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EMERGENCY ARBITRATION IN INDIA: AN EMERGING TOOL FOR INTERIM JUSTICE CHALLENGES AND OPPORTUNITIES IN THE INDIAN ARBITRATION ECOSYSTEM

ABSTRACT

The Emergency arbitration has begun as a crucial instrument for securing short-term assistance before the constitution of an arbitral tribunal. In India, while institutional rules increasingly recognize emergency arbitration, the legal framework under the Arbitration and Conciliation Act, 1996 remains silent on its enforceability. Indian courts, notably the Highest Court in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, have upheld the enforceability of emergency arbitrator commands under Section 17(2) of the Act, marking significant judicial acceptance of this tool. Institutional arbitration centres such as DIAC, MCIA, and ICADR have incorporated emergency arbitration provisions, facilitating expedited relief to preserve parties' rights and status quo pending full arbitration. The important advantages of emergency arbitration include speediness, confidentiality, and competence, allowing parties to acquire interim measures like injunctions or asset freezes within days, thus minimizing harm and preserving evidence. However, challenges remain, including the lack of explicit statutory recognition, ambiguity regarding the nature and enforceability of emergency arbitrator orders, and procedural uncertainties in the appointment and independence of emergency arbitrators. Additionally, the broader Indian arbitration ecosystem faces hurdles such as judicial overreach, limited diversity and training of arbitrators, and infrastructural deficiencies, which may impact the optimal utilization of

emergency arbitration. Despite these challenges, emergency arbitration represents a promising development in India's arbitration landscape, offering a vital tool for interim justice that complements existing arbitration and court-based remedies. Its evolution presents opportunities to support India's position as a global arbitration centre by enhancing procedural efficiency, reducing delays, and providing parties with effective access to urgent relief within the arbitration process. Continued legislative clarity, institutional support, and capacity building are essential to fully realize the potential of emergency arbitration in India. this article examines the development and current status of emergency arbitration in India.

Key words: Emergency arbitration, tribunal, speed, confidentiality, efficiency.

Introduction

The Emergency Arbitration (EA) has quickly emerged as a fundamental mechanism in the global landscape of commercial dispute resolution, proposing parties a swift and effective route to secure urgent interim relief before the constitution of a formal arbitral tribunal. While leading international arbitral institutions such as the Singapore International Arbitration Centre (SIAC), International Chamber of Commerce (ICC), and London Court of International Arbitration (LCIA) have institutionalized EA within their frameworks, India's journey with emergency arbitration reflects both significant progress and persistent challenges.¹ In India, the demand for expedited interim measures has grown alongside the country's ambition to become a leading arbitration hub. Indian arbitral institutions-including the Mumbai Centre for International Arbitration (MCIA) and Delhi International Arbitration Centre (DIAC)-have incorporated emergency arbitration provisions into their rules, enabling parties to seek urgent remedies in time-sensitive disputes. However, the absence of explicit statutory recognition for EA in the Arbitration and Conciliation Act, 1996, continues to create legal ambiguities, particularly regarding the enforceability of emergency awards and the treatment of foreign-seated emergency arbitration decisions.²

¹ O. Beniwal & Vinayak, "The Paradox of Progress: Emergency Arbitration and India's Arbitral Evolution," RGNUL Student Research Review, Nov. 2024, available at <https://www.rsrr.in> (last accessed May 12, 2025).

² Vijayendra Pratap Singh & Abhijnan Jha, The Emergency Arbitrator in India – Status and Enforceability, AZB & PARTNERS (Sept. 9, 2021), <https://www.azbpartners.com/bank/the-emergency-arbitrator-in-india-status-and-enforceabilitySep>

Despite these uncertainties, Indian courts have taken notable steps to support the enforceability of emergency arbitrator orders, as seen in landmark judgments such as *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*³ These judicial developments signal a growing acceptance of EA as a tool for interim justice, even as legislative reforms lag behind. This article examines the evolution of emergency arbitration in India, analysing its role as an emerging tool for interim justice, the challenges it faces within the Indian arbitration ecosystem, and the opportunities it presents for strengthening India's position as an arbitration-friendly jurisdiction.⁴

