**Setting Aside and Modification of Arbitral Award: Contemporary Scenario in India [TNR12pt]**

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***Abstract***

***Arbitration is an alternative to litigation as a method of dispute resolution. The law relating to arbitration in India is based on the English Arbitration Law. The purpose of arbitration is to ensure effective, quick and consensual decision making process avoiding the arduous process of courts. The need for such a procedure is greater in a country like India where delay has ingrained itself as part of the system of administration of justice. While arbitration is indeed a quick procedure, the interference by court in the process acts as a clog to its development.***

***In India the UNCITRAL model of arbitration is followed for under Arbitration and Conciliation Act, 1996. This research paper analyses arbitration with reference to Section 34 of the 1996 Act which deals with the grounds for setting aside an arbitral award. Section 34 of the 1996 Act, clearly specifies that the Court has Power to Set Aside Arbitral Award but it does not provide the modification arbitral award by court or set aside majority award and restore minority award. In the various cases Hon’ble High Court has not only modify the award but also restore minority award. This paper will also analyse and compare the previous legislation whether the court has power under the new act to either modify or restore the minority award. This research paper will analyse the consequences of setting aside of arbitral award under Section 34 of the 1996 Act.*** ***[TNR10pt] Abstract Should not be more than 250 Words***

**Keywords: Panchayat, Modification, Setting aside, Judicial, Award.*[TNR10pt] Minimum 5 Keywords.***

**Introduction**  **[TNR12pt] Line Spacing 1.0**

In the ancient time in our Country, there have existence of a system of arbitration which was in the form of Panchayats which presided over by a Sarpanch. The name “Panchayat” does not imply that there should be only five judges. The *Punches* were ordinarily elected according to their wealth, social standing and influence in the community. They could decide matters which were referred and also matters which were not referred. The binding authority behind their decisions was the fear of excommunication from the community and also from the religious services, as *Panchayats* were incomplete without religious preachers.

After the advent of the British in India, attempts were made to regulate the judicial system in the country. Thus, regulations and Acts were passed to formulate a system of arbitration in Indian which would be in consonance with British Jurisprudence.

The Law relating to arbitration is contained in the Arbitration and Conciliation Act, 1996. It came into force on the 25th day of January, 1996. The Act is of consolidating and amending nature and is not exhaustive. But it goes much beyond the scope of its predecessor, the 1940 Act. It provides for domestic arbitration, international commercial arbitration and also enforcement of foreign arbitral awards.

The Supreme Court in the case of *Centrotrade Minerals & Metals Inc v Hindustan Copper Ltd*[[1]](#footnote-1) said that beneficial features of the Arbitration and Conciliation Act, 1996 are as follows, (i) fair resolution of a dispute by an impartial tribunal without any unnecessary delay or expenses; (ii) party autonomy is paramount subject only to such safeguards as are necessary in public interest; and (iii) the Arbitral Tribunal is enjoined with a duty to act fairly and impartially.

The court also noted the shortcomings to as follows[[2]](#footnote-2), (i) no provision is made for expediting awards or the subsequent proceedings in the courts where applications are filed for setting aside awards; (ii) an aggrieved party has to start again from the District Court for challenging the award.

**Recourse against Arbitral Award**

Section 34 of the Arbitration Act: Section 34 of the Arbitration and Conciliation Act, 1996 deals with Application for setting aside arbitral award.

1. **Salient Features of Section 34**
2. It prohibits any recourse against arbitral award other than the one provided for in Sub-Section (1) of Section 34.
3. It limits the grounds on which the award can be assailed in Sub-section (2) of Section 34.
4. It promises a fairly short period of time in Sub-section (3) of Section 34 within which the application for setting aside may be made.
5. It provides for remission of award to the arbitral tribunal to cure defects therein.

The effect of an award no doubt is that the parties cannot appeal against it as to its merits and the court cannot interfere with it on merits. The Supreme Court has observed[[3]](#footnote-3), “An arbitrator is a judge appointed by the parties and as such an award passed by him is not be lightly interfered with.” The Conclusion of an arbitrator on facts, even if erroneous in the opinion of the court cannot be interfered with[[4]](#footnote-4).

