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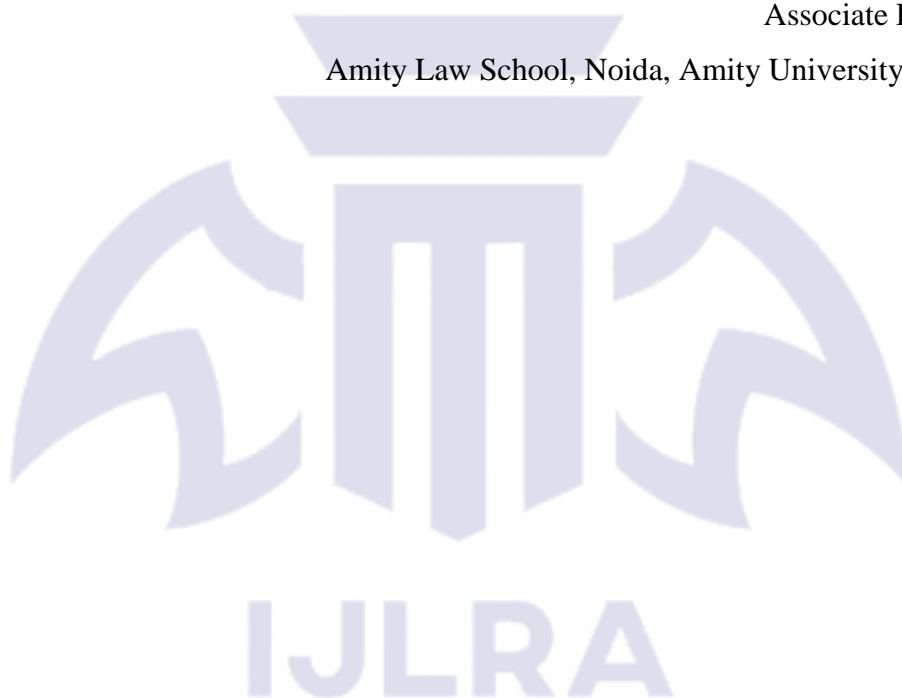
EMERGENCY ARBITRATION - A CRITICAL ANALYSIS

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Abstract

Emergency Arbitration (EA) has emerged as a significant procedural innovation in international and domestic commercial arbitration, addressing the critical need for urgent interim relief prior to the constitution of the arbitral tribunal. Traditionally, parties seeking immediate protection against irreparable harm or asset dissipation were compelled to approach national courts, thereby undermining the efficiency, neutrality, and autonomy of the arbitral process. EA fills this procedural lacuna by enabling the appointment of a temporary emergency arbitrator who is empowered to grant time-sensitive interim measures on an expedited basis.

This paper examines the conceptual foundations, institutional evolution, and practical relevance of emergency arbitration. It analyses key features of EA, including its expedited timelines, limited jurisdiction, and provisional nature, as well as its reliance on institutional frameworks such as those of the Singapore International Arbitration Centre (SIAC), Hong Kong International Arbitration Centre (HKIAC), International Chamber of Commerce (ICC), and London Court of International Arbitration (LCIA). The study further traces the historical development of EA from early institutional rules in the 1990s to its widespread adoption in contemporary arbitration practice.

Through statistical analysis, the paper highlights the increasing utilisation and effectiveness of EA in securing interim relief, demonstrating its transition from a theoretical construct to a practical tool in cross-border commercial disputes. The research also situates EA within the broader framework of party autonomy, emphasizing its role in reinforcing arbitration as a self-contained dispute resolution mechanism independent of national courts.

However, the paper critically engages with unresolved juridical issues, particularly the legal status of the emergency arbitrator, the characterization of EA decisions as “awards” or “orders,” and the challenges of enforcement under international instruments such as the New York Convention. Divergent approaches across jurisdictions underscore the need for legislative clarity and doctrinal coherence.

The paper concludes that while emergency arbitration represents a necessary and progressive development in arbitration law, its long-term efficacy depends on harmonised legal recognition and clearer statutory frameworks to ensure enforceability and legitimacy across jurisdictions.

What is Emergency Arbitration?

If you want to know what emergency arbitration is, you have to know that it's different from two other kinds of interim relief: (a) the kind that the main arbitral tribunal gives out after its constitution, and (b) the kind that national courts give out under state statutes. (e.g. in India, under Section 17 of the Arbitration Act of 1996, after the tribunal was established, Section 9).

Interim Relief EA v. Main Arbitral Tribunal: There is significant difference in terms of content and chronology. The primary arbitral panel will be composed after the claimant initiates arbitration, the respondent selects an arbitrator (or agrees to be arbitrated by a single arbitrator), and the appointing body verifies the choices will be the final primary arbitral panel. When involving multi-party conflicts which are complicated, this process can require longer than 3090 days. Before the tribunal was established, EA intervenes so as to offer relief within days after a request is received.

Upon the constituting of the main tribunal, it may adopt, vary or overrule the award of the emergency arbitrator. It is this power of review which guarantees uniformity and precludes the decision of the emergency arbitrator as not binding the main tribunal improperly. Practically, main tribunals uphold awards in EA cases in about 65-70 percent, revise in 20 percent and remand in 10-15 percent.

EA v. Indian Arbitration Act Section 9: Under Section 9, parties are allowed to seek interim remedy to be enforced by Indian courts before, during or after arbitration due to situations in which the judgment is yet to be executed. The court can provide a myriad of remedies such as injunctions, freezing of assets, preservation of property and appointment of receivers. However, Section 9 processes are adversarial, have a number of hearings, and can take between six months and twelve months before reaching a final resolution. And not just that, but a court can impose such things as security deposits which a temporary arbitrator will not. The EA is not a replacement of Section 9 yet is an additional safeguard before the establishment of the tribunal.

Scope and Limitations of Emergency Arbitration

Although EA provides an effective channel of providing immediate relief, it is not a panacea. The area and the restrictions it comes with should be well understood.

EA Scope- When Can It Be Used? In general terms, EA is usually provided according to the institutional arbitration rules provided that:

- The arbitration contract entails institutional provisions address EA. The majority of institutional regulations are such that EA occurs unless the parties explicitly choose otherwise. Such as, the SIAC Rules 2025, Rule under 30.1 states that, unless the parties have reported otherwise, the parties shall be deemed to have agreed to the Emergency Arbitrator provisions.
- The ordered remedy shall take place at once and this shall not be set aside until the time when the main tribunal shall be set-up. The most typical ones are injunctions to prevent the liquidation of assets and document hold orders to preserve evidence and injunctions to maintain the status quo to prohibit a party to take any harmful action and specific execution of a contractual obligation such as sealing a merger deal.
- The principal tribunal, which, when the request is presented, had not yet been constituted, received the request. When the EA proceedings are aborted then the party must seek remedy before the main tribunal.
- The disagreement can be solved by arbitration. Electronic arbitration is not applicable to cases that cannot be subjected to arbitration, including but not limited to cases involving criminal law, bankruptcy or part of family law.

Certain types of relief are generally not available from an emergency arbitrator:

- The primary tribunal is responsible for making final decisions on culpability or damages.
- Steps which require constant monitoring like appointment of a receiver to monitor a company over a length of time.
- Injunctions preventing arbitration (the aim of EA is to allow arbitration, not to disallow it).
- Subject to certain regulations, the EA may issue orders against third parties who are involved in the arbitration agreement, but its authority is restricted to the parties to the arbitration agreement itself.
- Cases that are irreconcilable with an existing court rule.

- Issues and Limitations of EA: Despite the numerous advantages associated with EA, it has some discrimination issues and drawbacks which are relevant in the Indian context:
- The New York Convention and the Indian Arbitration Act does not tend to recognise EA awards as arbitral awards that have the same force and effect. The ruling in *Amazon v. Future Retail* (2021) upheld the enforceability of EA awards as "orders of the arbitral tribunal" (interpreted broadly to include emergency arbitrators) under Section 17(1) of the Indian Act, but the case only dealt with institutional arbitration and failed to resolve other issues.
- In the case of emergency arbitrators, their orders are implemented by voluntary compliance or future court action because they lack the power to directly carry out their orders. Whether the other party agrees or disagrees, it is more time consuming and expensive when one party goes to court to compel the other party to comply (under Section 9 or under Section 17).
- Part of an emergency is that there is typically no complete hearing, cross-examination, or discovery in an emergency arbitration, and the arbitration judgment is usually ex parte or through only hurried submissions. The review has a limited scope. Due to this fact errors, or poor fact finding can take place.
- The Indian Arbitration Act does not draw a clear line between domestic and foreign arbitration although very many institutional EA norms apply to all kinds of proceedings. Given that the term "arbitral tribunal" is defined as either a "sole arbitrator or a panel of arbitrators" in Section 2(1)(d), it is unclear whether an EA ruling in an entirely domestic arbitration would be enforceable under Section 17. In a case involving an emergency, the "tribunal" that is formed by the parties' arbitration agreement, but a pre-tribunal officer. This ambiguity is a key gap this dissertation seeks to address.
- Other costs involved in EA procedures are additional costs to the emergency arbitrator, institutional fees and accelerated administrative assistance. These types of expenditures may not be sufficient to engage in conflicts with small/moderate/high value systems. The approximate cost range of EA varies, based on the nature and complexity of the institution, as it can be between 15,000 USD to 80,000 USD USD. This is not too high especially in claims less than five million dollars, but this could be too costly when dealing with larger conflicts.

- The tight deadline on submissions, evidence collection and delivery, places enormous pressure on counsel to meet deadlines, determine issues, gather evidence and make arguments within the tight deadlines that typically exists between request and award; 5-7 days. Consequently, the case can be distorted or not completed altogether.

It is essential to realise that EA does not substitute the interim relief or relief quality ordered by the court because of the main arbitration. Instead, it is to be considered as a complement. Quite the contrary, it refers to a specific period of time. The three-pronged approach is often the method used by expert parties: in the first instance, with a request to an emergency arbitrator, which seeks expedited relief; in the second instance, when the main tribunal has already been appointed, with a request to confirm or modify the EA award. This multi-pronged approach can prove to be costly, yet there is a higher chance of relief.

But between Uncertainty in the Courts and Statutory Silence: The History of EA in India there were periods of judicial opposition to emergency arbitration in India, followed by periods of judicial acquiescence, and then demand to have emergency arbitration in India codified in the legislation. Most Indian courts did not have EA awareness, and were sceptical about its applicability before 2016. Section 17's interpretation of the term "arbitral tribunal" was seen as referring strictly to the primary tribunal that was created following the referral of disputes, given there was no mention of the topic in the 1996 Arbitration and Conciliation Act.

A watershed moment came when in 2015 Section 17 of the Arbitration Act was amended to add a new section of the Act (which identifies an arbitral tribunal) and to make the point very clear that the tribunal in question might grant interim relief. However, the changes did not consider EA. In the case of *Raffles Design International v. Educomp Professional Education Ltd.* (2016), the Delhi High Court refused to enforce an emergency award as had been made under SIAC Rules. Citing the Indian Act, the court realized that an emergency arbitrator is not a "arbitral tribunal" as per the Indian Act. The Bombay high court had a different decision in the case of *Ashwani Minda v. U-Shin Ltd.* (2020). It was held that an EA award could be awarded as an order under Section 17. Due to this conflict that occurred, the situation became hazy.