Concept and Evolution of Emergency Arbitration⁵

The Emergency arbitration is a procedural mechanism that allows a party involved in an arbitration dispute to pursue urgent temporary relief before a formal arbitral tribunal is constituted. This mechanism is considered to address situations where waiting for the full tribunal to be formed would cause irreparable harm or immediate danger to the party's rights or property.⁶ Emergency arbitration is a modern procedural innovation in international arbitration that delivers parties with a rapid mechanism to obtain urgent temporary relief before the constitution of the arbitral tribunal. Originating with the ICC in 1990, it has evolved into a widely accepted feature of arbitration rules worldwide, with major institutions adopting and refining the mechanism. While it enhances the efficiency and effectiveness of arbitration by bridging the gap before the tribunal's formation, its recognition and enforceability vary by jurisdiction, with India still working towards clearer statutory acceptance.⁷

³ *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, (2022) 1 SCC 209 (India)

⁴ Nusrat Hassan & Sameer Thakur, *Emergency Arbitration Under Indian Law: Navigating a Complicated Maze, News & Events, Practitioner Perspective* (Apr. 22, 2023),.

⁵ See Arbitration Institute of the Stockholm Chamber of Commerce, *Ten Years of Emergency Arbitration* 1–10 (2016), https://arbitrationlaw.com/sites/default/files/free_pdfs/aria_-_songs_of_access.pdf; ICC Commission on Arbitration and ADR, *Emergency Arbitrator Proceedings*, ICC Publication No. 895-0, at 3–30 (2019), <https://iccwbo.org/wp-content/uploads/sites/3/2019/03/icc-arbitration-adr-commission-report-on-emergency-arbitrator-proceedings.pdf>; *Emergency Arbitration*, Oxford International Arbitration Series (2021), <https://doi.org/10.1093/law/9780198831051.003.0002>.

⁶ Alnaber, R., *Emergency Arbitration: Mere Innovation or Vast Improvement*, *Arbitration International*, Vol. 35, 2019,

⁷ What's an Emergency Arbitrator? And Should I Appoint One?, Hughes Hubbard & Reed LLP (Jan. 9, 2025), <https://www.hugheshubbard.com/news/whats-an-emergency-arbitrator-and-should-i-appoint-one> [<https://perma.cc/XXXX-XXXX>] (last visited May 13, 2025).

Concept of Emergency Arbitration⁸

Purpose: EA provides a quick, pre-arbitral remedy to preserve the status quo, prevent dissipation of assets, or stop actions such as breaches of confidentiality, which require immediate intervention.⁹

Procedure: Typically, a individual emergency arbitrator is appointed on an expedited basis by the relevant arbitral institution upon request by a party. The emergency arbitrator has the power to grant interim measures, set procedural rules for the emergency proceedings, and issue orders that have temporary effect until the main tribunal is constituted.

Scope and Limitations: Emergency arbitrators can grant interim relief only for a limited period and do not have the power to decide the merits of the dispute. Their decisions are provisional and meant to bridge the gap until the full tribunal takes over.

Relation with Courts: Parties may still resort to courts for interim relief, especially since emergency arbitration orders may require enforcement by courts in different jurisdictions. The emergency arbitration mechanism aims to reduce reliance on courts and avoid inconsistent orders from multiple courts.¹⁰

Evolution of Emergency Arbitration

Origins: The concept first emerged in the early 1990s, with the International Chamber of Commerce (ICC)¹¹ introducing a rudimentary emergency arbitration mechanism in 1990. It was primarily an optional procedure allowing parties to seek urgent relief before the composition of the arbitral tribunal.¹²

Institutional Adoption: Following the ICC's lead, many most important arbitral institutions incorporated emergency arbitration provisions into their rules over the next two decades. These include the Singapore International Arbitration Centre (SIAC),¹³ London Court of

⁸ What's an Emergency Arbitrator? And Should I Appoint One?, Hughes Hubbard & Reed LLP (Jan. 9, 2025),

⁹ Shivam Kumar, Emergency Arbitration - Its Advantages, Challenges and Legal Status in India, SCC Online Blog (Mar. 26, 2022), <https://www.sconline.com/blog/post/2022/03/26/emergency-arbitration/> (last visited May 13, 2025).

¹⁰ Sarthak Srivastava, The Role of Emergency Arbitration in India: Navigating Urgent Relief in Arbitral Proceedings, (Mar. 16, 2024), [URL] .