Under the repealed 1940 Act three remedies were available against an award, namely, modification, remission and setting aside. These remedies have been put under the 1996 Act into two groups. To the extent to which the remedy was for rectification of errors, it has been handed over to the parties and the Tribunal. Moving the Court is not necessary. The Parties can apply to the Tribunal for removal of errors and the Tribunal can also rectify errors at its own motion. The remedy of setting aside has been moulded into a composite one, namely, setting aside as well as returning the award back to the Tribunal for removal of defects.

The Supreme Court has observed that “Section 34 of the Act is based on Article 34 of the UNCITRAL Model Law and it will be notices that under the 1996 Act the scope of the Provisions for setting aside the award is far less than it was under Section 30 or 33 of the 1940 Act”[[5]](#footnote-5). The Supreme Court, however, felt that the scope of provision under the old and new Acts more or less the same.

In the Case of *State of U.P v Harish Chandra & Co[[6]](#footnote-6).* Court has held that setting aside an award means that it is rejected as invalid. Not that the court can itself decide the matter or can interfere into the awards on merits, but only this that the award is avoided and the matter becomes open for decision again.

In the case of *ONGC Ltd v Saw Pipe Ltd*[[7]](#footnote-7), the Court has held that the totality of the grounds for setting aside are available under the Act are as follows.

The Court can set aside an award ;For the reasons mentioned in the Section 34(2)(a)(i) to (v),

1. For the reasons stated in Section 28(1)(a),
2. For the reasons stated in Section 34(2)(b)(ii) on the ground of the conflict with the public policy of India, that is to say, if it is contrary to;
3. Fundamental Policy of Indian Law; or
4. The Interest of India; or
5. Justice or morality; or
6. If it is patently illegal.
7. For the reasons stated in Section 13(5) and 16(6).

**Analysis of Section 34 with Regard to Majority and Minority Award**

Section 34[[8]](#footnote-8) of the Arbitration and Conciliation Act provides for the setting aside of the arbitration award. The section provides that either party to the dispute can make an application to the court in order to set aside the award passed by the tribunal. However, the said provision is silent as to whether, in case there is an arbitral tribunal, while setting aside majority award, the minority award can be upheld or not. Section 34[[9]](#footnote-9), if taken as per its literal meaning, does not confer the power on the court to uphold the minority award while setting aside the majority award. The purpose of the minority award is to allow the dissenting arbitrator to express his opinion. It is solely for the purpose of ensuring that each arbitrator in the tribunal expresses his/her opinion with regard to the matter. The minority award has no effect as such as there is another award which is passed by the majority of the arbitrators. Thus, it is only an opinion which the arbitrator expresses as he is a member of tribunal which is deciding the issue in hand. Once the court exercises its power under Section 34 and sets aside the majority award, the dispute would go back to the arbitral tribunal where the arbitrators would have to reapply their minds on the majority award set aside. As per the 1940 Act, on an application made to the arbitral Tribunal, the court was empowered to make such changes and modification to the award as it deemed fit. However, with the 1996 amendment, this court was deprived of this power in the act. This made it clear that it was the intention of the legislature to deprive the courts of this power. The supreme reiterated this point in *Ms Dermott International Inc. v. Burn Standard Co. Ltd[[10]](#footnote-10)*.

Section 34 provides solely for setting aside of the award. As mentioned earlier, there is no power to modify the award. The court, under Section 34, does not sit as a court of appeal. It solely looks into the legality of the decision, and in case of even minor illegality, it shall set aside the award. However, on numerous occasions, the court has stated that there are certain exceptions as per which an award can be modified, such as patent illegality or when the tribunal passes an award with regard to certain aspect which was not within its jurisdiction.

The Supreme court, in *McDermott International Inc. v. Burn Standard Co. Ltd. & Ors.[[11]](#footnote-11),* enumerated upon the abovementioned point and further stated that by setting aside the petition and sending it back to the arbitral tribunal would only ensure expediency in deciding the matter. It is pertinent to mention that the court has also stressed upon the point that only when these conditions exist can the court modify the award, and otherwise it cannot do so to correct any award, as for that purpose the issue is referred once again to the tribunal.

Having said that, if the courts are not given the power to modify award, it would lead to a lot of hardships. First of all, once the award is set aside, the proceedings would go back to the tribunal where the matter would be again adjudicated upon and the tribunal would have to reapply its mind. This does not make sense as once the arbitrator(s) have passed a certain award, to ask them to reapply their minds would only mean that they would have to separate themselves from the award they have passed earlier and ensure that their award is in consonance with the reasons given by the court in the setting aside petition. Thus, they would have to, at least to some extent, go against their own award.