The case was resolved to favour enforcement by the judgement of the *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.* (2021). The Court interprets Section 17(1), that

an emergency arbitrator is part of the arbitral tribunal in the situation where the provision of EA is covered by the institutional norms within an arbitral system. Although the Court did point out that the Arbitration Act might require a certain amount of EA-specific language, it did leave the door open to future legislative changes in this regard.

Distinction from Other Interim Measures in Indian Arbitration Law

With a view to understand the special role of EA, a distinction shall be drawn between it and other types of interim relief under the Indian arbitration law.

Before, during or after, under the arbitration procedure, (but not before the award is enforced) a party may petition to a court seeking interim relief under, Title 9, which is entitled to interim measures by court. The property protection, appointment of receivers, expense security and injunctions are just a few of the numerous remedies which the courts may grant. Public proceedings, a lack of arbitration-specific knowledge, and lengthy delays (between six and twelve months) are some of Section 9's drawbacks.

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Section 9 vs. EA vs. Section 17 – A Timeline Perspective:

| Time Period | Available Relief | Advantages | Disadvantages |
|------------------------|-----------------------|--|--|
| Day 0 (Dispute arises) | Section 9 (Court) | Broad powers; state enforcement | Slow; public; court expertise may be lacking |
| Day 1-3 | Emergency Arbitration | Fast (days); expert arbitrator; confidential | Limited coercive power; additional cost |

| | | | | |
|----------------------------------|-------|--------------------------|---|--|
| Day (Tribunal constituted) | 30-90 | Section 17 (Tribunal) | Arbitrator expertise; flexible; enforceable as court order | Only after tribunal formed; no relief during gap |
|----------------------------------|-------|--------------------------|---|--|

Gap-filling with EA: EA is developed to accommodate the time range between Day 1 and Days 30-90. Without EA, the Indian parties faced two very slow and unreliable options: wait until the tribunal is established (it is also slow), or move to court under Section 9 (far slow). EA proposes alternative in-between.

A decision to grant or to withhold temporary relief under either of Section 9 or 17, can be appealed under Section 37 of the Act. Additional delays may result from this. Although the main tribunal may reform EA awards, they are not supposed to be appealed at once due to their temporary nature. Due to this, there will be less opportunity to make lengthy appeals.

Business and Commercial Necessity of Emergency Arbitration in India

In the last 30 years, India's economy has changed dramatically. Ever since its economy was liberalised in 1991, India has become one of the world's most dynamic economies, drawing huge amounts of foreign direct investment (FDI), hosting intricate multinational joint ventures, and operating as a center for international commercial arbitration. India is consistently placed among the top five places to invest capital internationally as of 20252026 with a total FDI inflows all the way to the tune of 1 trillion and annual inflows totalling at an average of about 70 85 billion over the last five years. An increase in high-stakes time-sensitive business disputes has come hand-in-hand with this economic integration, particularly in business sectors such as infrastructure, e-commerce, energy, telecommunications, and financial services.

The availability to access emergency interim relief can make or break a business, a transaction or the value of an investment. Due to procedural changes, the usual court processes are quite slow and unpredictable. There are over 4.5 crore (45 million) cases pending in Indian courts, of which some 72,000 cases await the Supreme Court and more than 6.2 million cases the High Courts, such that people cannot count on expeditious judicial relief. Due to this, arbitration has outdone other modes of conflict settlement. Even arbitration has a major scheduling loophole: time may seem to take between 30 and 90 days, or even more, to pass between the time of filing a notice of

arbitration and the formation of an arbitral tribunal. The party might lose the assets, destroy evidence, or an entitlement of the contract could be permanently lost during this period. It is precisely this gap that is supposed to be filled in by emergency arbitration.

Time-sensitive disputes: Emergency arbitration is crying out in need in India when it comes to a variety of different types of business disputes:

- In merger and acquisition transactions, sellers are often restricted from entering into competing agreements during due diligence and regulatory approval stages. A breach such as engaging with a rival bidder requires immediate injunctive relief to prevent the transaction from being consummated. Traditional arbitration is ineffective in such scenarios due to delays in tribunal constitution (typically 4–8 weeks), by which time the competing deal may already be completed. This urgency was evident in *Amazon v. Future Retail*, where Amazon sought to restrain Future Retail from proceeding with a conflicting transaction. The emergency arbitrator promptly granted interim relief, preserving the status quo. Without such intervention, any eventual arbitral award would have been rendered ineffective, as the disputed transaction would likely have already concluded.
- Contestation over Intellectual Property right (IPR): even a few-week delay will be irreparable to the brand worth or technical leverage of IP proprietor in cases of trademark abuse, patent abuse, or theft of trade secrets. The introduction of specific IP divisions in the High Courts of India and the National Intellectual Property Rights Policy (2016) has tremendously enhanced the intellectual property system in the country. However, there is no even rate in the judicial process. The decision on the permanent injunction may not be made yet, so an emergency arbitrator can issue a temporary injunction to stop the infringing party to manufacture, sell, or promote the infringing goods. Given a pharmaceutical patent case where a life-saving medicine is involved. The difference between retaining exclusivity and losing the market to generic competition, might be even as little as 15 days, the standard time to allow an EA, and 6 months, the typical timeframe to allow a court.
- The respondent might attempt to divert assets out of the jurisdiction or into shell companies to keep any potential award out of a dispute involving claims of fraud or

misappropriation of funds or a violation of fiduciary obligation. An emergency arbitrator may grant such a dispersion precluded by a "mareva injunction" (an order to freeze assets), which may be ordered by an emergency arbitrator within a single to two days of the application. Although Mareva injunctions, which are referred to as "freezing orders" or "attachment before judgement" under Order 38 Rule 5 of the CPC, are recognised by Indian courts, getting ex parte relief may be a procedurally challenging and needs proof of extreme urgency. EA provides a more simplified process that is specific to arbitration.

- **Preservation of Evidence:** The preservation of evidence may be ordered by an emergency arbitrator in situations where there is a likelihood that this evidence could be deleted or destroyed, such as emails, server logs, or even financial records. This data preservation could include having cloud service providers or third-party custodians hold the data until a decision is made by the main tribunal. The capacity to swiftly acquire such data is crucial due to the growing amount of digital evidence in business conflicts. Emergency arbitrators are specifically provided to issue orders on the preservation of documents under institutional under these rules such as Article 23.1(d) of the HKIAC Rules 2024.
- **controversy in Sports and Entertainment:** When a matter of wit is needed to determine the eligibility of a particular player, a team or the legitimacy of a transfer, disputes tend to arise in the sports business during the periods of tournaments and transfers. India currently has no established domestic mechanism to cover any emergency arbitration (i.e., to replace the Court of Arbitration for Sport [CAS]). Indian disputes are currently being resolved via CAS or Indian courts, neither of which has any domestic EA mechanism and may not have any sports specific knowledge to effectively resolve the conflicts.
- **Litigation in Infrastructure and Construction:** Orders which do not permit termination of contracts or the payment of bank guarantees are frequently necessary in large infrastructure projects (such as a highway, a power plant or a metro rail) within days to prevent closure of the project and resulting damages amounting to crores of rupees per day. The tendency to use bank guarantees in infrastructure contracts is widespread, and wrongfully accused contractors must appeal to the courts as soon as possible. Even though there are guidelines that a court may adhere to restrict the bank guarantees (e.g. in cases of action involving fraud, or irretrievable injustice) the process is sometimes a long

one and ex parte remedy is rarely granted. A quicker and more predictable option is emergency arbitration.

Impact on Investment Climate and India's Position as an Arbitration Hub

India has gone a long way to establish itself as a world arbitration centre. Contributed to the increased arbitration-friendly ecosystem has been the 2015 and 2019 amendments to the Arbitration and Conciliation Act, 1996 and the establishment of the Mumbai Centre of International Arbitration (MCIA) in 2016, the New Delhi International Arbitration Centre (NDIAC) in 2019 and the pro-arbitration position of the Supreme Court in cases like *Balco v. Kaiser Aluminium* (2012) and *Amazon v. Future Retail* (2021) has all contributed to an increasingly arbitration-friendly ecosystem. Dispute resolution has been noted to be a critical factor in attracting investment as part of the government-led initiatives trying to make India a neo-silkroad, the exact concept titled Make in India, and the the title program dubbed Ease of Doing Business.

Perceived inadequateness of interim relief procedures is among the materials that are heavily relied upon by determining the ranking of India. The broadly criticized aspect of Indian courts is that they are slack, hard-to-guess, and easily-interfered-with properties of Indian courts, including the notoriously slow pace of deciding cases and the substantial backlog of pending cases before the Indian Courts. A court may grant interim relief under Section 9 of the Arbitration Act, although take a long time (three to six months) to issue a final decision, and may impose harsh conditions (such security deposits) or refuse relief based upon procedural or jurisdictional grounds. This was shown in a study of proceedings regarding the delivery of temporary relief under Section 9 proceedings of the Delhi High Court, and found that the average period between filing and ruling was 214 days or 7.52 weeks and only 34 percent of the cases ended with awarding of temporary relief, according to a study of the proceedings based on awarding of temporary relief under the Section 9 proceedings of the Delhi High Court, conducted in 2024.

India, Resolving Emergencies with Arbitration: India sends a message to the global investors about its commitment to party autonomy, its desire to restrict judicial intervention and its offer of a complete, self contained dispute resolution package through its powerful emergency arbitration

mechanism. The acknowledgement of emergency arbitration is one step towards enhancing India to be an arbitration friendly jurisdiction as well as harmonising the Indian arbitration law with the best international norms, as observed by the Supreme Court in Amazon."

It is not sufficient that it should be recognized by the courts, however. Foreign investors are seeking judicial clarification; in particular, foreign investors are seeking the Arbitration Act to clearly address emergency arbitration and provide clear provisions on how a specific arbitrator should be appointed, given authority and enforced. Still, there remains a reason to doubt since different benches of the Supreme Court or even another High Court may come to different conclusions in the same absence of such a legislative support. The example of Raffles, in which the Delhi High Court rejected EA, followed by Ashwani Minda, in which the Bombay High Court accepted EA, and lastly Amazon, in which the Supreme Court accepted EA, shows how judge-made law may be quite unpredictable. Such a lack of predictability is one such risk that could be unbearable to some foreign investors.

A legislative framework would enable India to emulate this as well, improving its current ability to compete against Hong Kong and Singapore, which both have clear stipulations on the emergency arbitration. An emergency arbitrator is defined as a "arbitral tribunal" under Section 2 of Singapore's International Arbitration Act (IAA), Cap. 143A. In Section 12A the decision of an emergency arbiter is enforced in the same manner as a decision made by the full arbitral tribunal. Practically identical recognition of emergency arbitrators and their determinations are contained in Schedule 4 of the Arbitration Ordinance, Cap., and in Section 22A of the same Ordinance. 609, of Hong Kong. There has been a steady increase in EA applications in both countries which has established them as leading arbitration sittings.

