted to adjust post-award interest, especially under Section 31(7)(b), when the awarded rate is deemed excessive or would lead to unjust enrichment.

C. The Pragmatic Justification: Efficiency over Finality

A significant justification for the modification doctrine was judicial efficiency. The court noted that excluding the power to modify would inevitably force parties into "an extra round of arbitration," a process of remission that would delay conclusive resolution. By allowing courts to correct obvious errors or sever invalid portions immediately, the majority aimed to expedite the enforcement of the award and prevent prolonged litigation and repeated references back to the arbitral tribunal. This structural interpretative shift, however, creates significant uncertainty, as the application of "severability" or "manifest error" is subjective. This ambiguity risks transforming every Section 34 application into a partial appeal focused on the merits of calculation or quantum, potentially inviting the "floodgates of litigation" that the Act was designed to prevent.

III. CONSTITUTIONAL OVERREACH AND THE COMPLETE JUSTICE MANDATE (ARTICLE 142)

A. The Exercise of Extraordinary Power

Beyond the implied statutory power, the Supreme Court utilized a more formidable tool: its extraordinary constitutional power under Article 142. Article 142 of the Indian Constitution empowers the Supreme Court to pass any order necessary to "do complete justice" between the parties, allowing intervention even when such relief is not explicitly provided under the statutory framework of the Act. In the Balasamy context, this power served as the ultimate

justification for substantive modification, particularly for modifying the calculation of interest or monetary quantum where it was deemed "excessive".

The invocation of Article 142 is seen as highly controversial. While the limited modifications under Sections 34/37 concern technical issues like clerical errors or severability, Article 142 provides the court with an overarching, equitable jurisdiction to substantively re-assess the fairness of the relief awarded, effectively allowing for the replacement of the arbitrator's judgment on quantum.

B. The Legal Conflict: Article 142 vs. Statutory Finality (Section 5)

A central critique levelled against the Balasamy ruling is that the exercise of power under Article 142 runs directly counter to the fundamental and non-derogable principles embedded in the Arbitration Act. Section 5 explicitly bars judicial intervention beyond what the Act permits. Critics argue that conferring modification power through a constitutional safety valve fundamentally contravenes the spirit of the statute. Justice Viswanathan, in his dissent, specifically cautioned that such expansive use of Article 142 risked undermining the core principle of minimal judicial intervention and eroding the finality and autonomy characteristic of the arbitral process.

The explicit reliance on Article 142, an instrument of judicial equity, inherently introduces a subjective element, the assessment of "complete justice", into what should be a strictly objective statutory compliance test governed by Section 34. This reliance destabilizes the predictability required for international commercial law. If the enforceability of a large arbitral award depends not on compliance with statutory grounds but on the Supreme Court's discretionary assessment of fairness in quantum, the systemic risk for foreign investors and contracting parties increases significantly.

C. The Creation of a Two-Tiered Review System

The doctrine, by necessity, creates an asymmetric system of judicial review. Since the extraordinary power under Article 142 is exclusive to the Supreme Court of India, the following hierarchy is established: lower courts (such as High Courts dealing with Section 34 applications) are largely confined to limited modifications based on implied power (severability or clerical errors); conversely, the Supreme Court retains an overarching, equitable power to substantively modify awards, particularly by adjusting interest or quantum, under the 'complete justice' mandate.

While the majority justified this approach as preventing remission and fostering efficiency, the creation of this powerful Article 142 route for substantive modification inadvertently encourages a fourth stage of litigation (after arbitration, Section 34 application, and Section 37 appeal) directed specifically at the Supreme Court. Award debtors holding large awards now possess a codified legal incentive to appeal simply to argue for 'equity' and seek review of interest or quantum, ultimately increasing the time and cost associated with final execution.