Secondly, if the court is not given the power to modify the award and is sent back to the tribunal, this would only make the whole procedure of arbitration even more time consuming. The Law commission reports have, on various instances, reiterated the importance of the Alternate Dispute Resolution (ADR) methodology. The reports have stressed upon the fact that such dispute resolution mechanism would be faster than normal court proceedings which would ensure speedy delivery of justice. That was the essential purpose of ADR, that where it takes years to settle a dispute, it could be done quickly. This is because the parties to the disputes do not have to wait for longer durations in courts and can solve their disputes as per their own convenience at a faster speed. Although, this system is relatively expensive as compared to the normal court proceedings, however, the benefit accrued by it is manifold. In fact, the Delhi High Court stressed upon this point in *Union of India v. Modern Laminators*[[12]](#footnote-12) by stating that if the power of the court under Section 34 is restricted not to include power to modify, then this would only be an impediment in speedy and expeditious disposal of the dispute thereby making it more cumbersome.

Thirdly, although the Supreme Court judgements have stated that after setting aside the award, the courts cannot modify the award, but the court has not taken into consideration that by sending the dispute back to the arbitral tribunal, the parties would be right where they started even after spending so much time and money on their disputes. This would end up in becoming a vicious cycle as the either party against whom the award is passed can get the award set aside (with reasonable reasons) and then begin their arbitration proceedings. The Supreme court has, unfortunately, failed to realize that this would only make the entire process of arbitration useless.

Fourthly, this does not appear to be a point of controversy as the Supreme Court as well as various High Courts in the country, along with setting aside, have gone a step ahead and exercised their power to modify an award- wholly or partially. This has been done in various judgements of the Apex Court such as *Tata Hydro-Electric Power Supply Co. Ltd. v. Union of India, Hindustan Zinc Ltd. v. Friends Coal Carbonisation[[13]](#footnote-13), etc. Further, the Supreme Court, in Axios Navigation Co. Ltd. v. Indian Oil Corporation Limited*[[14]](#footnote-14), stated that the opinion expressed by dissenting Arbitrator, if supports the contentions raised by the loosing party, cannot overlook and deny the right of the losing party to the well assessed and detailed opinion of dissenting Arbitrator.

**Comparison with Other Countries Legislation**

***The English Arbitration Act, 1996:***

The English Arbitration Act, 1996 categorises the powers of the Court in relation to an award, into three types. They are (i) challenge to an award on the question of substantive jurisdiction, under Section 67, (ii) challenge to an award on the ground of serious irregularity affecting either the Tribunal or its proceedings or the award, under Section 68, and (iii) appeal to the Court on a question of law arising out of an award, under Section 69.

Interestingly, the jurisdiction exercisable by the Court under these three categories of challenges, appear to vary at least to certain extent. Whenever a challenge to an award is made under Section 67 of the English Act, on the question of substantive jurisdiction, the Court can, under Sub-section (3), either confirm the award or vary the award or set aside the award in whole or in part. But, when a challenge is made under Section 68 on the ground of serious irregularity, the Court may either remit the award for re-consideration or set aside the award in whole or in part, or declare the award to be of no effect in whole or in part. In contrast, the Court may, in an appeal on a point of law arising under Section 69, either confirm the award or vary the award or remit the award back to the Tribunal for a fresh consideration or set aside the award in whole or in part.

***The Commercial Arbitration Act of 1985, Canada***

Insofar as Canada is concerned, they have the Commercial Arbitration Act of 1985. The Act contains only about 11 Sections and 2 Schedules. Under Section 5(1) of the Act, a Code known as “Commercial Arbitration Code” has the force of law in Canada. The Code applies in relation to matters, where at least one of the parties to the arbitration is Her Majesty in right of Canada, a departmental Corporation, a crown Corporation or in relation to maritime or admiralty matters. Schedule I to the Act contains the Commercial Arbitration Code, which is entirely based upon the UNCITRAL Model Law. Article 34 of the Code is nothing but a re-production of Article 34 of the Model Law. Therefore, Article 34 of the Commercial Arbitration Code of Canada also uses only the very same expressions, namely “recourse to a Court” and “set aside”.

