

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 9 | Issue 3

2026

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Emergency Arbitration in India: Judicial Evolution and Legislative Recognition

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ABSTRACT

Emergency arbitration is among the most significant procedural innovations in contemporary arbitration, granting a party access to urgent interim relief before the arbitral tribunal is constituted. For a considerable period, Indian arbitration law did not recognise emergency arbitration as a statutory form of arbitration, although it was well established in leading institutional centres such as the Singapore International Arbitration Centre, the International Chamber of Commerce and the London Court of International Arbitration. Indian courts therefore relied on judicial interpretation to determine the legal nature, enforceability and scope of an emergency arbitrator's order. The decision of the Supreme Court in Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. marked a turning point by holding that an emergency arbitrator's order under the Arbitration and Conciliation Act, 1996 is enforceable, while reinforcing party autonomy and minimal judicial intervention. The draft Arbitration and Conciliation (Amendment) Bill, 2024 seeks to place these judicial developments on a statutory footing by defining the emergency arbitrator and providing for the enforceability of emergency awards. This paper traces the judicial development of emergency arbitration in India, examines the significance of the leading decisions, reviews the proposed legislative changes and considers whether they would resolve the legal and procedural difficulties of the earlier regime. It also discusses the continuing problems in the arbitration system and suggests reforms to strengthen it in India.

Keywords: *Emergency arbitration, interim relief, institutional arbitration, party autonomy, judicial intervention, Arbitration and Conciliation (Amendment) Bill.*

I. INTRODUCTION

The growing complexity of cross-border commercial transactions has created a need for immediate protection before an arbitral tribunal is appointed. Conventional court-based interim measures may frustrate the expectations of efficiency, confidentiality and autonomy that parties seek from arbitration. To fill this gap, several leading arbitral institutions created the emergency

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arbitration process, which allows parties to seek interim relief from an emergency arbitrator before the arbitral tribunal is constituted.¹

Emergency arbitration was not a statutory development but an institutional innovation. The Singapore International Arbitration Centre (SIAC), the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA) introduced emergency arbitrator provisions into their rules to provide for the prompt resolution of disputes without requiring parties to rely on national courts. Although some jurisdictions gradually validated the concept through legislation or judicial rulings, India had no legislation regulating the role of an emergency arbitrator.

The absence of legislative recognition resulted in uncertainty over the enforceability of emergency arbitrators' orders, especially in foreign-seated arbitrations. Indian courts therefore had to develop a jurisprudence that fitted within the existing statutory framework of the Arbitration and Conciliation Act, 1996 to address the question of emergency arbitration. This process culminated in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*,² which transformed the legal status of emergency arbitration in India.

The draft Arbitration and Conciliation (Amendment) Bill, 2024 is the next step along this continuum. The proposed reforms aim to consolidate the judicial developments and address unresolved procedural issues by introducing statutory recognition for emergency arbitration. The development of emergency arbitration in India therefore offers an instructive study of how judicial innovation and legislative reform operate alongside one another within the current arbitration landscape.

II. CONCEPT AND EMERGENCE OF EMERGENCY ARBITRATION

Before the constitution of an arbitral tribunal, parties may obtain urgent interim measures through the emergency arbitration mechanism from a specially appointed emergency arbitrator. The process is intended to maintain the status quo, prevent irreparable harm, protect assets or preserve evidence during the interval between the commencement of the arbitration and the formation of the tribunal.³ Emergency arbitration is premised on the recognition that many disputes are urgent and require resolution before the tribunal is constituted. In the absence of an emergency arbitration mechanism, parties would have to seek interim relief from the national

¹ Harshita Gupta, *Evolution and Future of Emergency Arbitration in India*, SSRN Electronic Journal (2023).

² *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, (2022) 1 SCC 209.

³ Nandini Kabra, *Emergency Arbitration in India: A Need for Legislative Implementation*, SSRN Electronic Journal (2024).

courts, which would inevitably increase judicial involvement in the arbitration and undermine its autonomy.⁴

As institutional arbitration was increasingly adopted, institutional rules were amended to provide for emergency arbitration procedures. One of the most widely used mechanisms is found in the SIAC Rules, under which emergency arbitrators can be appointed within a few days. Similar provisions appear in the ICC Arbitration Rules and the LCIA Arbitration Rules. These institutions paved the way for the acceptance of emergency arbitration in international commercial practice, well before statutory recognition emerged in a number of jurisdictions.⁵

The concept was introduced into India in practice through institutional arbitration agreements. The presence of emergency arbitrator provisions in the rules of the SIAC, the ICC and the LCIA did not create an emergency arbitration regime in India; rather, parties that chose these rules became subject to the emergency procedures. This lack of alignment between institutional practice and the domestic law gave rise to considerable legal uncertainty over the enforceability of emergency awards. International arbitration statistics illustrate the increasing relevance of emergency arbitration.