¹¹ See International Chamber of Commerce, ICC Arbitration Rules (2021), <https://iccwbo.org/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/>.

¹² GARY B. BORN, INTERNATIONAL COMMERCIAL ARBITRATION 123-45 (3d ed. 2021).

¹³ See Singapore International Arbitration Centre, *SIAC Arbitration Rules* (2025), <https://siac.org.sg/arbitration-rules-2025>; London Court of International Arbitration, *LCIA Arbitration Rules* (2020),

International Arbitration (LCIA),¹⁴ Hong Kong International Arbitration Centre (HKIAC),¹⁵ American Arbitration Association (AAA),¹⁶ International Centre for Dispute Resolution (ICDR), and others.¹⁷

Rule Developments: The ICDR was the first to make emergency arbitration available by default (opt-out basis) in 2006, rather than requiring parties to opt-in. This shift helped normalize EA as a standard feature of international arbitration.¹⁸

Recent Innovations: Newer rules, such as the SIAC Rules 2025, have introduced further refinements like allowing emergency arbitrators to issue ex parte protective preliminary orders, enhancing the mechanism's effectiveness and responsiveness.¹⁹

Emergency Arbitration in India

Current Status: Although Indian arbitration centres like the Delhi International Arbitration Centre (DIAC)²⁰ and Mumbai Centre for International Arbitration (MCIA) provide for emergency arbitration, the Arbitration and Conciliation Act, 1996, does not clearly recognize EA or its awards, especially foreign-seated emergency awards.²¹

¹⁴ London Court of International Arbitration, *LCIA Arbitration Rules* (2020), https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx;

¹⁵ Hong Kong International Arbitration Centre, *HKIAC Administered Arbitration Rules* (2018), <https://www.hkiac.org/arbitration/rules>;

¹⁶ American Arbitration Association, *AAA International Arbitration Rules* (2013),

¹⁷ Shivam Kumar, Emergency Arbitration-Its Advantages, Challenges and Legal Status in India, SCC Online Blog (Mar. 26, 2022), <https://www.sconline.com/blog/post/2022/03/26/emergency-arbitration>.

¹⁸ Dispute Resolution, Summary of Changes for the International Dispute Resolution Procedures 1 (May 1, 2006),

<https://www.adr.org/sites/default/files/Summary%20of%20Changes%20for%20the%20International%20Dispute%20Resolution%20Procedures%20May%202001,%202006.pdf> (last visited May 13, 2025) (noting addition of Article 37 making emergency arbitration procedure integral and available by default unless parties opt out).

¹⁹ See DLA Piper, Understanding the SIAC Arbitration Rules 2025 (Jan. 16, 2025), <https://www.dlapiper.com/en-us/insights/publications/arbitration-matters/2025/understanding-the-siac-arbitration-rules-2025> (last visited May 13, 2025) (discussing new provisions allowing emergency arbitrators to grant ex parte protective preliminary orders and to be appointed prior to filing a notice of arbitration).

²⁰ Delhi International Arbitration Centre, Delhi International Arbitration Centre (DIAC) (Arbitration Proceedings) Rules, 2023, <https://dhcdiac.nic.in/diac-arbitration-proceedings-rules-2018/>.

²¹ Delhi Int'l Arbitration Centre (DIAC), Arbitration Proceedings Rules, Part E: Emergency Arbitration and Interim Relief §§ 14.1–14.13 (2023), <https://dhcdiac.nic.in/wp-content/uploads/2023/04/delhi-international-arbitration-centre-arbitration-proceedings-rules-2023-355106-xTTODsUG.pdf> (last visited May 13, 2025)

Judicial Perspective: The Highest Court of India has acknowledged foreign-seated emergency arbitration awards under certain conditions but there remains a lack of uniform statutory recognition and clarity on enforceability within India.²²

Challenges: This legal ambiguity limits India's potential as an arbitration hub and raises questions about the enforceability of emergency arbitration orders domestic all.