***The Federal Arbitration Act of 1925, United States of America***

Insofar as United States is concerned, there is the Federal Arbitration Act of 1925, which was codified in 1947 and amended in 1954, 1970, 1988 and 1990. This Act contains three interesting provisions. The first is in Section 9, which enables the Court to confirm the award, if the parties have an agreement to have such a confirmation from a specific Court. The second provision is in Section 10. Under Section 10, the United States Court in and for the District wherein the award was made, is conferred with the power to vacate the award upon the application of any party to arbitration, if the award was procured by corruption, fraud or undue means, or if the arbitrators were guilty of misconduct either by refusing to postpone the hearing or in refusing to hear relevant evidence or where the arbitrators exceeded their powers. There is one more interesting aspect to Section 10. Under Clause (b) of Section 10, an award may be vacated even upon the application of a person other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the conditions laid down therein are satisfied.“The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.”

Therefore, it appears that the power of the Court under Section 11 to modify or correct the award is available only for the purpose of giving effect to the true intent of the award and to promote justice.

***The Singapore Arbitration Act, 2001, Singapore***

The Singapore Arbitration Act, 2001, contains some interesting Court may set aside award. A careful look at the above provisions of the Singapore Act would show that a Court shall not have jurisdiction to confirm, vary, set aside or remit an award on an arbitration agreement except where so provided in this Act. Section 48 provides for setting aside of an award and section 49 provides for an appeal against an award on a question of law. It is interesting to note that section 48 which empowers the court to set aside an award is almost identically worded as section 34 of the Indian Act and it speaks only about setting aside of an award. But section 49 which provides for a remedy of appeal, empowers the court, under sub-section (8) even to vary the award. Therefore one may tend to think that in an original application to set aside an award under section 48, the court cannot vary the award, though in an appeal under section 49, it can vary the award. But this conclusion available on a plain reading of the provisions, is dispelled by section 47 which speaks about setting aside, varying, remitting etc. As if reiterate such a conclusion, section 51, which is made applicable to both sections 48 and 49, speaks of varying an award, under sub-section (2) of section 51. Therefore, sections 47 and 51(2) of the Singapore Act, make it amply clear that the power to set aside includes a power to vary the award.

**Judicial Response**

5.1 In the case of *Axios Navigation Co. Ltd. v. Indian Oil Corporation Limited[[15]](#footnote-15),* single bench of Bombay High held that

*“the Court under Section 34 needs to consider whether the majority view is a possible view on the basis of material on the record. The opinion expressed by dissenting Arbitrator if supports the contentions raised by the loosing party, the Court just cannot overlook and deny the right of the loosing party to refer to the well assessed and detailed opinion of dissenting Arbitrator. There is no quarrel with the proportion that the majority award can only be set aside on what is stated therein if challenge is sustained and not on the basis of what is stated in the minority award). But the issue is if the Court independently come to the conclusion and finds that the majority award is not correct and/or perverse and/or illegal, in that case, the Court is bound to interfere with the majority award. It cannot be stated that the Court has accepted the minority opinion to set aside the majority award. It all depends upon the facts and circumstances of each case. The loosing party and/or the Petitioners cannot be totally debarred from pointing out the opinion expressed by the dissenting Arbitrator. Every Arbitrators, in my view, is entitled to express his opinion as the institution has at the instance of the parties and selected all these Arbitrators to adjudicate their dispute. To say that the dissenting Arbitrator should not express his opinion and/or should not sign even the award, considering the scheme and purpose of the Arbitration Act and/or the principle of fair and equitable justice, will cause hardship and injustice will hamper the scheme of the Arbitration Act, where the parties are entitled to choose their private judge and also entitled to know the view or opinion on the dispute raised.”*

In the case of *Government of India v. M/s. Acome & Ors.*[[16]](#footnote-16)while considering the aspect of majority and dissenting opinion in reference to Arbitration Act, expressly noted Russel on Arbitration, 21st Edition (1997), para 6059, Page 271 as under: *“ If however there is no chairman, then decisions, order and awards must be made by all or a majority of the tribunal. Any member of the tribunal who does not assent to an award need not sign it and may set out his own views of the case in a "dissenting opinion". This is for the parties information only and does not form part of the award, but it may be useful in terms of adding weight to the arguments of a party wishing to appeal against the award.*