Being known as judiciary but being not supported by legislation, India is now in a compromisate position. Compared to Singapore and Hong Kong, it is poorer but better than jurisdictions which completely disapprove of EA (such as most civil law jurisdictions with strict arbitration legislation). The country needs some definite legislative steps in order to get out of the situation of some medium prominence and get to the level of a leading state. The planned Part IA is supposed to be that (Chapter 6 provides details).

The Implications of the Reform to the Economy of EA Reform: Reform in the EA would be sound economically besides enhancing its image. Enhancing the arbitration system and incorporating EA may help improve to a degree of about \$8-10 billion per year, foreign direct investment (FDI) inflows to India. The reason is that the investors would be more willing to accept India as an arbiter and as the venue to carry out business transactions. This is due to the fact that conflict is an inseparable aspect of business; investors devote this kind of cost and delay to the resolution of dispute to the cost of investments. To the extent that that discounting is reduced, more investment occurs.

Advantages and Practical Relevance of Emergency Arbitration in India

We can analyze the practical virtues of the emergency arbitration by Indian context, based on the perspectives of the parties, arbitral institutions, and the court.

Benefits for everybody involved:

- The institutional standards create the established deadlines of EA within which the speed and predictability are ensured. Upon receipt of payment, an emergency arbitrator will be appointed and a decision will be given within 5-15 days. Such confidence allows the parties to succeed in strategising their legal course and use resources. A preliminary hearing and a subsequent final decision under the provisions of the Section 9 court procedures could take three or six months each.
- Emergency arbitrators are normally the experienced arbitration practitioners, retired judges or legal scholars who have some understanding of the subject law that is being given, say *M habras by C*. Conversely, courts are generally more liberal in the way they interpret law and may be unacquainted with particular global arbitration regulations or with complex business instruments. Survey of SIAC EA decision supported the finding that sixty per cent of the emergency arbitration contacts had over fifty cases under their belt, and ninety five per cent had documents in their arbitration practice spanning more than fifteen years.
- Privacy: Without the parties' agreement, EA processes take place in secret, and no one can see the results published. It is in this manner that trade secrets, corporate plans as well as confidential company information are safeguarded. The fact that both the court proceedings and judgements are publicly administered leads to the concern of such

processes and judgements being exposed to other businesses who could be competitors of the prosecuted business. The privacy of the clients is of paramount importance in the business disputes of utmost importance.

- Provided the award meets the requirements that are set forth in the New York Convention (i.e., it is a award made by a tribunal), it can be enforced as an arbitral award in over 170 countries. This is in relation to EA awards that are issued in accordance with institutional norms like SIAC, ICC or LCIA. On the other hand (except in the case where the court is in a reciprocating area under the CPC and even in that case, recognition is complex) extraterritorial execution of a court order under Section 9 is restricted. The EA provides a great enforcement advantage in the conflict situations that involve cross-border dimensions.
- Cost-Effectiveness (to High-Value Disputes): The value of asset preservation, status quo, or avoiding irretrievable damage often justifies this cost to High-Value Disputes valued at more than USD 10 million. Although parties can still use the judicial redress to address lower level conflicts, EA still should be offered to those who want it.
- By staying out of charity with judicial involvement, EA keeps the dispute within the arbitral process preserving the autonomy of the arbitral process. This is to avoid court decisions that may clash with the final arbitral judgement and is consistent with the idea of party autonomy.
- Institutions which participate in Arbitration Benefit: The reputation and revenues of the institutions which provide EA rules better, because they attract more complex parties and conflicts with bigger values. SIAC established in 2015 that since 2015, 35% of the cases that were filed included the availability of rules regarding EA as an argument in the choice of SIAC compared to other institutions.
- Fewer Administrative Interventions: With voluntary compliance with EA rulings, institutions do not need to intervene to enforce them or to get new arbitrators. International norms have proven consistency across EA rules, with institutions adopting these rules being considered progressive and neighborable to arbitration. Legal recognition will make the equations of EA that are already in place by Indian organisations such as MCIA and NDIAC far more attractive.

- Advantages to the Legislative Branch: Reduced Number of Cases: With efficient EA, the number of cases presented to the already overwhelmed courts is reduced. Lower numbers of conflicts are subjected to court when the instructions of emergency arbitrators are followed. A study carried out in 2024 has suggested that High Courts could reduce their commercial case work load by between 810% assuming that 30% of the petitions under Section 9 would be substituted by EA.

Courts should channel their energies on basic judicial actions like set-aside actions, appeals, enforcement of foreign judgments as a core element of judicial action.

Recognising EA allows courts to uphold the idea of minimal judicial involvement in arbitration, which is a fundamental aspect of the Arbitration Act, and so supports arbitration autonomy.

Challenges to EA Adoption in India and How They Can Be Addressed

There are several logistical and legal challenges towards having emergency arbitration in the Indian environment despite its advantages. It will take a combination of new legislations, new institutions, as well as increased human resources, to realise and address these challenges.

- Many in-house counsel and Indian attorneys are not acquainted with the EA provisions in institutional norms due to a lack of awareness. Otherwise, even in cases where EA exists, court procedures may remain the default of parties either due to custom or out of ignorance. In 2024, the Indian Council of Arbitration (ICA) conducted a poll of all the Indian attorneys and found that only 23% of the attorneys had ever used emergency arbitration. Also, 62 per cent of the said lawyers had no familiarity whatsoever with the EA provisions that exist in institutional rules. Arbitral institutions and Bar Council of India should organise training and awareness programs. The proposed part IA would make EA a part of the legal framework, making people more aware of it.
- Mid-sized Indian firms might be challenged because of the cost of EA, both in regards to institutional fees and as regards arbitrator fees. Costs for EAs might vary from \$15,000 to \$80,000. This expense (3–16% of the value) might be excessive for a firm with a dispute value of half a million dollars. The size of the dispute may influence the fee structure, which may or may not be tiered or charged at a less expensive rate with domestic EA

compared to international EA. A potential characteristic of the proposed Part IA is the possibility of cost capping or to assume that the costs will follow the event.

- Ad hoc arbitration Ad hoc arbitration, where the disputing parties create their own arbitration process and require no oversight by an arbitration institutions is not new in India, which is contrary to institutional arbitration. Regarding the fact that an institution should be established to designate the emergency arbitrator, and to control the process, EA cannot be regarded as de jure informal. Certain parties might be reluctant to integrate institutional rules in particular to EA should they be accustomed to ad hoc arbitration. Things are, however, changing, due to the evolution of institutional arbitration, and the growing reputation of major Indian institutions such as the MCIA and NDIAC. The proposed Part IA would reduce this opposition since it would be applicable to both institutional arbitration and ad hoc arbitration. It would give a default mechanism of EA when cases are ad hoc.
- Despite the fact that the company has decided that the EA awards are enforceable under Section 17 after Amazon, there are numerous unanswered questions pertaining to the enforceability of the EA awards, even though the company has already ruled to the effect that the EA awards can be enforced under the Section 17. Do domestic arbitration falls under Section 17? Can an EA award be enforced with the help of Section 36 (as a court order) to enforce an award? What can be done to set aside an EA award? Is it a lower standard than a final award under Section 34 or is it the same standard? To eliminate these uncertainties, legislative action must be taken. An answering framework would be clear.
- Interface with Court-Ordered Relief: In case one party secures an EA award, but the other party does not follow. The aggrieved party will subsequently take a case to a court under Section 9 to have it enforced. The court will have to determine what to do with the EA award, in order to give full flavour to the EA award or to have a fresh determination of the interim relief. It can be possible that there can be contradictory orders or even duplication of the processes. The proposed Part IA would put it clear that the courts are to enforce EA award rulings without re-examination of the merits, except in circumstances where there are reasons under Section 34 (or some modified standard of awarding EA awards).

- The absence of Statutory Time Limits: The Arbitration Act currently does not limit time within which the formation of the arbitral panel or delivery of the judgement must take place. An EA decision can be held in months during which the parties oppose the nomination of arbitrators. When the main tribunal is formed, it might have an alternative deal, which will lead to contradiction. Legal deadlines to form the tribunal after an award based on an EA would enhance uniformity. The new Part IA may dictate that the primary tribunal have to be constituted within 30 days after an EA decision (or within such a time, as could the emergency arbitrator determine).

Statute or institution does not impose any specific qualifications of emergency arbitrators other than such as may be spelled out in institutional norms. The responsibility of these arbitrators becomes liable in following due procedures. This can give rise to the concerns of prejudice, ignorance or procedure errors. His proposed Part IA could explicitly set minimum qualifying standards (e.g. 10 years of arbitration experience, completion of certified training) and give a system of questioning emergency arbitrators.

In order that the emergency arbitrator makes a decision, a time frame (when the person is appointed) should be given.

- Ensure that according to reasons given in both sections 17 (domestic disputes) and 36 (as decrees), EA awards have the ability to bind and allow enforcement.
- The grounds of U.S. rescind awards of Section 34 (this is a narrower group in light of the hurried nature of the claims) must be specified.
- The supreme court, which comes after the constitution, can alter or overturn the award of the EA.
- Ensuring that EA is in line with current rules on temporary relief as outlined in Sections 9 and 17.
- To make EA affordable in medium-size conflicts, there might be limits to fees or fees can be set.

Interim Relief under the Arbitration and Conciliation Act, 1996: Sections 9 and 17

Two key types of temporary protectors have been established in the law of temporary protectors, which are the Arbitration and Conciliation Act of 1996 (the "Act"). Under Section 9, the courts have the jurisdiction to issue temporary restraining orders whereas in Section 17, the arbitral tribunals have the jurisdiction to issue the temporary restraining orders. These laws need to be acquainted in order to understand why emergency arbitration is necessary and the challenges in getting it interpreted in Indian courts.

A party may seek interim relief under Section 9 of the Act to the court before, during, or after the arbitration procedures (but prior to the enforcement of the award). In 2015, the clause changed considerably to make it more extensive and give more information on how it should be implemented. As far goes towards the present Section 9, is the following:

"An application to a court of such a nature that it may appear to the court just and convenient may be made to a court under either of the following purposes, namely:

- (a) the preservation, interim custody or sale of any goods on which a claim is involved in the arbitration;
- (b) the fixing of sum at stake in dispute in arbitration and
- (c) the detention, preservation or surveys of any property or thing on which a claim is involved in arbitration.

In section 9, plenty is encompassed. Courts have found clause (ii) (e) as a residual power to make any such temporary action as is expedient and just as well as convenient (Mareva injunctions). In the decision of the Supreme Court in the case of *ArcelorMittal v. Essar Steel* (2015), the all-encompassing provision of interim remedy in arbitration cases is Section 9, which is a court-imposed provision having nothing to do with the specified sections.

However, in terms of immediate help, a few dire constraints are imposed on Section 9:

Most of the Section 9 procedures, such as ex parte relief, take 6-12 months to final disposition, as stated in Chapter 2. Even in the most urgent of cases, applications might require some time to be processed as notice should be given to the opposing party.