Legal Framework of Emergency Arbitration in India²³

Statutory Framework

The Arbitration and Conciliation Act, 1996 (the “Act”) governs arbitration in India but does not specifically recognize emergency arbitration or define an emergency arbitrator. Although the 2015 Amendment Bill proposed by the 246th Law Commission Report²⁴ recommended including emergency arbitration within the definition of “arbitral tribunal” under Section 2(d), this was not enacted by the legislature, leaving a statutory lacuna.²⁵ Despite this, the Act empowers parties to seek interim relief under Sections 9 and 17, which courts and tribunals have interpreted to extend to emergency arbitration awards, particularly when the seat of arbitration is in India.²⁶

Overview of the Arbitration and Conciliation Act, 1996

Before the 1996 Act, arbitration in India was governed by multiple outdated laws, including the Arbitration Act, 1940. The 1996 Act repealed these and modernized arbitration law to

²² Sarthak Srivastava, The Role of Emergency Arbitration in India: Navigating Urgent Relief in Arbitral Proceedings (Mar. 16, 2024) (discussing judicial acknowledgment of foreign-seated emergency arbitration awards but highlighting enforceability uncertainties in India), <https://example.com/article-url> (last visited May 13, 2025);

²³ Gayatri Kondapalli & Aditi Kanoongo, Emergency Arbitration Under the SIAC Rules, 2025: Will the SIAC’s New Rules Face Judicial Resistance in India?, IndiaCorpLaw (Feb. 1, 2025), <https://indiacorplaw.in/2025/02/emergency-arbitration-will-the-siacs-new-rules-face-judicial-resistance-in-india.html>; Enforceability of Emergency Arbitration Awards in India, Daily Jus (May 6, 2025), <https://dailyjus.com/world/2025/05/enforceability-of-emergency-arbitration-awards-in-india>; Delhi International Arbitration Centre, DIAC Arbitration Proceedings Rules, 2018, pt. E, <https://dhcdiac.nic.in/wp-content/uploads/2020/01/DIAC-Arbitration-Proceedings-Rules-2018.pdf>.

²⁴ Law Commission of India, Report No. 246, Amendments to the Arbitration and Conciliation Act, 1996 (Aug. 5, 2014), <https://indiacorplaw.in/wp-content/uploads/2014/08/Report246.pdf>.

²⁵ Sarthak Srivastava, The Role of Emergency Arbitration in India: Navigating Urgent Relief in Arbitral Proceedings, The Arbitration Workshop (Mar. 16, 2024), <https://www.thearbitrationworkshop.com/post/the-role-of-emergency-arbitration-in-india-navigating-urgent-relief-in-arbitral-proceedings> (last visited May 13, 2025).

²⁶ Emergency Arbitration and Section 9 of the Arbitration & Conciliation Act, Jindal Global University (Apr. 4, 2024), <https://jgu.edu.in/mappingADR/emergency-arbitration-and-section-9-of-the-arbitration-conciliation-act/> (last visited May 13, 2025).

meet the needs of growing domestic and international commerce²⁷ The Arbitration and Conciliation Act, 1996 is the primary legislation governing arbitration and conciliation in India. It consolidates and amends the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards, and conciliation, aiming to provide a comprehensive legal framework for alternative dispute resolution in India.²⁸

Key Features and Objectives Arbitration and Conciliation Act, 1996²⁹

Comprehensive Coverage: The Act applies to both domestic and international commercial arbitration and conciliation, promoting efficient and fair dispute resolution. Based on **UNCITRAL Model Law:** It aligns with the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration to harmonize Indian arbitration law with international standards.³⁰

Minimizing Court Intervention: One of the Act's objectives is to reduce judicial interference in arbitration proceedings, thereby expediting dispute resolution.

Enforcement of Awards: It ensures arbitral awards are enforceable as court decrees, including foreign awards recognized under international conventions incorporated by the Act.

Conciliation Provisions: The Act also governs conciliation as an alternative dispute resolution method, giving conciliation agreements the same effect as arbitral awards.

Structure of the Act

Part I (Sections 2–43): Deals with domestic arbitration and international arbitration where the seat is in India.

Part II (Sections 44–60): Concerns the enforcement of foreign arbitral awards.

Part III (Sections 61–81): Covers conciliation proceedings.

²⁷ Summary of Arbitration and Conciliation Act, 1996, TaxGuru, <https://taxguru.in/corporate-law/summary-arbitration-conciliation-act-1996.html> (last visited May 13, 2025)

²⁸ Arbitration and Conciliation Act, No. 26, Acts of Parliament, 1996 (India), <https://www.indiacode.nic.in/bitstream/123456789/1978/3/a1996-26.pdf> (last visited May 13, 2025).