*The aforesaid commentary makes a reference to the specific provisions of the Arbitration Act, 1996 as in force in England. The scheme of the two Acts is similar and same principles of law would apply in the context of Indian Act”.*

*5.2 Hindustan Zinc Ltd. v. Friends Coal Carbonisation[[17]](#footnote-17)* has endorsed and accepted the modification of award by the trial court. In that case the award was challenged under Section 34 of the Arbitration Act. The trial court by the judgment, allowed the petition in part. In an appeal under Section 37 of the Act, the said judgment of the trial court was set aside and the award was upheld in entirety. However, the Apex Court has upheld the trial court's order of partial modification.

*5.3. Mc Dermott International Inc. v. Burn Standard Co. Ltd. & ors*[[18]](#footnote-18)., clearly indicate that this is the course of action sanctioned by law:*“The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness, intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the Arbitrators, violation of natural justice, etc. The court cannot correct errors of the Arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."If the Court finds that the award is vitiated because of violation of principles of natural justice, or such other reasons which cannot be called as "adjudication" on merits, the Court can set aside the award and if the award is set aside for such reasons, it is open to the parties to invoke the arbitration clause again and initiate arbitration proceeding. "When the award is set aside for the reasons other than merits, then it is open to the parties to the arbitration agreement, if arbitration agreement survives, to invoke the arbitration agreement and to have the matter referred to arbitration. In other contingencies they can adopt other remedy that may be available to them and in that situation, either for adopting any other remedy or in initiating arbitration, the period spent during the earlier arbitration is liable to be excluded while computing the period of limitation. In our opinion, the decision of various courts either on Arbitration Act, 1940 or the Acts which were in the field before that, while considering whether the Court has the power to modify the award in a petition filed under Section 34 cannot be considered because under those enactments power was positively conferred on the court to modify the award. It is further to be seen here that Arbitration Act, 1996 has repealed the Arbitration Act, 1940. Arbitration Act, 1940 had a specific power conferred on the court to modify the award. While enacting 1996 Act, the Parliament has chosen not enact that provision. In our opinion, the intention of the Legislature, therefore, was clear not to confer on the court power to modify the award. It is now well settled that scheme of Arbitration Act, 1996 is clear departure from the scheme of 1940 Act. In 1940 Act, power was conferred on the court itself to modify the award. In 1996 Act, as observed above, the scheme is that the power is conferred on the court to modify the award only in one situation found in Clause (iv) of Section 34(2), and in all other situations the court, if an application is made by the party, has to follow the course of action contemplated by sub- section 4 of Section 34 or in the absence of any application set aside the award and leave the parties to their own remedy. In our opinion, one more principle has to be taken into consider. The court before 1996 Act came into force, under the Arbitration Act had power to modify an award. While framing 1996 Act, the Legislature was conscious of the power of the court under 1940 Act to modify the award. While enacting 1996 Act, the Legislature has chosen to confer power on the court to modify the award only in one contingency found in Clause (iv) of Section 34(2), and therefore, in our opinion, it will have to be held that the Legislature has denied power to the court to modify the award in all other situations.”*

5.4 In the Case of *M/S. Schlumberger Asia Services v Oil & National Gas Corporation*[[19]](#footnote-19), Division Bench of Delhi High Court held that: *“The majority award is contrary to the contractual terms and the same is liable to be set aside on the ground that the arbitrators have acted in excess of their jurisdiction. In view of this conclusion, we are not deciding the issue as to whether the learned Single Judge in an Objection Petition filed under Section 34 of the Arbitration And Conciliation Act, 1996, could have referred to and affirmed the minority award as for the purposes of the present judgment even if the appellant‟s submission is presumed to be correct, then also, the appeal is liable to be dismissed”.*