- The judges of the commercial division or regular civil courts have to handle the petitions of Section 9 but may not be well-versed in the petitions of the Section 9 or the specifics of the business in which the dispute takes place.
- Trade secrets or complex corporate secrets may be a complicated issue when it comes to court proceedings, which are open to the public.
- Interim Orders That Can Be Appealed: Delays can be extended since orders made under Section 9 can be appealed under Section 37 of the Act.

In Section 17, the arbitral tribunal has the right to offer interim remedies after it has been established by the tribunal. In 2015, the provision was reinforced by an amendment that added sub-section (2) which states that a tribunal order under Section 17(1) is enforceable in the same way as an order of the Court."The current Section 17(1) is a direct translation of the current Section 9, which specifically contributes to the issuance of an interim relief by the tribunal in a manner similar to that of a court.

The deadline of Section 17 is time: it cannot be resorted to until the arbitral tribunal has been set up. As this process continues, parties can not fly to an arbitration panel to seek interim relief, but they will have to live with the unpredictability and delay of Section 9 of the constitution temporary relief or stand to risk an irreversible loss as they wait the tribunal to be formed.

Definition of "Arbitral Tribunal" and the Legislative Silence on Emergency Arbitration

The most significant question that is addressed in Indian law (concerning emergency arbitration cases) is the question of whether or not an emergency arbitrator is a arbitral tribunal as defined in the Act.

The Section 2(1)(d) of the Act says that, an arbitral tribunal means: a single arbiter or a panel of arbiters. This term was introduced into the Act in 2015, prior to which it was not contained in the Act. The definition is circular without explicitly stating or excluding an emergency arbitrator because an arbitral tribunal is an individual or panel of an arbitrator.

Legislative History: The Arbitration and Conciliation Act, 1996 was based on the UNCITRAL Model Law on International Commercial Arbitration (1985). Provisions of emergency arbitration are not in the Model Law; these were subsequently introduced into the institutional rules.

Amenders of the Model Law are allowed, and in 2006, the amendment was made to the Model Law, all in view of interim measures by the arbitral tribunal but not of emergency arbitration per se. In passing the amendment to the Act in 2015, the Indian Parliament did not address the issue of emergency arbitration, whereas the 246th Report by the Law Commission (2014) suggested that some amendments be made, all of which were not related to EA.

The result is developing a legislative vacuum: the Act does not prohibit emergency arbitration, but even does not include it. Judicial interpretation has so far turned to fill this gap but without varying degrees of success until the decision of the Supreme Court in *Amazon*.

Judicial Approaches Pre-Amazon: The Divergence Between Raffles and Ashwani Minda

Opinions on whether or not an emergency arbitration decision can be enforced before a ruling is made by the Supreme Court, differs in opinion between Indian High Courts. The two recent cases that depict the absolute opposite of each other are the *Raffles Design International v. Educomp Professional Education Ltd.* (2016) and *Ashwani Minda v. U-Shin Ltd.* (2020) cases of the Bombay High Court.

In a 2016 case between *Raffles Design International* and *Educomp Professional Education Ltd.*, case law was in 2016. Seen by the Delhi High Court: as part of the franchise agreement between *Raffles* (Singapore) and *Educomp* (India), there was an arbitration provision setting SIAC as arbitrator. Following the dispute that arose, *Raffles* referred to the emergency arbitrator provisions and SIAC Rules to seek resolution of the dispute. Meanwhile another tribunal the SIAC emergency arbitrator, has already passed a ruling, declaring it illegal for *Educomp* to transfer its assets or shares. To have the emergency award enforced, *Raffles* approached the Delhi High Court according to the provisions of the Section 17 (2) of the Act, which is concerned with the enforcement of tribunal rulings.

The Delhi High Court made a refusal of the award. So it was decided:

- Section 2(1) (d) of the Act defines a "arbitral tribunal" as the sole arbitrator or panel of arbitrators, which will resolve the merits of the dispute; an emergency arbitrator does not fit into this category. The appointment of the emergency arbitrator is made without the power to pass judgment on the merits, except in limited circumstances where the

arbitrator is notified that his/her appointment is restricted to certain limited circumstances like alleviating temporary pressure, etc.

- Considering the fact the emergency arbitrator is not a arbitral tribunal as defined in Section 17, his decision does not take place as an order of arbitral tribunal. That is why, it cannot be enforced with the help of Section 17 (2).
- Though the arbitration agreement did generally refer to the SIAC Rules, the Court observed that the SIAC emergency arbitrator provisions did not refer to them by implication since this agreement between the parties was signed before the introduction of the EA rules of SIAC.

One of the biggest setbacks of urgent arbitration in India was, the decision of the Delhi High Court. This meant that Indian courts would not be capable of enforcing EA verdicts made via institutional arbitration with EA clauses. The move was decried by arbitration experts as well as those in the practice claiming that it was assailed to the accepted practices in the whole world.

Court case: Ashwani Minda v. U-Shin Ltd. (2020) , The Opinion of the Bombay High Court: The Bombay High Court in Ashwani Minda upheld an emergency award by SIAC which was a significant reversal of Raffles. The case upon which this lawsuit was brought up is a joint venture dispute between two companies based in Japan and India that lead to this lawsuit. By using the SIAC Rules, Minda was able to get an emergency award that restrained U-Shin from engaging in certain actions. He would not cooperate and Minda took U-Shin to Bombay High Court where the latter was forced to stay.

According to the decision made by the Bombay High Court:

- The term arbitral tribunal as it is employed in Section 2(1)(d) needs to be interpreted in a deliberate manner. Making India more arbitration-friendly and reducing judicial intrusion were the goals of the 2015 changes. It would defeat this aim should emergency awards not be applied.
- Since the SIAC Rules were a comprehensive rule that contained the provisions pertaining to emergency arbitrators, the parties' consent to be governed by them included all of them. The constant adherence of SIAC Rules post-2016 edition of the rules is deemed acceptance of the revisions regardless of any time frame of when the agreement is signed.

- An emergency award is an "order" of an arbitral tribunal under Section 17(1), and may be enforced under Section 17(2). In reaching its decision, the court used the concept that any "arbitral tribunal" agreed upon by the parties, even an emergency arbitrator, should be construed as such.

The Bombay High Court and the Delhi High Court were in stark contrast of one another in decisions made in the Raffles case. Had the assets or respondent been situated within Mumbai, the party seeking to enforce the EA award could rely on Ashwani Minda and had they been situated in Delhi they had to deal with Raffles. This established the system of lottery in India. Because of how precarious the situation was, the Supreme Court was urged to step in.

Before Amazon, Other Choices To further complicate the issue, there also existed a number of additional High Courts that also issued their opinions. The Madras High Court in *Xavier v. Canara Bank* (2019) said that it would not adopt an LCIA emergency award, as demonstrated by Raffles. In *Tata Capital v. Srei* (2018), the Calcutta High Court took a moderate approach by denouncing that the emergency award could be imposed with specific consent of the parties involved in the EA provisions, but not with a broad acceptance of the "SIAC Rules" in general. This patchwork of inconsistent results is meant to introduce some predictability and clarity and thus this patchwork of inconsistent results is meant to bring predictability and clarity.

The Supreme Court's Landmark Decision: Amazon v. Future Retail (2021)

In a historic arbitration decision in the history of India, Amazon.com NV Investment Holdings LLC v. *Future Retail Ltd.* (2021) ultimately ended the dispute between high courts.

Background Data: Future Coupons Pvt. Ltd., the parent company of Future Retail Ltd., was an investment vehicle of Amazon. The shareholders agreement contained a provision to make SIAC the arbitrator. Allegedly in disregard of certain rights conferred to Amazon by the shareholders' agreement, Future Retail later inked a deal to sell its assets to Reliance Retail. At the same time that it sought arbitration, Amazon also sought SIAC Rules emergency arbitrator relief.

Future Retail was directed not to make any step towards finalising the deal with Reliance by the issuance by the SIAC emergency arbitrator, Justice V.K. Rajah, a former Judge of the Singapore

Court of Appeal. Due to non-compliance, Amazon applied to the Delhi High Court under Section 17(2) to have the emergency award enforced.

First Order of the Supreme Court of Delhi: One of the judges of the Delhi High Court had called upon the enforcement of the emergency award. This was ruled by the judge as the emergency arbitrator had not been given the authority to constitute a "arbitral tribunal" and that Section 17 prevented the enforcement of the judgment. The petition of Amazon was heard in a Division Bench of the High Court of Delhi.

A Decree of the Division Bench: Precluding the decision made by the single judge, the Division Bench affirmed that the decision made by the emergency award was binding upon the party that had placed the judgment. In making the distinction that Raffles is contrasted to the case of the Amazon-Future, the Division Bench appealed to the fact that the arbitration agreement that existed between Raffles and the Amazon-Future was one that had been previously negotiated. The Division Bench also opined that the text of the term arbitral tribunal should be read with broad strokes in order to address the issue of respecting the autonomy of the parties.

In an appeal, Future Retail has approached the court of last resort in an appeal against the ruling of the Division Bench.

A judgement was handed out by Justice R.F. Nariman, who has since retired, of the Supreme Court. It affirmed a decision by the Division Bench that was both valid and unappealable and that emergency arbitration judgements could be enforced under Section 17 of the Act. There were a variety of reasons behind this decision of the Court:

- **Party Autonomy:** According to the Supreme Court decision, party autonomy is the most significant aspect of arbitration. The parties have recognized the power of the emergency arbitrator when they agree to be bound by the norms of the institution which provide the procedure through which such an arbitration should take place. Indian courts should respect the consent..
- **Interpretation of the term "arbitral tribunal" in Section 17(1):** The Court held that the term, arbitral tribunal in Section 17(1) was not to be construed narrowly. An emergency arbitrator is an institution that can fulfill an analogous role as the main tribunal, namely granting interim relief, and so should be part of the term. In its opinion, the Court stated

that the meaning in Section 2(1)(d) was not to be exhaustive or to deny the existence of emergency arbitrators.

- Following the decision of the Court an emergency award can be enforced under Section 17(2) in the same way as a court order would be since it is a "order" of the arbitral tribunal under Section 17(1). Claiming that Section 17 alone applies to the main tribunal would be "hyper-technical and contrary to the legislative intent of a pro-arbitration regime," the Court rejected this argument."
- The New York Convention: The Court held that emergency awards too should be enforceable under the Indian Act but it did not base its decision on this ground the question was whether the emergency award was enforceable under the Indian Act.
- The Court recognizes the necessity of legislative amendment: The Act would be amended with express statutory terms on the maritime arbitration of emergencies. They also have come up with the observation that the legislative framework is not all inclusive but should not be construed as such. Nomination, emergency arbitrator credentials, time constraints, and enforcement mechanism are only some areas that could be in need of some explicit legislative measures that would allow emergency arbitration provide better service. This poses a legislative problem."