²⁹ Arbitration and Conciliation Act, 1996, India Code, https://www.indiacode.nic.in/handle/123456789/1978?sam_handle=123456789%2F1362 (last visited May 13, 2025).

³⁰ Arbitration and Conciliation Act, 1996 - Overview, iPleaders (June 16, 2022), <https://blog.ipleaders.in/arbitration-and-conciliation-act-1996/> (last visited May 13, 2025).

Part IV (Sections 82–86): Contains supplementary provisions.³¹

Section 9 Arbitration and Conciliation Act, 1996: Interim measures by courts

Section 9 of the Arbitration and Conciliation Act, 1996 empowers Indian courts to grant interim measures of protection to parties involved in arbitration. These interim reliefs can be sought before the commencement of arbitration, during arbitral proceedings, or even after the award is made but before it is enforced, to safeguard the subject matter of the dispute and prevent irreparable harm³²

Key Features of Section 9 Arbitration and Conciliation Act, 1996

Scope: Section 9 allows parties to approach courts for urgent interim reliefs such as injunctions, preservation of assets, or maintaining the status quo at any stage before or during arbitration, or after an award but prior to enforcement.³³

Timeline and Invocation: The 2015 amendment introduced Section 9(2), requiring parties to initiate arbitration within 90 days of seeking interim relief under Section 9, ensuring that interim relief is not misused to delay arbitration.³⁴

Restriction after Tribunal Constitution: Section 9(3) restricts courts from entertaining interim relief applications once the arbitral tribunal is constituted, except in exceptional cases where relief under Section 17 (tribunal's power to grant interim measures) is ineffective³⁵.

Relation to Section 17: Section 9 grants courts the power to order interim measures, while Section 17 empowers the arbitral tribunal to do so. Both provisions have similar wording but

³¹ The Arbitration and Conciliation Act, 1996: An Overview, iPleaders (Jan. 27, 2021), <https://blog.iplayers.in/arbitration-conciliation-act-1996-overview/> (last visited May 13, 2025).

³² Timeline to Follow Under Section 9(2) of the Arbitration and Conciliation Act 1996, Cyril Amarchand Mangaldas Blog (Nov. 2024), <https://disputeresolution.cyrilamarchandblogs.com/2024/11/timeline-to-follow-under-section-92-of-the-arbitration-and-conciliation-act-1996/> (last visited May 13, 2025).

³³ Arbitration and Conciliation Act, No. 26, Acts of Parliament, 1996, § 9 (India), <https://www.indiacode.nic.in/bitstream/123456789/1978/3/a1996-26.pdf> (last visited May 13, 2025).

³⁴ Section 9, Arbitration and Conciliation Act, 1996, India Code, https://www.indiacode.nic.in/show-data?actid=AC_CEN_3_46_00004_199626_1517807323919&orderno=9 (last visited May 13, 2025).

³⁵ Ishani Samajpati, Section 9 of Arbitration and Conciliation Act, 1996, iPleaders (June 6, 2022), <https://blog.iplayers.in/section-9-of-arbitration-and-conciliation-act-1996/> (last visited May 13, 2025).

differ in enforcement and timing, with courts stepping in primarily before the tribunal is formed or when tribunal relief is inadequate.³⁶

Judicial Interpretation: The Supreme Court has clarified that Section 9's purpose is to provide urgent interim relief without affecting the arbitration proceedings themselves. Courts have also emphasized the wide scope of Section 9 to protect parties' rights and prevent arbitration from becoming futile.³⁷

Comparison with Civil Procedure Code Applications under Section 9 are somewhat analogous to applications under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, which deal with temporary injunctions and interlocutory orders.³⁸

Lack of express recognition of emergency arbitration under Indian law³⁹

while Indian law currently lacks express statutory recognition of emergency arbitration, judicial decisions and proposed legislative amendments indicate a growing acceptance and formalization of the mechanism. Until statutory reforms are enacted, emergency arbitration in India operates in a legal grey area, with enforceability primarily supported by judicial interpretation rather than explicit legislative provisions.⁴⁰ The Indian Arbitration and Conciliation Act, 1996 does not expressly recognize emergency arbitration or define the role, powers, or enforceability of emergency arbitrators and their awards. While parties may agree to institutional rules providing for emergency arbitration, the Act itself remains silent on this mechanism, creating legal uncertainty in India regarding its status and enforcement.⁴¹

Judicial Trends in Interim Relief and Emergency Arbitration under Indian Arbitration Law

³⁶ What Is the Difference Between Section 9 and 17 of the Arbitration and Conciliation Act?, The IDRC, <https://theidrc.com/content/adr-faqs/what-is-the-differences-between-section-9-and-17-of-the-arbitration-and-conciliation-act/> (last visited May 13, 2025).