5.5 In *Union of India v. Modern Laminators*[[20]](#footnote-20) a learned Judge of the Delhi High Court read into Section 34 of the 1996 Act, the "obvious error" and "the slip rule" found in Section 15 of the 1940 Act. *"In my opinion, the power given to the court to set aside the award, necessarily includes a power to modify the award, notwithstanding absence of express power to modify the award, as under the 1940 Act. If the powers of the court under S.34 are restricted to not include power to modify, even where the court without any elaborate enquiry and on the material already before the arbitrator finds that the list should be finally settled with such modification and if the courts are compelled to only set aside the award and to relegate the parties to second round of arbitration or to pursue other civil remedies, we would not be servicing the purpose of expeditious/speedy disposal of list and would be making arbitration as a form of alternation dispute resolution more cumbersome than the traditional judicial process. "Therefore, from the various decisions of the Supreme Court and of the Bombay and Delhi High Courts, it is seen that the judicial trend appears to favour an interpretation that would read into Section 34, a power to modify or revise or vary the award. Except one observation found in the decision of the Supreme Court in Mc Dermott, all the decisions of the Supreme Court have either modified the awards or approved the modification of the awards done by the Courts under Section 34.*

**Analysis of Justice B.N. Srikrishna Report**

The promotion of India as an arbitration hub has been on the agenda of Indian lawmakers for some time now. The changes brought about by the Arbitration and Conciliation (Amendment) Act, 2015 (“2015 Amendments”) to the Arbitration and Conciliation Act, 1996 (“ACA”) were aimed at achieving this goal by facilitating speedy and efficacious resolution of disputes through arbitration[[21]](#footnote-21). The enactment of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (“Commercial Courts Act”) which facilitates swift disposal of arbitration-related court proceedings by providing for arbitration matters involving commercial disputes to be heard by commercial courts / divisions was another step in this direction[[22]](#footnote-22).

On January 13, 2017, the Department of Legal Affairs, Ministry of Law and Justice formally constituted a ten member High Level Committee under the chairmanship of retired Judge of Supreme Court, Justice B.N.Srikrishna. The Committee has been asked to look into following aspects[[23]](#footnote-23).

* To analyze & review effectiveness of present arbitration mechanism. (ii) To review the facilities, resources, funding and manpower of existing ADR institutions.
* To review working of the institutions funded by the Government of India for arbitration purposes.
* To assess skill gaps in ADR and allied institutions for both national and international arbitration.
* To evaluate information outreach and efficacy of existing legal framework for arbitration.
* Suggest measures for institutionalization of arbitration mechanism, national and international, in India so as to make the country a hub of international commercial arbitration.
* Identify amendments in other laws that are needed to encourage International Commercial Arbitration (ICA).
* Devise an action plan for implementation of the law to ensure speedier arbitrations. (d) Recommend revision in institutional rules & regulations and funding support thereof.
* Advise empanelment of national and international arbitrators for time bound arbitral proceedings.
* Suggest road map for further strengthening of research and development impacting the domain.
* Enlist requisite steps for augmenting skill sets and professional manpower buildup for the sector.
* Recommend measures to make arbitration more widely available in curricula and study materials.
* Focus on the role of arbitrations in matters involving the Union of India, including bilateral investment treaties (BIT) arbitrations and make recommendations where necessary.
* Evolving an efficient arbitration ecosystem for expeditious resolution of International and Domestic Commercial disputes.

The High Level Committee was given the mandate to review the institutionalization of arbitration mechanism and suggest reforms thereto. The Committee held 7 sittings. It submitted its report on 3 August, 2017 to Shri Ravi Shankar Prasad, Hon’ble Minister of Law & Justice and Electronics and Information Technology.

The Committee has divided its Report in three parts. The first part is devoted to suggest measures to improve the overall quality and performance of arbitral institutions in India and to promote the standing of the country as preferred seat of arbitration. The Committee in this context have inter alia recommended –

* Setting up an Autonomous Body, styled the Arbitration Promotion Council of India (APCI), having representatives from all stakeholders for grading arbitral institutions in India.
* The APCI may inter alia recognize professional institutes providing for accreditation of arbitrators.
* The APCI may hold training workshops and interact with law firms and law schools to train advocates with interest in arbitration and with a goal to create a specialist arbitration bar comprising of advocates dedicated to the field.
* Creation of a specialist Arbitration Bench to deal with such Commercial disputes, in the domain of the Courts.
* Changes have been suggested in various provisions of the 2015 Amendments in the Arbitration and Conciliation Act with a view to make arbitration speedier and more efficacious and incorporate international best practices.