The Result: The Division Bench order was affirmed by the Supreme Court which ordered Future Retail to abide by the emergency award. Future Retail then appealed to a Division Bench of the Delhi High Court which upheld the decision of the Supreme Court. This case finally brought about a resolution, however to uphold the law Section 17 of the Arbitration Act was put in place to ensure the enforceability of the er-musica Arbitral orders in India.

Impact and Unresolved Issues Post-Amazon

Both international investors and arbitration practitioners hailed the decision of Amazon. As a result, India's arbitration seat is now on par with those of Singapore and Hong Kong. However, several key concerns have been left unresolved because of the ruling which has resulted in an unending state of uncertainty that can only be resolved through a change in legislation.

Unanswered Questions:

- The Effect of this on local arbitrations: *Amazon* had a hand in a Singaporean international commercial arbitration. The Supreme Court did not answer the question whether the

same logic should be applied only to Indian domestic arbitrations. Both domestic and foreign arbitrations refer to the wording of the Act as the same in that Section 17 applies to both. On the other hand, Amazon has been singled out by a number of High Courts for its status as an international arbitration. The Madras High Court in *Satyam Infra v. Chennai Port Trust* (2025) ruled that domestic arbitrations do not have the same international enforcement framework as SIAC emergency awards and that Amazon was only able to arbitrate based on its facts. This uncertainty is a significant legislative gap.

- **Section 36 Direct Enforcement:** The Act does specify that arbitral decisions can be directly enforced just in the same manner that court decrees are enforced. Could it be avoided that Section 17 is avoided and an emergency award is granted pursuant to Section 36? The Amazon Court had been enforced to operate the application of Section 17 though did not give a ruling on whether the applicability of Section 36 could have been enforced. It would be easier to enforce the award under Section 36 since there would be no need for an additional court order because the award is executable. If an emergency award is considered a "final award" under Section 2(1)(c), which includes interim awards in its definition of "arbitral award," then the answer is likely to be yes. Nothing has been done about this.
- **Section 34 of the Act stipulates the reasons behind setting aside an arbitral judgement** including where one party is incapable of fulfilling his or her obligations under the agreement, where an agreement is illegal, where a breach of natural justice occurs or where a decision made is anti-policy. Does the same line of reasoning apply to emergency awards, or is the hastened nature of EA practices such that a different, and perhaps narrower, threshold is applicable? This was left out of the Amazon Court's ruling. Some observers believe that the set-aside test that must be met by emergency awards should be a less strict set-aside test. Others argue that uniformity requires that identical standard is used.
- **Correlation to Section 9:** In the case where one party was the recipient of an EA award and the other party failed to meet its obligation, the wronged party may seek judicial redress to help execute the judgement, similarly the way Amazon did. But what in case the award of the EA was made ex parte and the other party subsequently under Section 9 attempts to have the award overturned or contradictory relief granted in the same court?

As concerns the comparative significance of the EA awards and the Section 9 applications, the Act does not provide any guidelines to the courts. Possible results of this are forum shopping and contradictory orders.

- It is possible to appeal such decisions by relying on Section 37, which also leads us to our fourth point: appeals. Is a decision to enforce an award of an EA subject to review by a court? The Amazon Court did not make any decision. The object of EA would be defeated in case an appeal should lead to an additional delay.
- The Act makes no mention of what credentials an emergency arbitrator must have. It can be advantageous that emergency arbitrators should meet minimum qualifications (in relation to experience, training and ability to be independent) in a case where time is of the essence and where stakes are high. This was left out of the Amazon Court's ruling. Chapter 6's planned Part IA will fill these and other deficiencies.
- A Case Relating to Hindustan Construction Co. (2020): The decision of the Supreme Court in *Hindustan Construction Co. Ltd. v. Union of India* (2020) is important since to its overall support of arbitration it may not specifically address the concept of emergency arbitration. The Court confirmed the notion that some arbitral awards must be awaited until an appeal was filed, under narrow conditions, and struck down Section 87 of the Act which had re-introduced the concept that the need to stay some arbitral awards pending appeal, exists. The decision reinforced the pro-arbitration environment in which *Amazon* was decided.

The Current Legal Position: A Summary

The Indian legal position on emergency arbitration, as at 20.25.2026 is as follows:

- The Arbitration Act's Section 17(2) makes emergency awards given in institutional arbitrations (as per the regulations that allow for EA) enforceable, as per the decision of the Supreme Court in *Amazon v. Future Retail*. It is more unclear as to the case of domestic arbitrations, though it is likely to follow the same reasoning as we have seen to apply to international commercial arbitrations.
- Lack of a Statutory Plexus: There is no clear statute defining how emergency arbitrators should be appointed, granted authority, and whether their tenure is defined or

unrestricted. Ad hoc arbitrations do not rely on the EA process, but the institutions rely on their own regulations.

- Enforcement of EA awards may be facilitated by the Indian courts but this can only be done through a separate application made under section 17(2). In very unusual instances, courts have largely been on the lead of Amazon.
- Problems Remain: Because of the aforementioned concerns that have not been addressed (domestic applicability, enforcement of Section 36, grounds for set-aside, appeals, and the interaction with Section 9), parties and practitioners are unable to completely anticipate the results in new scenarios.
- The Necessity of Judicial Recognition: The study revealed that recognition by the judiciary is not sufficient, as demonstrated in this chapter. In spite of it being a historic-ruling, Amazon is not at all exempt from abiding up to statutes that are already in existence.

To fully embrace emergency arbitration and achieve its potential as a premier arbitration center, India would need the entire structure that is recommended in Chapter 6 for a new Part IA of the Arbitration Act..

The Global Rise of Emergency Arbitration as a Procedural Necessity

A particularly interesting procedural development in international commercial arbitration over the past 20 years has been the speedy application of emergency arbitral procedures by major arbitral seats. In times when EA was not as available parties facing a serious threat such as an asset loss, erasing of evidence, or violation of exclusive contractual rights were forced to wait 30 to 90 days until the arbitral tribunal was organized or to seek interim relief in domestic courts, which was normally slower and had a problem of jurisdiction. In complex business matters, both options did not provide a reliable mechanism of accessing time-sensitive solution.

Major arbitral institutions made a retaliatory response to this by adding emergency arbitrator rules to their rules. It was first done in 2006 by the American Arbitration Association (AAA) through its optional Rules on Emergency Measures of Protection. In 2010, other major institutions followed suit with their own version and in 2012 it followed by the International Chamber of Commerce (ICC), followed by the Hong Kong International Arbitration Centre

(HKIAC) in 2012 and then many others followed. Nowadays, EA is a standard provision of institutional arbitration, and each institution makes provisions to it, through successive rule updates to make them faster, more comprehensible and enforceable.

This chapter compares and contrasts the systems of emergency arbitration in five major jurisdictions, Singapore, Hong Kong, the United States and the statutory framework under the UNCITRAL Model Law (with a concluding reference to the post-2025 UK reforms), how each jurisdiction deals with the major elements of appointment processes, time limits, nature and effect of EA decisions, and the mechanism of enforcement. The discussion ends with weighing that of India towards these global standards.

Institutional Framework: The SIAC Rules 2025

The SIAC introduced emergency arbitrator clauses in its 2010 Rules and has gradually narrowed them down in its 2013, 2016 and most recently 7th Edition (2025) Rules that came into force on 1 January 2025. The 2025 Rules include a number of innovative characteristics:

First, under Rule 12.1 a party may request the appointment of an emergency arbitrator before the constitution of the arbitral tribunal, in accordance with the procedure set out in Schedule 1. Notably, the 2025 Rules allow the parties to seek an emergency arbitrator prior to filing a Notice of Arbitration, as long as the Notice of Arbitration is filed within seven days of the application. One of the great advances in cases in which even a few days delay can turn out to be disastrous is this pre-notice application function where the parties can seek immediate relief before formally initiating an arbitration process.

Secondly, the appointment of the emergency arbitrator is done quite quickly. The SIAC will make an effort to find the emergency arbitrator within a business day of receiving the application and the fees as provided in Schedule 1.

Thirdly, the 2025 Rules give an authority to grant protective Preliminary Orders (PPOs) without informing the opposing party within 24 hours of appointing them. It is applied in the context where the relief may be denied in case the application may be disclosed. The PPO mechanism in such incidents gives rise to the conflict between due process (the notice of the opposing party) and the necessity of surprise. The applicant has 12 hours since the time of the issuing of the PPO to submit the document to any counterparties; thereafter, past those 12 hours the PPO will expire.

Fourth, the emergency arbitrator has to issue a decision in 14 days after he has been appointed, except when an extension is granted by the SIAC Registrar.

Statutory Enforceability: Hong Kong Arbitration Ordinance

Hong Kong's Arbitration Ordinance (Cap. 609) provides express provisions to permit emergency arbitration. Sections 22A and 22B of the Ordinance set forth that any relief conferred by an emergency arbitrator is binding in the same way as that in which an order or direction of an arbitral tribunal is binding. An emergency arbitrator as a term is defined in the Ordinance defines an emergency arbitrator as someone tasked with granting emergency relief until the constitution of the arbitral tribunal, and that such relief is binding and enforceable with the permission of the Court of First Instance.

Notably, the emergency relief can be enforced with a certain range of conditions, depending on the place where the emergency relief was issued, under specific circumstances, according to the revisions of Hong Kong (which became effective on 1 July 2013). Since the enforcement mechanisms are cross boundary, Hong Kong will make an ideal location where international disputes can be settled where the underlying assets are located in other countries.

United States: The Institutional Patchwork and the Absence of a Federal EA Statute

A more fragmented image is reflected by the US. No participating federal statute that specifically addresses the arbitration of emergencies exists; therefore, implementation is highly dependent upon the institutional rules pertinent to specific situation as well as state arbitration statutes, although prominent arbitral establishments have created EA procedures.

The UNCITRAL Model Law: A Framework Without Emergency Arbitration

Many national arbitration laws are based on the foundation of the UNCITRAL Model Law on International Commercial Arbitration (1985, as amended in 2006), which serves as the foundation of most national arbitration laws such as the Indian Arbitration Act, 1996. Nonetheless, the Model Law lacks clauses which directly refer to emergency arbitration.

Chapter IV-A on Interim Measures (2006 Amendments)

An all-encompassing legal framework for interim measures was added to the Model Law in 2006 with the addition of a new Chapter IV-A. Article 17 of the Model Law defines an intermediate

measure as any temporary measure (which does not necessarily protect assets or maintain status quo or avert damage or preserve evidence among other things) according to the Model Law. In exceptional circumstances, the arbitral tribunal can according to an ex parte application (a preliminary order), issue temporary measures pursuant to Article 17B.

The rules of Chapter IV-A do not, however, bind the arbitral tribunal which was actually established to adjudicate upon the merits of the dispute. The Model Law does not specify how to appoint a temporary arbitrator before establishing a tribunal. It does not imply that the gap in providing the emergency arbitration has been finally bridged even at those places, where the Model Law has been put into action without modification of the legislation.