³⁷ Vidya Drolia & Ors. v. Durga Trading Corp., (2020) 2 SCC 1 (India).

³⁸ What Is the Difference Between Section 9 and 17 of the Arbitration and Conciliation Act?, The IDRC, <https://theidrc.com/content/adr-faqs/what-is-the-differences-between-section-9-and-17-of-the-arbitration-and-conciliation-act/> (last visited May 13, 2025).

³⁹ The Emergency Arbitrator in India – Status and Enforceability, AZB & Partners (Dec. 21, 2020), <https://www.azbpartners.com/bank/the-emergency-arbitrator-in-india-status-and-enforceability/> (last visited May 13, 2025).

⁴⁰ See *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. & Ors.*, SCC Online Del 1279 (2021); see also Shivam Kumar, Emergency Arbitration-Its Advantages, Challenges and Legal Status in India, SCC Online Blog (Mar. 26, 2022), <https://www.scconline.com/blog/post/2022/03/26/emergency-arbitration/> (last visited May 13, 2025).

⁴¹ Enforceability of Emergency Arbitration Awards in India, Daily Jus (May 6, 2025), <https://dailyjus.com/world/2025/05/enforceability-of-emergency-arbitration-awards-in-india> (last visited May 13, 2025).

Indian courts have progressively recognized emergency arbitration awards as enforceable interim orders in India-seated arbitrations, with the Amazon case as a cornerstone. Procedural innovations in institutional rules like SIAC 2025 enhance emergency arbitration's utility but face enforceability challenges in Indian courts due to procedural fairness concerns. Legislative reforms are underway to clarify and strengthen emergency arbitration's legal framework. Meanwhile, courts continue to balance judicial intervention and party autonomy in granting interim relief under Sections 9 and 17 of the Arbitration Act.⁴²

***Bhatia International v. Bulk Trading S.A.*,⁴³**

the Supreme Court of India held that Part I of the Arbitration and Conciliation Act, 1996 applies to international commercial arbitrations seated in India unless expressly excluded by the parties. This ruling allowed Indian courts to grant interim relief under Section 9 of the Act even in international arbitrations, thereby expanding judicial intervention in such proceedings. The decision significantly influenced the role of Indian courts in international arbitration before being partially overruled by the BALCO judgment in 2012.

Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO) (2012)

BALCO overruled Bhatia International to the extent that Part I of the Act applies to foreign-seated arbitrations. The Court emphasized the territoriality principle, holding that Part I applies only to arbitrations seated in India. This curtailed Indian courts' jurisdiction to grant interim relief in foreign-seated arbitrations, reinforcing the autonomy of the seat of arbitration and limiting judicial intervention. The decision was made prospective, applying to arbitration agreements made after September 6, 2012⁴⁴.

Supreme Court's Recognition of Emergency Arbitration Awards (*Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. & Ors.*, 2021)

The Supreme Court ruled that emergency arbitration awards issued under institutional rules (e.g., SIAC Rules) in India-seated arbitrations are enforceable under Section 17(2) of the Arbitration Act. The Court held there is no express or implied bar against enforcing

⁴² Interim Reliefs in Arbitration: Emerging Judicial Trends in India, SCC Online Blog (Mar. 27, 2024), <https://www.scconline.com/blog/post/2024/03/27/interim-reliefs-arbitration-emerging-judicial-trends-india/> (last visited May 13, 2025).

⁴³ Bhatia International v. Bulk Trading S.A., (2002) 4 S.C.C. 105 (India).

⁴⁴ BALCO Arbitration, Indian Kanoon, <https://indiankanoon.org/search/?formInput=balco+arbitration> (last visited May 13, 2025).

emergency arbitration orders and that no appeal lies against enforcement orders under Section 37, thereby aligning Indian law with international practice and promoting arbitration efficacy.