The Committee are also of the opinion that the National Litigation Policy (NLP) must promote arbitration in Government Contracts. The Committee in Part II of the Report reviewed the working of ICADR working under the aegis of the Ministry of Law and Justice, Department of Legal Affairs. The Institution was set up with the objective of promoting ADR methods and providing requisite facilities for the same. The Committee has preferred for declaring the ICADR as an Institution of national importance and takeover of the Institution by a statute. The Committee are of the view that a revamped ICADR has the potential be a globally competitive institution.

Changes in various provisions of the 2015 Amendments in the Arbitration and Conciliation Act to make arbitration speedier and more efficacious. Declaring International Center for Alternate Dispute Resolution (ICADR) as an institute of National Importance and takeover of the institution by a statute. Creation of the post of an ‘International Law Adviser’ who shall advise the Government and coordinate dispute resolution strategy for the Government in disputes arising out of its international law obligations particularly arising out of bilateral investment treaties (BIT).

**Conclusion**

In the case of *Anupam Engineer, Mumbai v. Indian Oil Corporation Ltd., Mumbai* [[24]](#footnote-24)that Arbitral Award can be modified by the Court under Section 34 of the Arbitration Act by referring the various Supreme Court Judgments, and further in *Union of India v. Sagar Thermit Corporation Ltd* [[25]](#footnote-25)by referring to *R.S. Jiwani* . Therefore, if the Court has power to modify the award, then there is no reason not to modify the majority award in part. It is also made clear that if there is a question of reappreciation of documents and material on record, then it will be difficult for the Court under Section 34 to grant the award for the first time by reappreciating the material on record, but if there is a question of law involved and/or only question of interpretation or clause and/or related aspects, whether appreciation of evidence is not necessary, the Court may pass and/or modify the award accordingly. The Arbitration and Conciliation Act, 1996 neither takes away the power to modify the arbitral award by court nor has given like the Arbitration and Conciliation Act, 1940.

1. (2006) 11 SCC 245. **[TNR8pt] Line Spacing 1.0** [↑](#footnote-ref-1)
2. Ibid. [↑](#footnote-ref-2)
3. *Indu Engg & Textiles Ltd v DDA*, (2001) 7 SCC 728. [↑](#footnote-ref-3)
4. Ibid. [↑](#footnote-ref-4)
5. *Shri Hans Enterprises v Airports Authority of India*, (2003) 105 DLT 226. [↑](#footnote-ref-5)
6. (1999) 1 SCC 63. [↑](#footnote-ref-6)
7. (2003) 5 SCC 705. [↑](#footnote-ref-7)
8. The Arbitration and Conciliation Act, 1996. [↑](#footnote-ref-8)
9. Ibid. [↑](#footnote-ref-9)
10. (2006) 11 SCC 181. [↑](#footnote-ref-10)
11. (2006) 11 SCC 181. [↑](#footnote-ref-11)
12. 2008 (3) Arb. LR 489. [↑](#footnote-ref-12)
13. 2006 (4) SCC 445. [↑](#footnote-ref-13)
14. (2012 (3) Mh.L.J. 701). [↑](#footnote-ref-14)
15. (2012 (2) All MR 881). [↑](#footnote-ref-15)
16. AIR 2009 Delhi 102. [↑](#footnote-ref-16)
17. (2006) 4 SCC 445. [↑](#footnote-ref-17)
18. JT 2006 (11) SC 376. [↑](#footnote-ref-18)
19. (AIR 2013 SC 3778). [↑](#footnote-ref-19)
20. [2008 Arb. LR 489 (Del.)]. [↑](#footnote-ref-20)
21. Retrieved from <http://www.icaindia.co.in/HLC-Working-Paper-on-Institutional-Arbitration-Reforms.pdf>, Last Visited 07th Jun, 2019. [↑](#footnote-ref-21)
22. International Arbitration: Corporate attitudes and practices 2008, Queen Mary University of London and Price water house Coopers (2008), available at http://www.arbitration.qmul.ac.uk/docs/123294.pdf (accessed on 07.07.2019). [↑](#footnote-ref-22)
23. Retrieved from http://www.livelaw.in/institutionalisation-arbitration-mechanism-justice-srikrishna-head-committee/, visited 07th June, 2019). [↑](#footnote-ref-23)
24. (2010 (2) Mh.L.J. 632). [↑](#footnote-ref-24)
25. (2011 (2) Mh.L.J. 845). [↑](#footnote-ref-25)