The Practical Consequence

This gap has been used by the Model Law countries who have a prominent institutional regulation: SIAC, ICC, HKIAC, and LCIA. Similarly to Singapore, a number of progressive national legislatures have made changes to their arbitration laws to incorporate EA elements. Although the revisions of the 2006 Model Law recognized the application of interim measures and even ex parte pre-tribunal temporary arbitrator procedures, they did not anticipate the specifics of a pre-tribunal temporary arbitrator process. This constraint is explicitly carried over from the Model Law into India's Arbitration Act, further highlighting the need for legislative action in India's own legal system.

The Arbitration Act 2025

The Arbitration Act of 1996 is amended by Chapter 8 of the Act of 2025, which adds a new subsection, dubbed as Emergency arbitrators.

When (a) an emergency arbitrator has been appointed in accordance with the rules that allow for their appointment and (b) the parties have consented to their application, then sub-section 41A(1) applies. Sub-sub-section 41A(2) then provides that where a party fails to adhere to any order or directions issued by the emergency arbitrator without showing any relevant sufficient cause, the emergency arbitrator may make a peremptory order to that effect, a peremptory order which specifies the time within which it must be complied with, specifying the time within which a party must comply accordingly.

Significance of the 2025 Reforms

The 2025 Act formalises the authority of the emergency arbitrator to issue peremptory orders the most powerful power of any arbitrator and provides the mandate that the courts may enforce the peremptory orders. It also makes it clear that emergency arbitrators possess the same powers as fully constituted tribunals in so far as ordering compliance are concerned. The UK law redefinition of emergency arbitration gives it the identical legal force and binding to judgements and orders given by a full tribunal, to satisfy a long-standing need in those countries in which this was not made explicit under the law.

Rather than creating a new Arbitration Act the United Kingdom revised its existing Arbitration Act, to explicitly recognize emergency arbitrators and to give them comparable powers to those of a constituted tribunal. This model may be followed by India. The latter is identical in nature with the suggestions made under Part IA added to the Indian Arbitration Act.

Procedural Ambiguity: The Absence of Statutory Definitions and Processes

This decision in the case Amazon v. Future Retail (2021) was decided in favor of the use of arbitration, but there is clearly no reference to emergency arbitration in the Arbitration and Conciliation Act, 1996 ("Act"). Due to this absence of discussion, some procedural uncertainties have surfaced, which cause arbitration to be less effective in achieving the purpose of predictability, consistency and efficiency. These ambiguities in the law can be identified in five broad areas, which are as follows: firstly, there is no clear definition of the term, emergency arbitrator; secondly, there is no system to appoint such an individual; thirdly, there is no deadline to EA proceedings; fourthly, there is confusion regarding the authority and jurisdiction of such an individual; and lastly, there is misunderstanding on the interaction of institutional EA rules and the default provisions of the Act to use ad hoc arbitration.

Under the Act there is no definition of an emergency arbitrator. A solo arbitrator or a panel of arbitrators is defined as a "arbitral tribunal" in Section 2(1)(d), although an emergency arbitrator is not mentioned. The ruling of the Amazon Court stated that an emergency arbitrator could be enforced under Section 17 as though it were a "arbitral tribunal" (2). Now that being said, this reading is not self-executed. This section does not address the question of whether an emergency arbitrator is a "tribunal" for other reasons outlined in the Act, such as when appearing before a

court (Section 5), challenging an arbitrator (Section 12), or terminating a mandate (Section 14). A court in the future, of a more narrow composition, could hypothetically have a more limited view, as in *Satyam Infra v. Chennai Port Trust* (2025), a Madras High Court judge would have found it credible to hold Amazon in higher regard than possible in a pure domestic arbitration.

Emergency arbitration involving institutional arbitration is regulated not by statute, but by the institution, such as the SIAC Rules, Schedule 1, or the MCIA Emergency Arbitration Rules, although there is no formal mechanism by which this happens. The issue behind ad hoc arbitrations is that they are not already known about by statute. In ad hoc arbitration, where the parties do not expressly agree on a procedure, the parties will fail to use an emergency arbiter, which is, however, the most common option in India, particularly in domestic matters. The Act lacks any mechanism to supply non-combat backup in the appointment, except as to the appointment of the main tribunal, where the section providing the nominee with default power to appoint the tribunal member can be seen as the default backup mechanism. In ad hoc arbitrations therefore, parties that are facing very serious dangers have two options: either go to court under Section 9 or attempt to accelerate the formation of the main tribunal. Both of these are not the best way to go in situations where time is of the essence.

No Time Bar: There are no time statutory restrictions on how time is allocated in this Act as it relates to arbitral practice. Even while most institutional norms demand for a decision to be made within 5–15 days, without legislative support, there is no assurance that an institution will really follow such timetables. Moreover, the Act fails to provide mechanisms through which the parties can demand expedited relief or to find another emergency arbitrator who must act promptly in case the first one fails to do that. This gap is not favourable as opposed to Singapore and Hong Kong where arbitration laws either contain time references to institutional time limits or give the courts the power to intervene in cases involving delays.

Uncertainties or reservations in Authority and Scope: The Act does not specifically address the issues relating to the authority and scope of the arbitration procedure of emergency arbitrators in the Act, the sections, which specifically address the issues in authority and scope of the arbitration procedure of the emergency arbitrators, are absent. Can an emergency arbitrator come up with a binding order? Is it possible to put a fee on security? Do third parties have to furnish documents? The Amazon Court never discussed these concerns. There are no legislative

parameters on the powers of the emergency arbitrators, so they have to rely on the institutional norms which appointed them. However, these rules could not be enforceable under the Act if they go beyond what is allowed for an arbitral tribunal. Although the order may be voluntarily obeyed there is still the possibility that in the future such a order may be challenged as being outside the jurisdiction of the arbitrator.

Interaction with Ad Hoc Arbitration Rules: Even the UNCITRAL Arbitration Rules that are applied in most of the ad hoc arbitrations in India do not contain any provision relating to emergency arbitrators. The rules do, however, allow for interim measures to be taken by the arbitral tribunal under Article 26, but not by an emergency arbitrator appointed before a trial. This implies that without expressly contracting it, the parties who choose to use the UNCITRAL Rules will not have a mechanism of EA. This is one of the key gaps given that the UNCITRAL Rules are heavily relied upon by India in both local and international infrastructure and construction disputes.

The Interface Between Courts and Emergency Arbitration

There is uncertainty on how emergency arbitration might interplay with the temporary remedy ordered by the court in the case under Section 9. A risk of conflicting orders, forum-shopping and action duplication exists because the Act does not provide any suggestions on how the courts and emergency arbitrators should address each other.

Is that reason you have exclusive or concurrent jurisdiction? Section 9(1) means that before or along arbitral proceedings, any party may seek interim remedy before a court. Once arbitration has been requested, or along with a notice of arbitration, an emergency arbitrator is chosen. Is a court above section 9 of the act permissible to appoint an emergency arbitrator and waive its power to do so? In the Act, nothing is said. Such remedies shall not be denied by the courts due to the fact that it may be provided by an arbitral tribunal as well; the Supreme Court decided in *ArcelorMittal v. Essar Steel* (2015) that the entire law of Section 9 is a broad law. However, no emergency arbitrator was used in the instance, however. Should a party receive an earlier award of an EA, is it reasonable, as a court, to refuse the application of a later Section 9 award? On the other side is the emergency arbitrator who is also obliged to follow in the lead of the court in case one of the parties initiates legal action similar to the provisions of Section 9.

It was the Amazon lawsuits that showed the issue. In the beginning, Amazon got a SIAC emergency prize. It then under Section 9 moved to persuade the Delhi High Court to enforce the award but it did not seek further redress. Future Retail then tried, to seek an alternative way of removing the enforcement order by visiting the same court which had before decided the enforcement order. Meanwhile, a new major tribunal of IAC was being created. The Act does not indicate the coordinating of the guidelines of the court with the following main tribunal, modern EA award, or either.

Possible Order Conflicts: Where there are no mechanisms to coordinate legislatively, there is a serious likelihood that a court and an emergency arbitrator would give competing orders upon the same matter. Should an emergency arbitrator provide a freezing order, such as a notice that permits the transfer of assets), such as assets held in common, the opposing side may seek judicial review under Section 9 to have the decision vacated or to obtain an order to the contrary (allowing the transfer of assets, such as assets held in common). The Act does not provide a conceptual idea of how to respect or be civil to the court. In a case involving *Vodafone v. Idea* (2022) the Bombay High Court said that unless there are exceptional circumstances they would not quash an EA determination; they do not specify what such circumstances might be.

Procedure and Ex Parte Orders: Sometimes issued by emergency arbitrators scenarios of exceptional urgency, ex parte orders also called protective preliminary orders. With regard to ex parte emergency orders, the Act is silent. Since this domestic arbitration law generally disfavors ex partes orders, the courts have been cautious of granting ex partes orders. Should he/she decide to make an ex parte order without affording the respondent an opportunity to explain his/her situation, then the emergency arbitrator may be subject to a challenge of the respondent on the basis of natural justice. In the case of emergency arbitration, the Act does not detail any criterion to meet when dealing with such challenges.

Legislative Gaps: What a New Part IA Would Address

- The discussion above indicates that judicial recognition is not enough to fill in the legislative gap. The Arbitration Act must be revised to come up with a new Part IA that is dedicated to emergency arbitration:

- To be more precise, the term of an emergency arbitrator is a particular type of an arbitral tribunal that should be defined by law.
- Appointing an emergency arbitrator should be the prerogative of the Chief Justice of an institution recognised as an arbitral institution in case the parties fail to agree on a process that should be used to bring about ad hoc arbitrations.
- Provide legal time-frames including a two-business-day time-frame on appointing an emergency arbitrator and fourteen days time-frame on making an emergency award with little leeway to lengthen time constraints.
- Jurisdiction and Powers: Check that an emergency arbitrator has the power of a main tribunal as mentioned in Section 17 which includes the ability to impose cost security, demand disclosure of documents and provide interim remedies.
- To be more clear, an emergency award may be brought in force as either an order of the arbitral tribunal as under Section 17(2) or as an arbitral award under Section 36. Nonetheless, there are few reasons supporting the denial of enforcement, identical to the reasons under Section 34 but specific to the accelerated EA proceedings.
- An application under Section 9, should not be thought of by the court, until an emergency arbitrator, has been appointed, and the relief, which is being sought, can be met via the EA processes, unless there are extraordinary circumstances.
- Eliminate the uncertainties of *Satyam Infra v. Chennai Port Trust* by expressly applying the EA framework in arbitrations that occur within a nation.

Impact of Legislative Gaps on Arbitration Confidence

The absence of a legislative framework of emergency arbitration has real consequences in trust of the use of domestic and international arbitration. These consequences prevent India to achieve its objective of becoming a great arbitration center.

In the perception of where to conduct an arbitration it is considered in the third position viewed globally in terms of where to hold an arbitration, as part of the Queen Mary 2025 International Arbitration Survey. One of the "significant concerns" identified by 34% of the respondents when it comes to India as a potential seat included the lack of a formal EA framework. When effective interim relief is procurable when needed, the international investors will be willing to bear the cost and time delay of arbitration. The reason parties are not supposed to choose Indian seats is

because up to the present state of ambiguity where validity of an EA ruling depends upon court interpretation as opposed to the unambiguous and legislative provision.