This decision has been hailed as a significant step in strengthening the arbitration framework in India by Providing clarity on the status of emergency arbitration awards. Enhancing party autonomy by upholding the enforceability of interim reliefs granted by Emergency Arbitrators. Aligning Indian arbitration law with international arbitration practices, particularly under institutional rules like SIAC. Thus, the Supreme Court's ruling in *Amazon v. Future* firmly establishes that emergency arbitration awards, when issued in arbitrations seated in India, have the force of interim orders under the Arbitration Act and are enforceable by Indian courts.⁴⁵ Delhi High Court decisions have further clarified that while emergency arbitration awards in foreign-seated arbitrations may not be enforceable under Section 17, parties can still seek interim relief under Section 9 of the Act. The courts have also emphasized non-intervention where an emergency arbitrator has been appointed, treating emergency arbitration orders as equivalent to interim orders of the tribunal.⁴⁶

Challenges in the Indian Context for Emergency Arbitration

while Indian courts have made significant strides in supporting emergency arbitration, especially after *Amazon v. Future*, the absence of clear statutory provisions, procedural inconsistencies, and federal legislative complexities continue to pose substantial challenges to the effective and predictable enforcement of emergency arbitration awards in India

1.Lack of Explicit Statutory Recognition

The Arbitration and Conciliation Act, 1996, does not explicitly define or recognize emergency arbitrators or their awards, leading to legal uncertainty regarding their enforceability. Although the Supreme Court in *Amazon v. Future* recognized emergency arbitration awards as enforceable under Section 17(2), this interpretation is based on judicial reasoning rather than clear legislative mandate, leaving room for ambiguity and potential resistance in future cases.

2. Enforcement Issues for Foreign-Seated Arbitrations

⁴⁵ *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. & Ors.*, Civil Appeal Nos. 4492-93 of 2021 (Supreme Court of India, Aug. 6, 2021)

⁴⁶ *Ashwani Minda v. U-Shin Ltd.*, 2020 SCC OnLine Del 1697 (India).

While emergency awards from India-seated arbitrations are enforceable as interim orders under Section 17(2), awards from foreign-seated arbitrations cannot be directly enforced in India. Parties must instead approach Indian courts under Section 9 for interim relief, which does not equate to direct enforcement of the emergency award but allows for similar judicial intervention.

3. Procedural Gaps and Recent Rule Changes

The SIAC Rules, 2025, for example, now allow emergency arbitration to commence before the formal initiation of arbitration. This procedural shift may undermine the Supreme Court's rationale in *Amazon v. Future*, which relied on emergency proceedings occurring "during the arbitral proceedings." Orders issued before the formal commencement of arbitration may not be covered by the current interpretation of Section 17, further complicating enforcement.

4. Party Autonomy and Institutional Arbitration

Emergency arbitration is available only if the parties have agreed to institutional arbitration rules that provide for it. Parties who opt for ad hoc arbitration or do not specify institutional rules are excluded from this mechanism, limiting the scope and accessibility of emergency arbitration in India.

5. Federal Structure and Legislative Complexity

Arbitration is a subject in the Concurrent List of the Indian Constitution, meaning both Parliament and State Legislatures can legislate on the matter. The introduction of emergency arbitration provisions at the national level could lead to conflicts with state-level arbitration rules, causing inconsistency and unpredictability in the application of emergency measures across different states.

6. Judicial Attitude and Non-Intervention

While courts have generally adopted a pro-arbitration stance and respected party autonomy, the lack of a uniform approach and the possibility of judicial intervention-especially when emergency arbitration is not expressly provided for in the Act-can create unpredictability and delays.

7. Legislative Reforms in Progress

The Arbitration and Conciliation (Amendment) Bill, 2024, proposes to introduce Section 9-A, which would formally allow parties to seek emergency relief from an emergency arbitrator

during arbitral proceedings. However, until this amendment is enacted, the statutory position remains uncertain, and parties must rely on evolving judicial interpretations.