Since the introduction of emergency arbitrator provisions in the SIAC Rules in 2010, the number of emergency arbitration applications before the SIAC has steadily grown. A similar pattern is observed under the ICC and HKIAC rules, reflecting a broader trend towards the commercial use of expedited interim protection mechanisms. Emergency arbitration forms part of the wider movement towards efficiency and autonomy in international dispute resolution.⁶

Jurisdiction	Statutory Recognition	Enforceability of EA Orders
Singapore	Yes	Directly enforceable
Hong Kong	Yes	Directly enforceable
United Kingdom	Partial judicial recognition	Generally enforceable
India (Pre-Amazon)	No	Uncertain
India (Post-Amazon)	Judicial recognition	Enforceable under Sec. 17
India (Proposed 2024 Amendment)	Proposed statutory recognition	Explicit enforceability

⁴ Id.

⁵ David Sandberg, *Emergency Arbitration under the SCC Arbitration Rules*, 10 BCDR Int'l Arb. Rev. 297 (2023).

⁶ Singapore International Arbitration Centre, *Emergency Arbitration*, <https://siac.org.sg/emergency-arbitration> (last visited July 1, 2026).

III. JUDICIAL EVOLUTION OF EMERGENCY ARBITRATION IN INDIA

A. Phase I: pre-Amazon judicial ambiguity

The initial stages of emergency arbitration in India were marked by considerable uncertainty owing to the absence of statutory recognition. The Arbitration and Conciliation Act, 1996 made no mention of emergency arbitrators, emergency awards or expedited interim procedures. This legislative silence deprived parties of a settled practical solution. Emergency arbitrators in institutional arbitrations were often appointed by parties who sought relief in arbitrations seated in another jurisdiction, and it was questioned whether such orders could be recognised or enforced in India.⁷ The decision in *HSBC PI Holdings (Mauritius) Ltd. v. Avitel Post Studioz Ltd.*⁸ highlighted the difficulties associated with enforcing interim measures in the context of foreign-seated arbitration.

During this period, Indian courts broadly acknowledged the significance of party autonomy and principles that foster an arbitration-friendly environment, but they remained bound by the statutory provisions. Despite the absence of legislation, emergency arbitration effectively took place through the incorporation of institutional rules into contracts. The status of an emergency arbitrator's orders was therefore left in a state of uncertainty under Indian arbitration law. The result was an inconsistent and inefficient system. Parties frequently faced duplicative proceedings in both the emergency arbitral process and the courts. Emergency arbitration often failed to reduce judicial oversight and instead produced further litigation over enforceability and jurisdiction. Cumulatively, these difficulties called for a judicial solution that would reconcile institutional practice with the interpretation of the statute.⁹

B. Phase II: the Amazon turning point

The decisive transformation came through *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*¹⁰ The dispute arose from Amazon's investment in Future Coupons Pvt. Ltd. and Future Retail's proposed transaction with Reliance Retail Ventures Ltd. The parties had agreed to resolve their disputes under the SIAC arbitration rules, including the provisions relating to emergency arbitration. Amazon invoked the emergency arbitration provision and secured an emergency award restraining the transaction. The principal question before the Court was whether the order passed by the emergency arbitrator could be enforced in India.

⁷ Cameron Sim, *Emergency Arbitration* (Oxford University Press 2021).

⁸ *HSBC PI Holdings (Mauritius) Ltd. v. Avitel Post Studioz Ltd.*, 2014 SCC OnLine Bom 102.

⁹ *Id.*

¹⁰ *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, (2022) 1 SCC 209.

The Court interpreted the Act purposively, in an arbitration-friendly manner. It affirmed that party autonomy is fundamental to arbitration and that parties may agree to incorporate institutional arbitration rules. The parties' arbitration agreement conferred authority on the emergency arbitrator, since the SIAC Rules had been incorporated into the agreement.¹¹ The Court held that an emergency arbitrator fell within the general definition of an arbitral tribunal for the purposes of Section 17, so that the orders of an emergency arbitrator could be enforced under Section 17(2) of the Act. In contrast with the earlier uncertainty, the Court was able to integrate emergency arbitration into the statute through judicial interpretation.

Enforceability is not the only reason the decision is significant. First, it strengthened party autonomy by affirming that institutional arbitration rules are binding. Second, it limited judicial oversight by permitting parties to use an alternative dispute resolution process rather than the courts. Third, it enhanced India's reputation as an arbitration-friendly forum consistent with international best practice.¹² The Court's reasoning reflected the commercial, intervention-minimising approach characteristic of modern arbitration. It did not read the statute as prohibiting emergency arbitration, but construed it so as to advance the purposes of arbitration.