IV. THE MAJORITY COUNTERPOINT: REJECTION VS. REPLACEMENT

A. Justice Viswanathan's Sole Dissent

The minority opinion, penned by Justice K.V. Viswanathan, presents a compelling counterweight to the majority's pragmatism, providing a rigorous defense of the rule-of-law principles intended by the 1996 Act. Justice Viswanathan fundamentally rejected the premise that the power to modify is inherently included within the power to set aside under Section 34.

He argued that reading the power to modify into the Act is "antithetical to the objective of the Act to minimise judicial intervention". Furthermore, he maintained that the majority's invocation of Article 142 to grant powers not explicitly stated in the statute constitutes an overreach of constitutional power. The minority opinion represents a plea for a more efficient, respected, and rule-of-law-based arbitration regime.

B. Doctrinal Distinction: Setting Aside vs. Modification

The dissent correctly highlighted that the majority's structural interpretation failed to maintain the crucial doctrinal distinction between the two types of judicial action.

Setting Aside (Rejection/Supervision): This process involves the court exercising a supervisory role, reviewing the award for procedural or jurisdictional defects (the limited grounds under Section 34). If a defect is found in a segment, setting aside that segment means the court judicially rejects the offending part, leaving the rest of the tribunal's findings intact. The court does not substitute its judgment.

Modification (Replacement/Appellate): Conversely, modification requires the court to exercise an appellate function. It involves the court judicially replacing the tribunal's findings, calculations, or monetary quantum with its own determination. The minority opinion stressed that this act of judicial replacement is inherently appellate and violates the statutory mandate that courts should not sit in appeal over the merits of arbitral awards.

C. The Abandonment of Legislative Intent

The structural fault line exposed by the dissent lies in the majority's failure to distinguish between procedural review and substantive correctness. The power to modify necessarily implies that the court must review the merits (e.g., assessing if interest is "excessive" requires a merits review), thereby transforming the Section 34 process into an avenue for partial appeal.

The power to modify was intentionally omitted in the 1996 Act to align India with international best practices and the UNCITRAL Model Law. By finding an implied power, the majority's interpretation effectively resurrects a power that the legislature had intentionally abandoned, structurally unsettling the scheme of the 1996 Act and reversing the very reform it sought to accomplish. When a court replaces an arbitrator's discretionary judgment (such as determining damages or interest), it compromises the core principle of party autonomy, as the court effectively rewrites the contractual outcome determined by the parties' chosen forum.

V. SYSTEMIC IMPLICATIONS AND INTERNATIONAL SCRUTINY

A. Undermining Core Principles of Indian Arbitration

The Gayatri Balasamy ruling represents a fundamental structural interpretative shift in Indian arbitration law, threatening the very principles the 1996 Act was built upon.

The doctrine is widely viewed as diluting the doctrine of Minimal Judicial Interventionism by allowing the Supreme Court discretion to modify awards "virtually without any guardrails or principles guiding the exercise of such discretionary power". This trend risks inviting subjective and inconsistent reliance on non-statutory grounds like "equity" and "reasonableness" to alter awards. Furthermore, the power of judicial replacement weakens the Finality of the Award and supplants Party Autonomy, as the tribunal's decision, the chosen, agreed-upon mechanismis subject to non-procedural amendment by the judiciary.

B. The Risk to International Enforceability (The New York Convention)

Perhaps the most serious concern raised by the Balasamy doctrine relates to its international implications. The decision sits uneasily with the pro-arbitration, minimal-curial-intervention stance long championed by the global arbitration community. Major arbitration hubs, such as England and Singapore, whose respective legislation (the Arbitration Act 1996 and the International Arbitration Act 1994, respectively) does not provide for judicial power to vary or modify an arbitral award, highlight India's deviation from consensus.

A primary risk highlighted by the minority is that a judicially modified award may face significant challenges regarding its enforceability under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (NYC). Article V(1)(e) of the NYC allows for the refusal of enforcement if an award "has not yet become binding on the parties" under the law of the seat. If an Indian court substitutes its own findings for the arbitrator's original determination, this raises a crucial legal question: Does the resulting modified document still legally qualify as an "award" that has become "binding" under Indian law, or has the judicial modification rendered the original award non-binding and the new document unenforceable abroad due to the court having exceeded its jurisdictional authority under the Act?

