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THE ARBITRATOR DECIDES, BUT THE JUDGE CORRECTS: THE RISE OF 'MANIFEST ERRORS' AND THE REFORM OF ARBITRAL REVIEW

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Introduction

The promise of arbitration was intended to remedy the persistent delays, procedural weariness and startling case pendency that plague traditional litigation in India's legal system where the adage "*justice delayed is justice denied*" enviously reverberates through courtroom hallways.[1] Arbitration is a type of Alternative Dispute Resolution ["**ADR**"] that has become a valuable instrument for efficiency and re-establishing trust in prompt justice, as there are currently over four crore cases pending before Indian Courts.[2] It has been promoted as a symbol of contemporary justice that is easier to achieve, more flexible and less contentious. Nevertheless, there have been challenges along the way from promise to reality. What occurs when an arbitral ruling that is supposed to be final is abuzz with errors, be they computational anomalies, factual contradictions or glaring legal oversights, mistakes so obvious and unfair that a judge's silence might be seen as complicity? Can the Courts intervene in their limited review under Section 34 of the Arbitration and Conciliation Act, 1996 ["**Arbitration and Conciliation Act**"][3] to correct what is incorrect rather than reevaluate the merits?

In order to minimise the amount of judicial interference in arbitral judgements, Sections 34 and 37 of the Arbitration and Conciliation Act were created. Only specific grounds may be used to set aside an award under Section 34 and appeals from such rulings are governed by Section 37. Neither clause specifically addresses the authority to "modify" an award, this is because Section 34 is designed solely to enable setting aside an award on limited grounds such as illegality or conflict with public policy, and not to allow Courts to reassess or rewrite portions of the award. Thus, the

[1] Pratyaksh Garg, 'Role of ADR in Speedy Justice System in India' (2025) 5(6) IJLR 648 <https://ijlr.iledu.in/wp-content/uploads/2025/04/V5I663.pdf> accessed 7 June 2025.
[2] ibid.
[3] The Arbitration and Conciliation Act 1996, s 34.

Supreme Court's recent judgement in *Gayatri Balasamy v ISG Novasoft Technologies Ltd.* [4] ["**Gayatri Balasamy**"], has sought to address the statutory silence in the Arbitration and Conciliation Act regarding whether Courts possess the authority to 'modify' arbitral awards.

Despite being presented as a technical debate over legislative authorities, this case invites a more thorough investigation of the essence of arbitral finality. The majority ruling in states that the Court can identify and solve "manifest errors"[5] without re-examining the case's main arguments. On the other hand, acknowledging this makes us think about a manifest error. Are Courts able to handle such complex cases with care? In addition, does it have an impact on the finality of arbitration? Instead of applauding the growth of judicial discretion, this research effort aims to challenge its limits and examine remedies that protect justice and arbitral autonomy.

The Grammar of Justice and the Syntax of Arbitration

The issue started as a conflict between Ms. Gayatri Balasamy and ISG Novasoft Technologies Ltd, her previous employer. The arbitrator rendered a decision after the case proceeded to arbitration. Ms. Balasamy was unconvinced with the award and sought the Court to overturn the award under Section 34 of the Arbitration and Conciliation Act.[6] The Madras High Court took things further when it heard the case. It altered several aspects of the award rather than merely overturning it. This raised a legal question: Can a Court under Section 34 change an arbitral award or can it just reject the challenge or set it aside entirely? In pointing this out, the authors implicitly take a view that "overturning" may be permissible, but "alteration" ventures into a territory far beyond the scope of the statute.

Due to divergent opinions in several Court rulings regarding this problem[7], the case went to the Supreme Court which established a constitutional bench to resolve the issue. This case developed into much more than a private job conflict. It brought up significant legal issues about the finality of arbitral decisions, the function of Courts in arbitration and the boundaries of judicial authority. The Supreme Court had to determine how much authority Courts should have when examining arbitration results particularly when the award contains glaring errors. However, the law is unclear on what to do.