Issue	Position Before Amazon	Position After Amazon
Status of Emergency Arbitrator	Uncertain	Judicially recognised
Enforcement of EA Orders	Doubtful	Enforceable under Sec. 17
Party Autonomy	Limited practical effect	Strongly reinforced
Reliance on Courts	Extensive	Reduced
Institutional Arbitration	Less attractive	Encouraged

C. Phase III: post-Amazon developments and the normalisation of emergency arbitration

The period following the decision in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*¹³ may be described as a phase of normalisation and institutional consolidation of emergency arbitration in India. The decision resolved the immediate controversy over the enforceability of emergency arbitrator orders, but its wider implications proved even more significant. The ruling moved emergency arbitration from a contested procedural novelty to an accepted part of Indian arbitration practice. By removing the most prominent legal impediment to the use of emergency arbitration, the decision helped to accelerate the institutionalisation of arbitration in India.

¹¹ H.K. Saharay ed., *Arbitration Law* (2d ed. 1986).

¹² Cameron Sim, *The Principles of Emergency Arbitration*, in *Emergency Arbitration 1* (Oxford University Press 2021).

¹³ *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, (2022) 1 SCC 209.

One of the most significant effects of the decision is that commercial parties in high-value domestic and foreign transactions have relied increasingly on the emergency arbitration mechanism. Before the ruling, the uncertainty surrounding the enforceability of an emergency arbitrator's orders was one reason parties often preferred to approach the courts under Section 9 of the Act.¹⁴ Since judicial recognition, however, parties have increasingly regarded emergency arbitration as an effective alternative capable of providing prompt and expeditious relief. The ruling thus confirmed that arbitration should function as a self-contained system of dispute resolution, rather than one subject to constant judicial oversight.

The post-Amazon era has also seen a wider turn towards institutional arbitration. A principal advantage of institutional arbitration is the availability of emergency arbitrator procedures that assist parties in obtaining urgent relief within days of filing an application. The certainty attaching to emergency arbitration procedures has made institutions such as the SIAC, the ICC and the LCIA more attractive to Indian parties. The Court's approval of emergency arbitrators' orders brought Indian arbitration law into closer conformity with these systems and contributed to the growing popularity of institutional arbitration clauses in commercial contracts.¹⁵

At a broader policy level, the post-Amazon phase signals India's ambition to emerge as a leading global arbitral hub. When international commercial parties choose the seat of arbitration, an important consideration is the availability and efficacy of interim relief. Jurisdictions that recognise and enforce emergency arbitrators' orders are regarded as more arbitration-friendly, since they offer a full suite of dispute resolution tools capable of addressing pressing business risks. By endorsing emergency arbitrators through judicial interpretation, India took an important step towards global best practice and enhanced its appeal as a venue for resolving commercial disputes.¹⁶

Even after these welcome developments, certain questions remained unresolved. Because the decision was reached through judicial interpretation, the precise status of emergency arbitrators, the scope of enforcement of their awards, and the interaction between emergency arbitration proceedings and court-ordered interim measures under Section 9 remained uncertain. These grey areas prompted calls for legislation, which in turn led to the draft Arbitration and Conciliation (Amendment) Bill, 2024.

¹⁴ Cameron Sim, *The Foundations of Emergency Arbitration*, in *Emergency Arbitration* 23 (Oxford University Press 2021).

¹⁵ Hermann J. Knott & Martin Winkler, *Emergency Arbitration*, in *Austrian Yearbook on International Arbitration* 2022, 161 (2022).

¹⁶ Helmut Ortner & Philipp A. Peters, *Emergency Arbitration*, in *Elgar Concise Encyclopedia of International Commercial Arbitration* 164 (2025).

IV. THE DRAFT ARBITRATION AND CONCILIATION (AMENDMENT) BILL, 2024: TOWARDS STATUTORY RECOGNITION

The draft Arbitration and Conciliation (Amendment) Bill, 2024 is among the most significant proposed reforms concerning emergency arbitration in India. Although the courts successfully integrated emergency arbitration within the existing statutory framework in Amazon, the absence of express statutory recognition left uncertainty over the scope of the emergency arbitrator's jurisdiction and the enforceability of emergency awards. The proposed amendment seeks to address these gaps by formally incorporating emergency arbitration into the statutory fabric of Indian arbitration law.¹⁷

A key feature of the proposed amendment is a formal statutory definition of an emergency arbitrator. The draft Bill provides that arbitral institutions may, for the purpose of granting interim measures referred to in Section 9, provide for the appointment of an emergency arbitrator before the constitution of an arbitral tribunal. Until now, Indian arbitration law recognised only arbitral tribunals constituted under the regular procedure, and emergency arbitrators were permissible only where parties agreed to incorporate institutional arbitration rules. The proposed reform seeks to remove this technical uncertainty by giving emergency arbitrators formal recognition to grant urgent interim relief before the tribunal is constituted.¹⁸