This uncertainty creates a critical systemic risk for international arbitration seated in India.

The Balasamy doctrine, therefore, represents a significant policy reversal, moving India away from the reformist posture cultivated internationally. This deviation from established global norms reduces India's attractiveness as a neutral, predictable arbitration seat, potentially undermining the country's recent efforts to position itself as a global arbitration hub.

VI. PRACTICAL IMPACT AND FUTURE DIRECTIONS

A. Guidance for Practitioners

The Gayatri Balasamy doctrine, while settling a pre-existing doctrinal inconsistency and bringing definitive clarity to the fragmented legal landscape, presents a complex new reality for arbitration practitioners. Parties challenging awards must now strategically frame their arguments, not just for setting aside, but also for modification of specific, severable, or clearly erroneous parts of the award, particularly concerning monetary quantum and interest.

For arbitral tribunals, meticulous care is required when drafting awards. Clear separation and articulation of findings related to distinct claims, calculations, and interest rates are crucial to maximize the chances of a finding of "severability," thereby potentially limiting the scope of judicial interference under Section 34 to only the offending segments. Conversely, award debtors now possess a codified legal pathway to seek substantive review of quantum and interest by strategically framing their Section 34 application around 'severability' or 'excessive interest,' thereby increasing the transactional cost and time required for execution.

B. The Need for Legislative Clarity

The ruling emphasizes the judiciary's preference for judicial efficiency (avoiding remission) over rigid adherence to the minimal intervention framework. However, the explicit reliance on Article 142 to override statutory limitations poses a significant structural challenge. The Constitution Bench's decision necessitates legislative action to address this inherent conflict between the absolute bar on intervention stipulated in Section 5 and the broad, equitable powers asserted by the Supreme Court under Article 142. Without legislative intervention clarifying the precise boundary between limited statutory modification and equitable constitutional review, the system risks perpetuating a reliance on constitutional exceptionalism, eroding predictability in commercial disputes.

C. Mitigation Strategies for Enforcement

For Indian-seated awards destined for enforcement abroad, counsel must proactively anticipate challenges based on the New York Convention. Argumentation must be prepared to defend the modified award, specifically addressing the concern that the judicial modification exceeded the court's jurisdiction under the law of the seat (Indian arbitration law), potentially rendering the award non-binding under Article V(1)(e) of the NYC. The perceived lack of institutional commitment to strict minimal intervention, signalled by this judicial innovation, adds a layer of scrutiny to Indian-seated arbitration outcomes globally.

VII. CONCLUSION: A PRAGMATIC STEP OR A DOCTRINAL RETREAT?

The Gayatri Balasamy doctrine constitutes a major inflection point in Indian arbitration law. The majority judgment ultimately prioritized judicial pragmatism—avoiding the protracted

delays inherent in remission back to the tribunal—over the strict doctrinal purity of minimal judicial intervention. By formally establishing the implied power to modify awards, the Supreme Court provided a judicial mechanism to rectify palpable errors and excesses in monetary relief, a mechanism often sought by parties under the pre-existing fragmented legal landscape.

However, this pragmatic achievement comes at the cost of sacrificing key tenets of international arbitration best practices. The ruling blurs the critical line between judicial supervision (rejection) and appellate review (replacement) and destabilizes the concept of finality inherent in the arbitral award. Furthermore, the reliance on Article 142 ensures that the substantive review of an award's quantum and interest remains subject to the discretionary power of the Supreme Court. While providing certainty regarding the existence of the modification power, the Gayatri Balasamy doctrine raises profound questions about India's long-term commitment to a non-interventionist arbitration regime and may increase complexity and uncertainty for large-scale commercial contracts seated in the country.

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