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[4] *Gayatri Balasamy v ISG Novasoft Technologies Ltd.* (2025) 7 SCC 1.
[5] ibid [49].
[6] The Arbitration and Conciliation Act 1996, s 34.
[7] *Project Director, National Highways No. 45 E and 220 National Highways Authority of India v M Hakeem* (2021) 6 SCC 150; *Tata Hydro-Electric Power Supply Co Ltd v Union of India* (2003) 4 SCC 172; *Larsen Air Conditioning and Refrigeration Company v Union of India* (2023) 15 SCC 472; *J C Budhraja v Chairman, Orissa Mining Corporation Ltd.* (2008) 2 SCC 444; *Vedanta Ltd. v Shenzden Shandong Nuclear Power Construction Company Ltd.* (2019) 11 SCC 465.

The Modification–Setting Aside Distinction

In ¶¶38 and 39 of the *Gayatri Balasamy* judgement, the Supreme Court subtly yet remarkably broadens the scope of judicial intervention in arbitration. It draws a theoretical line between "setting aside" and "modifying" an award, but while the distinction is acknowledged in words, the Court's approach seems to blur that line in practice.

The judgement begins by addressing an important concern that modifying an arbitral award is not the same as setting it aside. Under Section 34 of the Arbitration and Conciliation Act,[8] setting aside an award wipes it out entirely, while modification involves tweaking specific parts without disturbing the whole. This seems like a clear legal distinction at first glance. But when the Court tries to introduce a "limited power" of modification, it muddies the very lines it was trying to draw.

Although the Court describes this power as a balanced middle ground, it steps into a territory that the Act does not clearly define. The judgement does not grant Courts unchecked authority, but it does create a vague space where some changes to an award, which can be computational or typographical, even sometimes factual or legal, might be allowed without revisiting the actual merits of the case. However, the judgement fails to specify what kinds of errors fall within this 'limited' power. Can Courts fix arithmetic errors but not legal misjudgements? The absence of definitional clarity makes the scope of this power ambiguous and opens the door to inconsistent applications by different courts. The judgement does not specify, and this lack of clarity, makes the scope of this new power confusing and uncertain.

In stark contrast, a clearer legislative framework, like Section 68 of the UK Arbitration Act, 1996[9] which allows for Court intervention only in cases of serious procedural irregularities, may offer useful comparative guidance. As the *Gayatri Balasamy* Judgement[10] does not clearly explain what the new power covers, its meaning is not clear at all. This new statement by the Court means it will no longer strictly follow the words of the law but will seek better results in cases.[11] While that might seem appealing from an ethical standpoint, it disregards one of the arbitration's foundational principles i.e. finality, and Arbitration is designed to deliver closure, not perfection. Besides, this evolving practice is not only bad in doctrinal terms, as it defeats the legal certainty that parties depend upon, but also practically, since it can be something that either exposes such mechanisms to enforceability risks or creates a situation that promotes inordinate judicial scrutiny. Doctrinally,

[8] ibid.
[9] Arbitration Act, 1996, s 68.
[10] *Gayatri Balasamy* (n 4).
[11] *Gayatri Balasamy* (n 4), [39].

it undermines the predictability and uniformity of legal interpretation; practically, it introduces the possibility of more challenges and delays in enforcement, to vitiate the efficiency that arbitration is supposed to provide. Even minimal involvement of the Court risks blurring the line between appropriate oversight and undue interference.[12]

There is a delicate balance here: correcting blatant mistakes versus turning arbitral review into a backdoor appeal process. By introducing this idea of judicial correction without clear statutory support or procedural rules, the Court may have done more to complicate than clarify. The central concern is whether the Court's evolving criteria for intervention can genuinely be located within Section 34 or whether they represent a judicial expansion beyond its intended scope. If these powers are not rooted in Section 34, they may call for a new legal framework, but if they are then the worry is that Section 34 is being stretched beyond its intended limits. Put differently: If this new power is not grounded in Section 34, does it need a new legal framework? And if it is part of Section 34, does that stretch the section beyond what it was meant to do?

Ultimately, the Court's decision goes beyond interpretation by subtly redefining how arbitral awards might be reviewed in the future. If there are not enough clear guidelines or safety measures, courts can give different versions of the law, recreating the issues that arbitration was intended to solve.

'Manifest Error': A New Judicial Construct?

Arbitration is important mainly because it brings about finality.[13] This is what sets arbitration apart from traditional Court proceedings. Parties choose arbitration precisely because they want a binding outcome, free from prolonged litigation and with minimal court involvement. Reflecting this, the Arbitration and Conciliation Act was carefully designed to keep judicial interference to a bare minimum.