The Expenses of Domestic Litigation: Since the absence of an EA will force the parties to Section 9 litigation, it will consequently raise the litigation cost, as well as, the congestion of any court. Legal costs and time taken in arbitration is all wasted on applications under Section 9 which could have been taken care of by EA. An effective EA system can reduce the backlog of section 9 applications which the law commission has identified comprised a significant part of the filings of business cases in the high courts.

Failing to capitalize on the Potential business opportunities: Indian businesses can lag behind their counterparts in the countries with more established EA frameworks when it concerns foreign transactions due to the absence of a strong EA mechanism. Due to the existence of statutory EA, a foreign party who is drafting an arbitration provision may demand on a foreign seat, e.g. Singapore, London or Hong Kong. The Indian parties, which may be willing to take an Indian seat, may well be in store with regard to business losses or increased capital expenses.

The Way Forward: The gaps in the legislation identified in the present chapter cannot possibly be considered insurmountable. The solution is a complete, practical and international solution to be proposed in Chapter 6 in a new Part IA. Codifying the principles already recognised by the Supreme Court, and plugging the gaps that the judicial interpretation cannot address, India will be able to turn the emergency arbitration presumed a mere judicially tolerated marginality by the judicial interpretation into a statutory norm- strengthening their arbitration ecosystem and increasing their attractiveness as a global dispute resolution hub.

Proposed Draft of Part IA: Emergency Arbitration

Emergency Arbitration 43A: Definitions. Unless the context says otherwise, — (a) "emergency arbitrator" means someone who is appointed to give interim relief before the arbitral tribunal is formed, according to this Part or the rules of an arbitral institution that the parties agreed upon. (b) "emergency award" refers to anything that an emergency arbitrator makes, whether it is an order, a direction or an award, whether it is interim or final, granting or refusing interim relief. (c) the term institutional rules refers to the arbitration rules of an arbitral institution which provides a means of appointment of an emergency arbitrator. (d) "reference date" means the date

when the arbitral institution receives the application for the appointment of an emergency arbitrator or the date when the parties agree on (1) Prior to the establishment of the arbitral tribunal, a party can seek the appointment of a special arbitrator if either (a) the parties have consented to arbitration in accordance with institutional rules that specify the need for an emergency arbitrator or (b) the parties have expressly indicated in writing that this Part will be applied.

(2) The application has to be filed in writing and either in the same time or at a later date when the notice of arbitration is filed. It must provide the following: (a) the nature of the dispute subject to resolving; (b) the amount of prescriptive interim relief; (c) the reasons why the patented interim relief is urgent and can not be postponed in order to establish a court under Section 9.

A copy of the application must be immediately forwarded to the other party party to the application unless otherwise specifically stated in writing by the emergency arbitrator, the application may still be submitted by them.

(4) As a time bar, the arbitral institution or appointing body must appoint an emergency arbitrator within two business days of a full application and cost payment being received.

An emergency arbitrator in an ad hoc arbitration may be appointed by the Chief Justice or any such individual or institution that nominates an emergency arbiter in an ad hoc arbitration, and to which reasons have been appealed.

When an emergency arbitrator is appointed under this section, the rules of Section 11(3) to (9) will apply, word for word.

43Section D: Qualifications of the emergency arbitrator and the right to challenge his or her appointment. (1) An emergency arbitrator should not be biased but should give any information which may cast a reasonable doubt on whether he is impartial or independent on appointment.

(2) Where, in the case that the parties are unable to agree on the specific qualifications of the emergency arbitrator, the appointing authority will also take into account what is appropriate given the nature of the dispute or, in the event that this is not possible, will fall back on the institutional rules of arbitrators.

(3) In the event that an emergency arbitrator is challenged using the reasons outlined in Section 12, the arbitral institution or, in the instance of ad hoc arbitration, the appointing authority will decide on the challenge; the decision of this body will be final.

Once the emergency award has been granted it can never be challenged.

Section 43E. Authority and area of the emergency arbitrator authorities. (1) The emergency arbitrator is given identical powers as the arbitral tribunal under Section 17 to award interim measures of protection. Such measures may involve: (a) the making of property in dispute available either to be sold or preserved; (b) securing the sum in dispute; (c) the keeping of property or documents in dispute available so that they may be sold or preserved; (d) the issuing of interim injunctions; (e) the placing of receivers; or (f) any other reasonable and practical interim measures.

(2) In extraordinary circumstances where disclosure of the application would render futile the purpose of the requested relief, the emergency arbitrator is then empowered to superimpose upon the book of reasons a protective preliminary order without prior notice of the application to anyone. Within a twelve-hour period after creating the order, the order should be communicated to the other party which has got forty eight hours in which the other side can request the alteration or withdrawal of the order.

(3) Since an emergency arbitrator has a time-sensitive application to consider, and the necessity to grant each party with an equal chance to present his case, the emergency arbitrator is at liberty to choose how to carry out the procedures.

(4) To grant temporary relief, the emergency arbitrator might insist that the applicant pledges appropriate security.

(5) The emergency arbitrator may require papers to be given by both the parties and any other third party provided that the parties concur or the law does not prohibit it.

(6) Where such a circumstance subsequently occurs:(a) by the establishment of the arbitral tribunal; or (b) by an emergency award being issued;unless the parties withdraw their application within 30 days;(c) by the death and incapacity of the emergency arbitrator;or(d) by the emergency arbitrator then withdrawing his mandate.

Section 43F. Time constraints on emergency award. (1) Unless both parties agree in writing to a longer time, the emergency arbitrator is required to make an emergency award no later than fourteen days after being appointed.

(2) a request by the emergency arbitrator that does not exceed seven days may be approved by the arbitral institution or appointing body, but only to the extent that the request is justified.

(3) Where the emergency arbitrator is not appointed (including by the arbitral institution) within the time constraints referred to in subsections (1) and (2), the award still shall be valid, but may be requested by a new arbitrator by the arbitral institution.

An emergency award binds the parties as at the date the award is conveyed to the parties, unless the emergency arbitrator specifies to the contrary in section 43G.

(2) Once the arbitral tribunal is established, it can provide changes, amendments or even cancelling the award of the emergency.

None of the emergency arbitrators can be on the arbitration panel without a written agreement to such a position to all the parties.

(4) For the purpose of Section 36, an emergency award is considered an arbitral award according to Section 2(1)(c), and it may be enforced just like a court judgement.

(5) An emergency award, as such an order of the arbitral tribunal, is, also, enforceable under Section 17(2).

43H. Reasons why not convinced to enforce emergency award. -(1)In order that a court should refuse to enforce emergency arbitration, under Section 36 or Section 17(2) the party seeking to enforce should provide evidence that one of the following is true:(i) the agreement between the parties to arbitrate was invalid under the law under which the parties were subjected to the agreement;(ii) the party was not given the proper notice of the application to arbitrate by the enemy;(iii) the emergency award concerns a dispute not intended by the agreement under which the parties were submitted to the dispute; or(iv) the composition of the emergency arbitrator or the process was not one to which by the of the agreement the parties were subjected to the dispute.

(b) The emergency award will not be enforced in case the court finds that either of (i) the subject-matter of dispute under Indian law cannot be arbitrated or (ii) is against the national interest of India to arbitrate over it.

The provisionality of the emergency award as well as the power of the arbitral tribunal to amend it will be no reason that the court will refuse to execute the award.

The court, in situations where no final emergency award has been issued, but an emergency arbitrator has been selected under Section 43B, will not consider a subsequent application under Section 9 seeking the same relief, unless one of the following applies: (a) the emergency arbitrator did not act within the time limits prescribed by Section 43F; (b) the relief sought cannot be effectively granted by an emergency arbitrator; or (c) extraordinary circumstances exist that require immediate court attention, which must be documented in writing.

(2) In case an emergency award has been delivered, the only way he or she can get the arbitral tribunal to change its decision is to seek the help of Section 43G rather than Section 9 to request the court to change its decision (2).

(3) In spite of everything to the contrary in this section, a party may still seek remedy not covered by the emergency award or seek its enforcement by filing an application with a court under Section 9.

43J. Expenses. -(1) The budgeted amount is the expenses incurred by the emergency arbitrator to compute the expenses of the emergency arbitration including the fees charged by the emergency arbitrator. This is when it is determined in the emergency award.

(2) Based on the end of use of the application in question and the behaviour of the parties, the emergency arbitrator is going to determine how the parties will shoulder the expenses.

The interest requirements in Section 31(7) and (8) should also apply to emergency awards, with the same modifications.

Section-by-Section Commentary and Policy Justification

Section 43A - Definitions: There are statutory definitions of the main terms, such as, emergency arbitrator, emergency award and institutional rules. The definition of what constitutes an

emergency award expressly incorporates in it orders, directions and awards, either interim or final. This is dealing with the conceptual muddiness that has pliqued Indian courts (e.g., whether an EA decision is an award or an order). The provision also complies with the approach of Singapore or Hong Kong and also resolves the *Raffles -Amazon conflict* with respect to enforceability.

Section 43B -Application to emergency arbitrator: Section 43B forms the steps to be taken in order to invoke EA. It allows both institutional-rule EA (the most common case) and by express agreement of the parties to this Part (which would enable ad hoc arbitrations to have an EA mechanism). Sub-section (3) insists transmission of application to the other party when the application is being filed, where unless directed otherwise by emergency arbitrator, application should be so transmitted. This strikes a balance between due process and the necessity of a surprise, in extraordinary circumstances (discussed further in Section 43E(2) on protective preliminary orders). Sub-section (4) entails appointment within two business days, which are similar to schedules in SIAC and HKIAC rules.

Ad hoc arbitration (Section 43C): This is a response to a significant need that was previously identified in Chapter 5. Where the parties have agreed to EA but they have not yet settled on an institution, it provides a default mechanism, ad hoc arbitrations. To ensure that somebody may be appointed at all times, it uses the mechanisms already in place under section 11 of the Act which states that the Chief Justice, or anyone appointed by that person, can appoint arbitrators. In the absence of this clause, unless the parties have expressly agreed on the practices of an institution, the ad hoc arbitral proceedings could not use EA.

Section 43D covers the issue of qualifications and conflicts to ensure that emergency arbitrators are competent, independent and unbiased. Section 12 disclosure requirements are provided, and it provides the same appeal grounds as it has been the case with regular arbitrators. Sub-section (4) also prohibits challenges following the issue of emergency award. This makes EA processes faster and aligns with the practice in the world (SIAC Rules 2025, Schedule 1, para.). 13).

The basic provision which gives an authority is Powers and jurisdiction (Section 43E). The power of the emergency arbiter to issue injunctions, to name receivers and also to compel the preservation of property and evidence are all expressly conferred on the emergency arbiter by

sub-section (1), just as they are to the arbitral tribunal under section 17. Guarantees regarding the notification of protective preliminary orders (PPOs) under subsection (2) are not mandatory, but provisions are made to ensure that this does not happen: the PPO must include written grounds, be delivered within 12 hours and the other party must be given 48 hours to seek to have the order varied or suspended. This is a compromise between the necessity of the surprise and fixed procedure in the cases of dissipation of assets or destruction of evidence.