Opportunities and Way Forward for Emergency Arbitration in India

India stands at a pivotal moment to solidify its status as a pro-arbitration jurisdiction. Legislative reforms, judicial support, and procedural innovations present significant opportunities. By enacting proposed statutory changes and fostering a supportive ecosystem, India can ensure that emergency arbitration becomes a reliable, efficient, and enforceable tool for urgent interim relief in both domestic and cross-border disputes.

1. Statutory Recognition and Legislative Reform

The proposed Arbitration and Conciliation (Amendment) Bill, 2024, which introduces Section 9-A and Section 12B, aims to give explicit statutory recognition to emergency arbitrators and their orders. This reform would align India with leading arbitral jurisdictions like Singapore and Hong Kong, providing certainty regarding the validity and enforceability of emergency arbitration procedures and awards. If enacted, it will resolve much of the current ambiguity and enhance India's attractiveness as a global arbitration hub.

2. Enhanced Procedural Efficiency

Recent changes in institutional rules, such as the SIAC Rules 2025, allow for even more expedited relief, including ex-parte protective preliminary orders and the ability to seek emergency measures before the formal commencement of arbitration. This procedural innovation offers parties rapid, effective protection of rights and assets, reducing reliance on slower court processes.

3. Judicial Support and Party Autonomy

Indian courts, especially after the Supreme Court's decision in *Amazon v. Future*, have demonstrated a pro-arbitration stance and respect for party autonomy, recognizing the enforceability of emergency awards in India-seated arbitrations. This judicial attitude reassures parties that their choice of institutional arbitration and emergency relief mechanisms will be respected.

4. Reduced Court Intervention

With the expansion of emergency arbitrator powers and the introduction of mechanisms like Protective Preliminary Orders (PPOs), parties can increasingly secure urgent interim relief without immediate recourse to national courts. This shift supports a more efficient, arbitration-centric dispute resolution process and reduces judicial backlog.

5. Alignment with International Best Practices

The ongoing reforms and judicial developments are bringing India in line with international standards, particularly the UNCITRAL Model Law and practices in Singapore and Hong Kong. This alignment will boost confidence among international investors and commercial parties considering India as a seat or venue for arbitration.

Way Forward

A. Enact the Proposed Amendments

The Indian legislature should prioritize passing the Arbitration and Conciliation (Amendment) Bill, 2024, to provide clear statutory backing for emergency arbitration and its enforceability. This step will address the current legal uncertainty and foster a more robust arbitration ecosystem.

B. Judicial Clarification on Foreign-Seated Awards

Indian courts should continue to clarify the enforceability of emergency awards from foreign-seated arbitrations, particularly regarding the interplay between Section 9 and direct enforcement. Clear judicial guidance will help parties navigate cross-border disputes more effectively.

C. Institutional Capacity Building

Indian arbitral institutions should further develop their own emergency arbitrator procedures, drawing on innovations from SIAC and ICC, to offer competitive, efficient options for both domestic and international parties.

D. Awareness and Training

Greater awareness and training for legal practitioners, arbitrators, and parties on the use and enforceability of emergency arbitration will ensure that these mechanisms are effectively utilized and integrated into commercial practice.

E. Continuous Review

As international arbitration practice evolves, India should regularly review and update its legislative and institutional frameworks to maintain competitiveness and relevance in the global arbitration landscape.

Final Thoughts

The evolution of emergency arbitration in India marks a crucial step toward strengthening the country's arbitration framework. The Supreme Court's ruling in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. & Ors.* has paved the way for recognizing emergency arbitration awards as enforceable interim measures under Indian law, reinforcing the principle of party autonomy and aligning with international arbitration standards.

Despite this progress, certain hurdles remain, particularly concerning the enforceability of emergency awards from foreign-seated arbitrations and the absence of explicit statutory provisions governing emergency arbitration. These challenges highlight the need for comprehensive legislative reforms and consistent judicial interpretation to provide clarity and predictability.

With the anticipated enactment of the Arbitration and Conciliation (Amendment) Bill, 2024, and continued judicial support, India is poised to enhance its position as a preferred seat for arbitration. Embracing these changes will not only streamline dispute resolution but also foster a more investor-friendly environment, encouraging both domestic and international parties to rely confidently on arbitration for urgent interim relief.

Ultimately, the ongoing developments signal a promising future for emergency arbitration in India, balancing efficiency, enforceability, and fairness in resolving urgent commercial disputes.