While Section 34 of the Arbitration and Conciliation Act lays down a specific and limited set of grounds on which an arbitral award can be set aside.[14] Section 37 permits only a narrow scope for appeal.[15] Nonetheless, neither part of the Arbitration and Conciliation Act allows for any

[12] Sukhman Kapoor, 'The Evolution and Effectiveness of Judicial Intervention in Indian Arbitration: Analyzing the Balance between Autonomy and Oversight' (*Jus Scriptum*, 30 August 2024) <https://www.jusscriptumlaw.com/post/the-evolution-and-effectiveness-of-judicial-intervention-in-indian-arbitration-analyzing-the-balanc> accessed 7 June 2025.
[13] Udechukwu Ojiako, 'The Finality Principle in Arbitration: A Theoretical Exploration' (2023) 15 Journal of Legal Affairs and Dispute Resolution in Engineering and Construction 04522038.
[14] The Arbitration and Conciliation Act 1996, s 34.
[15] The Arbitration and Conciliation Act 1996, s 37.

adjustments or corrections to an award. It is clear from this section that the legislators intended to keep the arbitration process clear and uninterrupted by the involvement of the Courts.

However, the term "manifest error" risks becoming a judicially invented gateway to undermine the very foundation of arbitral finality.[16] Although it gained significant attention through the Supreme Court's ruling in *Gayatri Balasamy* judgement,[17] the concept remains vague. It raises serious questions about its scope and implications. The Court's recognition of a limited power to correct "manifest errors" without a corresponding legislative basis in Section 34 creates a grey area with potentially far-reaching consequences.[18]

By not clearly defining what counts as a "manifest error," the judgement ends up opening a backdoor that Courts could walk through far too easily. What is being framed as a narrow, harmless exception for correction might actually become a wide-open opportunity for deeper judicial involvement. In ¶49, the Court says that it can fix manifest errors without re-examining the merits but this restraint may be more illusion than reality. Once Courts are allowed to "correct" what they consider obvious mistakes, it becomes hard to tell where correction ends and re-evaluation begins. The risk is that this could gradually turn into a subtle form of merit-based review, undermining the very finality arbitration is supposed to guarantee.[19]

The real concern lies in the lack of clear interpretation surrounding the term. What one judge considers "manifest" may appear merely "arguable" to another.[20] Unlike the well-defined statutory grounds for setting aside arbitral awards under Section 34, such as public policy or incapacity, this new category lacks both legal basis and doctrinal clarity. Disappointed parties may now try a new approach: label the issue a "manifest error," argue that the mistake is too obvious to overlook and ask the Court to modify the award under the guise of correction.

Even more concerning is the absence of procedural safeguards. Unlike appeals or Section 34 proceedings which set procedures and timelines, the concept of correcting manifest errors

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[16] Sudha Sampath, 'Supreme Court Clarifies Limits of Judicial Intervention in Arbitration: Insights from Gayatri Balasamy v. ISG Novasoft Technologies Ltd.' (*ATB Legal*, 12 May 2025) <https://atblegal.com/blog/supreme-court-judicial-intervention-gayatri-balasamy/> accessed 27 May 2025.

[17] *Gayatri Balasamy* (n 4).

[18] Abhinav Sahrma, Ayush Srivastava, Mayank Bansal, 'Supreme Court on Modification of Arbitral Awards: A Landmark Ruling with Loose Ends' (*Chambers and Partners*, 2 May 2025) <https://chambers.com/articles/supreme-court-on-modification-of-arbitral-awards-a-landmark-ruling-with-loose-ends> accessed 27 May 2025.

[19] Srashti Talreja, Tanya Khanijow, 'When Final Isn't Final: Supreme Court Interprets Power to Modify Awards' (*The Arbitration Digest*, 22 May 2025) <https://thearbitrationdigest.com/when-final-isnt-final-supreme-court-interprets-power-to-modify-awards/> accessed 27 May 2025.

[20] Sukhman Kapoor (n 12).

provides no clear process.[21] Should the correction process occur under Section 34 or use a different, undetermined course of law? Do Courts have the authority to take action without being told to do so? Is it possible for errors of law to happen? All these unanswered questions make the idea suspect of misuse.