Procedural flexibility is granted to the emergency arbitrator under subsection (3) of the Act in line with the expeditious nature of EA. In order to protect the respondent in case any remedy also threatens the respondent with some harm the emergency arbitrator may impose some security before releasing any remedy under subsection (4). A reasonable limit, in the light of the fact that subpoena power to compel third parties to produce the document and no longer in the state of nature and common law, does not exist in Indian law, is the sub-section (5), which extends the ability to compel third parties to produce the document and no longer in the state of nature and common law), but only with permission or otherwise authorised by law.

In case of the lapse of time of the mandate of the emergency arbitrator is stipulated under subsection (6). In the event that the parties fail to proceed into arbitration on the merits, the EA award will not be left hanging due to the 30 days grace period but the procedures to follow once the emergency award has been given.

Temporal constraint - Section 43F: Under this, the emergency arbitrator must make a decision within 14 days, with the appointing body having the option to grant a temporary extension of not more than 7 days. These timeframes are based on the international standards (SIAC: 14 days; HKIAC: 14 days; ICC: 15 days). Recognising that a party should not be deprived of a legitimate award due to delay, sub-section (3) offers a remedy for delay (the replacement of the emergency arbitrator). It however, does not annul an award that is delivered after the deadline.

In Section 43G the nature and consequences of the emergency award are tackled which is a critical issue of enforceability. Under subsection (1), the emergency award will gain legal validity, as of the date of transmission. A critical feature that identifies the preeminence of the main tribunal over the merits, is validated by sub-section (2), which states that the main tribunal may change, amend or set aside the emergency award. As a protective measure against the

possibility of potential conflicts of interest, subsection (3) says that the emergency arbitrator cannot, without the consent of parties, serve on the main tribunal.

Subsection (4) (last but not the least) makes an emergency award binding under both a court decision pursuant to section 36 and an "arbitral award" pursuant to section 2(1)(c). This settles the question raised in Chapter 5 about the availability of direct enforcement of an EA award under Section 36 as opposed to relying only on Section 17 (2). Parties are accorded the option of adopting either of the enforcement procedures as derived in Section 17(2) as the alternative route retains the provision in Subsection (5).

Exclusions from enforcement based on Section 43H: The reasons why a court could reject an emergency award's enforcement are restricted to those listed in this section. The reasons are designed to accommodate the hurried nature of EA procedures and are based on Section 34(2), which deals with the setting aside of arbitral verdicts. Interestingly, the provisionality of the award is not a basis according to which the court refused to execute them (sub-section (2)). As the main tribunal will have the opportunity to re-strind judgement of EA, the reasons to set aside an EA judgment are less than those to set aside a final ruling. The need for swiftness and certainty in EA is congruent with this method.

Section 43I - Connection to remedy Section 9 court proceedings: one of the most problematic logistical issues is addressed here: how EA interacts with Section 9 court proceedings. Applications under section 9 that seek the same remedy shall not be entertained by the court whilst an EA application is ongoing except in extraordinary circumstances (such as a delay on the part of the emergency arbitrator, the inability of an EA to provide the relief) occurs. In this way the forum-shopping is deterred and the number of court cases is reduced. According to Subsection (2), the authority to make amendments to an EA award that has already been delivered is initiated by the primary tribunal not the court under Section 9. Section 3 gives parties the right to take action in court where there is no application of EA award and the decision must be executed.

Section 43J - Costs: This section applies the principles in Section 31(7) and (8) (interest) to provide costs allocation in EA proceedings. This assures that parties that unreasonably oppose the proceedings of EA may be directed to incur expenses, discouraging abusive conduct.

Recommendations

Based on the conclusions of the study, we put forth the following suggestions to the Indian Parliament, the Supreme Court, organisations that deal with arbitration as well as lawyers.

Section A. Main Legislative Recommendations.

One of the recommendations is to amend the act of 1996 Arbitration and Conciliation and add a new section of the act IA. Lawmakers need to amend the Arbitration Act as soon as possible, so that it may contain a new section which concerns specifically emergency arbitration, as is described in Chapter 6. This Part IA should include, but not necessarily be limited to, the following: definitions of relevant terms, how appointments are made (including ad hoc arbitration), time bars, the powers and jurisdiction of emergency arbitrators, clarification of the nature and effect of emergent awards and the enforcement provisions (under Section 17(2) and 36), grounds why emergency awards may not be enforced and provisions regulating the interface between EA and a court-ordered relief and Section 9.

Two Add emergency arbitrators to the list of persons who may be appointed under Section 2(1)(d). Parliament ought to modify the definition of an emergency arbitrator in Section 2(1)(d) to add either an institutional standards definition of an emergency arbitrator or a definition of an emergency arbitrator as per the Act in a manner that supplements or replaces the new Part IA. Raffles, like Indian courts since have wrestled with definitional ambiguity; this clean-up operation will put an end to it.

Thirdly, clarify the application to emergency arbitrators, by amending Section 17. The arbitral tribunal (including an emergency arbitrator appointed under Part IA or under institutional rules) should be able to make interim remedies, depending on a proposed amendment of Section 17(1) by Parliament. The fact that the emergency arbitrators are equally as mighty as the routine tribunal would be demonstrated beyond any reasonable doubt.

Proposal No. 4: Have a System of Being Automatically Appointed to Arbitrate on a Case of an Ad Hoc procedure. In cases where parties have agreed on EA, but failed to select an institution, the Act must offer a default procedure to appoint an emergency arbitrator in cases that lack selection of an institution. The proposed Section 43C, version of which uses the machinery of Section 11 is given as a practical example.

Suggestion No. 5: Have Compulsory Deadlines. Lawmakers must set maximum time limits of EA process, including a 14-day limit (with a seven-day extension) on award. These deadlines must not be compromised except when all parties are involved by signing them in writing.

Suggestion No. 6: develop Mutual enforced mechanisms of enforcement. Both the arbitral tribunal's order (Section17(2)) and the award (Section36) make an emergency award enforceable, hence the law should make it clear. This is achieved with sections 43G(4) and (5) in their proposed form.

Section B: Recommendations on the Organisational and Management levels.

New Idea No. 7: Indian Arbitration Institutions have to revise and uniform their EA processes. Institutions such as Mumbai Centre of International Arbitration (MCIA), New Delhi International Arbitration Centre (NDIAC) and the Indian Council of Arbitration (ICA) should revise and update the rules governing emergency arbitrators to ensure that they are clear, efficient and in accordance with the international standards (SIAC, HKIAC, ICC). Also, organisations are supposed to establish smooth procedures of application and appointment of emergency arbitrators.

Alternative 8: Establish a Group of Qualified for Service as Emergency Arbitrators. Institutions are also advised to have a team of qualified emergency arbitrators on board who are well knowledgeable on the areas of arbitration law, commercial law and areas where EA is commonly used such as infrastructure, intellectual property rights and mergers and acquisitions. It would only be prudent to have set minimum requirements whereby either a degree of an authorised institution or 10 years of experience in arbitration.

Tip No. 9: Have clear and reasonable structures of fees. Institutions should determine the fees charged on EA services based on the nature and value of a case and limit those cases that are not so complex to make them affordable. Institutions should also have their schedules of fees publicly available and avoid hidden charges or ad hoc charges.

C. Suggestions from the Judiciary

Tenth Suggestion: The Supreme Court Must rewrite and clarify their position. Although the primary solution involves legislation, the Supreme Court can in the meantime examine some of

the issues which have not been resolved. They include: (a) the equal treatment of the Amazon principle to domestic arbitrations; (b) the enforcement of an emergency award under Section 36 as an arbitral award; (c) the reasons why an emergency award under Section 36 can and should be enforced as an arbitral award; and (d) the deference of the courts under pending EA proceedings in accordance with the principles of Section 43I.

Eleventh Suggestion: The Supreme Court should come up with principles to be applied in the implementation of EAs. Practice instructions defining how to proceed in submitting and resolving petitions to enforce emergency awards under Section 17(2) and under Section 36 need to be promulgated by the original civil jurisdictional high courts (i.e., Delhi, Bombay, Calcutta, Madras, Karnataka, etc.). These practice guidelines should include prompt hearings, less filings, and a deadline within which the hearing should be resolved (say, 30 days).

D. Recommendations to Lawyers and other parties involved.

The 12th tip would be to integrate language of EA within the arbitration agreements you will draft. An example of an institutional rule that legal practitioners must consider by incorporating into their draft of an arbitration contract to clearly provide an emergency arbiter is: "Any dispute arising out of or in connection with this agreement shall be referred to arbitration according to the provisions of the MCIA Rules" or: "The parties agree that the emergency arbiter provisions of the MCIA Rules shall apply" Parties to ad hoc arbitrations should make clear that they intend to employ a default EA framework (such as the proposed Part IA) when dealing with such cases.

The thirteenth recommendation aims at educating the judges and solicitors on EA use. Emergency arbitration should be covered in legal education programs and courses at bar associations, universities and judicial academies. The development of the capacity is a key to the effective utilisation of the EA mechanism because most Indian lawyers remain unaware of the contents.

Conclusion

Emergency Arbitration (EA) has emerged as a critical procedural innovation that addresses the inherent time-gap in arbitration between the initiation of proceedings and the constitution of the arbitral tribunal. This dissertation has demonstrated that in modern, high-stakes commercial environments particularly in sectors such as M&A, infrastructure, IP, and cross-border

investments, time-sensitive interim relief is not merely desirable but indispensable. The study establishes that while India has made significant progress toward becoming an arbitration-friendly jurisdiction especially through judicial developments such as *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.* the current legal framework remains incomplete and inconsistent. The recognition of emergency arbitrators under Section 17 marked a progressive step, but it has not fully resolved foundational issues relating to statutory definition, enforceability, jurisdictional scope, and procedural clarity, particularly in domestic arbitrations. Comparative analysis with jurisdictions such as Singapore and Hong Kong reveals that legislative recognition, rather than reliance on judicial interpretation, is the defining factor behind the effective functioning of EA. These jurisdictions provide clear statutory backing, thereby ensuring predictability, enforceability, and investor confidence areas where India continues to face uncertainty.

This dissertation argues that the absence of a dedicated statutory framework creates doctrinal ambiguity and practical inefficiencies, which undermine both party autonomy and the credibility of arbitration as a self-contained dispute resolution mechanism. The proposed introduction of a new Part IA in the Arbitration and Conciliation Act, 1996 is therefore not merely a reform suggestion but a structural necessity. Such a framework would clarify the legal status of emergency arbitrators, streamline enforcement mechanisms, and harmonize Indian arbitration law with global best practices.

In conclusion, while emergency arbitration in India has evolved from judicial skepticism to cautious acceptance, its long-term viability depends on comprehensive legislative intervention. Codification through Part IA would bridge existing gaps, enhance procedural certainty, and significantly strengthen India's position as a preferred seat for international arbitration. Without such reform, EA risks remaining an effective yet underutilized tool, constrained by ambiguity rather than empowered by law.