The *Gayatri Balasamy* judgement provides some legal leeway through its judgement. The Court's aim to stop injustice makes much sense and is worthy of praise. Nevertheless, the way it goes about it, by introducing a vague, judge-made review power, is problematic. Without clear limits, this idea of "manifest error" could end up being a Trojan horse, quietly weakening the very principle of finality that makes arbitration effective in the first place.

Justice K.V. Viswanathan's Principled Dissent

In this above-mentioned case, the majority judgement stirred debate by suggesting that Courts could "modify" arbitral awards under Section 34 of the Arbitration and Conciliation Act,[22] without reassessing the merits of the case. In contrast, Justice K.V. Viswanathan, in his dissent, takes a more cautious and principled stance. He firmly rejects the idea that Section 34 gives Courts any implied power to modify awards. His reasoning, rooted in a careful reading of the law and a strong respect for the autonomy of contracts, provides a compelling counterpoint, especially as discussions around "manifest error" continues to evolve.

He highlights that an arbitral award stems from party autonomy, a conscious choice by the parties to stay out of regular courts. This choice amounts to a 'contractual ouster',[23] meaning the parties have agreed to resolve their disputes privately, which is perfectly valid under Section 28 of the Indian Contract Act of 1872.[24] So, if Courts begin to interpret Section 34 as giving them the power to modify or correct awards without any clear wording in the law, it would effectively bring back the very judicial involvement the parties had chosen to avoid.

The dissenting opinion zeroes in on what courts are actually allowed to do under Section 34. Justice K.V. Viswanathan makes it clear that Section 34 is not meant to function like an appeal. Courts can only interfere with an arbitral award on particular and limited grounds like when there is a blatant legal error or if the award goes against public policy.

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[21] Manav Pamnani, 'The Boundaries of Judicial Intervention in Arbitration: Navigating Section 34' (*The HNLU CCLS Blog*, 1 August 2024) <https://hnluccls.in/2024/08/01/the-boundaries-of-judicial-intervention-in-arbitration-navigating-section-34/> accessed 27 May 2025.
[22] The Arbitration and Conciliation Act 1996.
[23] *Gayatri Balasamy* (n 4), [82].
[24] The Indian Contract Act, 1872, s 28.

He disagrees with the majority's use of the legal maxim *omne majus continet in se minus* (the greater includes the lesser)[25] to argue that if a Court can set aside an award, it should also be able to modify it. In his view, that logic does not hold. Setting aside an award means wiping it out completely, while modification involves reviewing and changing parts of it, which amounts to reassessing the merits. According to Justice K.V. Viswanathan, that kind of review is not allowed under Section 34.[26]

The dissenting opinion further highlights how other countries, like the UK and Singapore, allow Courts to modify or send back arbitral awards, but only when their laws explicitly permit it.[27] As argued earlier, Section 68 of the UK Arbitration Act 1996[28] enables a party to seek redress of an arbitral award in court due to what considered as *"serious irregularity"* which may do or already has done substantial injustice to the applicant. In like manner, Section 24 of Singapore's International Arbitration Act ["**IAA**"],[29] which mirrors Article 34 of the UNCITRAL Model Law,[30] allows annulment of an arbitral award upon satisfaction of some conditions, including violation of natural justice that prejudice a party. But in contrast, the Arbitration and Conciliation Act has chosen not to follow that route even after several rounds of amendments. This silence shows a deliberate choice by the legislature to keep the courts at arm's length when it comes to interfering with arbitral awards. As a result, in ¶20 of the *Gayatri Balasamy* judgement,[31] the Solicitor General had stressed that modification powers in other jurisdictions are specially bestowed by statute, which is not the case with Section 34 of the Arbitration and Conciliation Act[32] as it only permits setting aside, rather than modification. If courts start stepping in to modify awards without clear legal backing, it means rewriting the law from the bench. This view is further supported by the 2015 T.K. Viswanathan Committee ["**Committee**"], which recommended reforms to the Arbitration Act. The Committee took a deep dive into various issues, including delays, institutional arbitration and court involvement but it never suggested giving courts the power to modify awards.[33] That silence speaks volumes. If such a change was necessary or even desirable, the Committee had every chance to propose it. The fact that it did not and that the amendments passed in 2015, 2019, and 2021 did

[25] 'Omne Majus Continet in Se Minus' (*Academic Dictionaries and Encyclopedias*) <https://blacks_law.en-academic.com/36654/omne_majus_continet_in_se_minus> accessed 7 June 2025.
[26] *Gayatri Balasamy* (n 4), [91].
[27] *Gayatri Balasamy* (n 4), [93].
[28] *See* (n 8).
[29] International Arbitration Act 1994, s 24.
[30] UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006), UNGA Res 61/33 (adopted 4 December 2006), art 34.
[31] *Gayatri Balasamy* (n 4).
[32] The Arbitration and Conciliation Act 1996, s 34.
[33] *Gayatri Balasamy* (n 4), [94].

not include any such power reinforces the idea that modification lies outside what the statute allows.[34]

Justice K.V. Viswanathan also addresses the issue of severability in his dissent. He highlights that in many cases; arbitral awards reflect a composite reasoning process where claims and counterclaims are intertwined. Courts attempting to sever and modify one part of the award risk disturbing the internal logic of the tribunal's decision.[35] This exercise cannot be done without re-entering the merits, and doing so would require stepping back into the merits of the case, something that is impermissible under the current legal framework.

Justice K.V. Viswanathan clarifies that correcting errors, manifest or not, is not a matter for the Courts to decide unless the law allows it expressly. Letting a power like this into arbitration would lead to unpredictable results and cause the key objectives of efficiency and a final result to be lessened. It is necessary to give Section 34 a narrow scope to ensure that arbitration remains autonomous and uncompromised.

Justice K.V. Viswanathan's point shows that arbitration is an independent way to solve disputes, so any Court involvement should only be according to existing laws. In his view, there is a clear boundary against using the flexible 'manifest error' idea to increase judicial review. The dissent moreover, highlights that arbitration is meant to remain an independent dispute-resolution mechanism and therefore Court intervention must strictly follow the statutory framework. Justice K.V. Viswanathan's rejection of the broad and uncertain idea of a "manifest error" test, reinforces the view that any modification of an arbitral award, if at all permissible, must be tightly circumscribed and grounded in clear legislative limits.

Conclusion

The *Gayatri Balasamy* judgement takes a new direction from the rules of the Arbitration and Conciliation Act. Because the majority believes that a judge has the right to change an award if they see "manifest errors," the ruling brings in a discretionary judicial power that lacks legislative support and proper protection. While the judgement claims to preserve arbitral autonomy, it risks opening the door to broader judicial intervention.

However, what is particularly striking is that the concluding paragraph of the majority's opinion restricts correction only to "clerical, computational or typographical errors which appear erroneous on the face of the record." The absence of the term "manifest error" from this operative portion

[34] *Gayatri Balasamy* (n 4), [96].
[35] *Gayatri Balasamy* (n 4), [146].

raises serious questions; whether it was a typographical error or a deliberate exclusion remains unclear.[36] Either way, it exposes the conceptual fragility of the majority's reasoning.

This paper leans into Justice K.V. Viswanathan's dissent and rightly restores doctrinal clarity. He points out that Section 34 does not allow a Court to alter a decision, only to reject it. He adds that any attempt to expand this rule might erode the parties' autonomy. His view fits what the legislators and international groups meant and clears up the problems created by other Court-made guidelines.

Ultimately, finality in arbitration is not just a procedural preference but a foundational principle. Any departure from it must come through clear legislative reform and not judicial improvisation. Until such reform occurs, the concept of "manifest error" remains vague and potentially disruptive, threatening the very goals arbitration seeks to uphold i.e. efficiency, certainty and minimal judicial interference.

In case of introducing correction mechanism, it would be most logical to implement them through statutory amendments while specifying the extent of permissible corrections (e.g., restricted corrections caused by computing error or by mistake of clerical work). Instead, the judicial guidelines may offer an interpretive clarity, but it will be inconsistent unless legislature offers intention. Another alternative road could be through development of procedural safeguards where individuals have a time-bound motion of correction or rectification by the tribunal which has to be approved or endorsed at the Court. Although the gap is presently addressed through judicial articulation, and exemplified in Gayatri Balasamy, it can be perceived as an interim measure rather than a substitute for structured legislative reform.

[36] *Gayatri Balasamy* (n 4), [85].