Another important element of the proposed reform concerns enforceability. Under the approach in Amazon, an emergency arbitrator's decision is enforced through Section 17 of the Act, but only on an expansive reading of what constitutes an arbitral tribunal. The proposed amendment seeks to remove this doubt by providing expressly that an order of an emergency arbitrator shall be enforceable in the same manner as an order of a duly constituted arbitral tribunal under Section 17(2). This change would substantially enhance the utility of emergency arbitration and reduce the scope for procedural challenges.¹⁹

The proposed amendment also seeks to clarify how emergency arbitration interacts with judicial intervention. A contentious feature of Indian arbitration practice has been the tendency of parties to initiate court and arbitral proceedings simultaneously. The proposed reform aims to draw clearer boundaries around the circumstances in which courts may intervene once emergency

¹⁷ David Goldberg & Ivan Philippov, *Emergency Arbitration*, in Elgar Encyclopedia of International Economic Law (2025).

¹⁸ Id.

¹⁹ Gunawan Widjaja, Andriyawan & Victoria Regine Liando, *Emergency Arbitration: Comparative Analysis*, in Arbitration and Alternative Dispute Resolution International Conference (ADRIC 2019) Proceedings 63 (Atlantis Press 2020).

arbitration proceedings have begun, thereby helping to insulate the arbitral process from unnecessary judicial interference.

There is, however, more at stake than merely codifying what the courts have decided. Although the Court in Amazon successfully addressed the question before it, the nature of judicial decision-making means that such rulings may be reconsidered in future, which could weaken the certainty that businesses require.²⁰

An important question is whether the proposed amendment merely confirms the position established in Amazon or introduces substantive change. The amendment clarifies to some extent the principles already recognised by the courts, particularly party autonomy, enforceability and the legitimacy of the emergency arbitrator, but it also introduces procedural certainty regarding the appointment process, time limits and the territorial limits of jurisdiction, and judicial supervision. In this sense the amendment would be not only declaratory but also constitutive.²¹

This development reflects not only the details of the proposed amendment but also a wider international trend. Emergency arbitration is now recognised in the laws of several major arbitration centres, such as Singapore and Hong Kong. Their experience suggests that such recognition strengthens confidence in the arbitral process and reduces litigation over the enforceability of orders. Through similar measures, India seeks to align its arbitration procedures with those of the leading jurisdictions and to enhance its appeal as an international arbitration forum.

From a policy standpoint, the proposed amendment may be seen as an attempt to strike a balance between two competing objectives. On the one hand, parties must have speedy and effective measures capable of preventing serious harm. On the other, a check is required to ensure that emergency procedures are fair and not abused. The proposed framework attempts to reconcile these aims by enabling the emergency arbitrator to issue meaningful orders while preserving a limited scope for parties to seek judicial remedies in exceptional circumstances.²²

²⁰ The Vth International Arbitration Congress, 7-10 January 1975, New Delhi: Proceedings (Indian Council of Arbitration 1975).

²¹ David Goldberg & Ivan Philippov, *Emergency Arbitration*, in Elgar Encyclopedia of International Economic Law (2025).

²² Id.

V. CONTINUING CHALLENGES, CONCLUSION AND THE WAY FORWARD

Despite the significant progress achieved through the decision in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*²³ and the proposed statutory recognition under the draft Arbitration and Conciliation (Amendment) Bill, 2024, several challenges continue to affect the effectiveness of emergency arbitration in India. One concern relates to parallel proceedings. Even after securing emergency relief from an emergency arbitrator, parties continue to approach the courts under Section 9 of the Act to seek similar interim relief. Emergency arbitration accompanied by parallel court proceedings results in higher costs, duplication of procedures and potential inconsistencies, all of which undermine the very purpose of emergency arbitration. Concerns also remain regarding enforceability, particularly in the case of foreign-seated arbitrations.

Despite the clarification in *Amazon*, uncertainty persists over the status of certain foreign emergency awards, as no comprehensive enforcement mechanism is yet in place. Moreover, the institutional arbitration market in India remains far less developed than those of leading international arbitration hubs such as Singapore and Hong Kong. Emergency arbitration has not been widely used, owing to limited institutional capacity, a lack of awareness within the commercial community and a scarcity of specialist emergency arbitrators. There also remains the possibility that courts may revisit a matter already decided by an emergency arbitrator, which would undermine party autonomy and arbitral finality.

Nonetheless, the evolution of emergency arbitration in India has been largely a judicial initiative. The journey from the absence of statutory recognition to the landmark ruling in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*²⁴ demonstrates the willingness of Indian courts to adopt an arbitration-friendly approach consistent with international best practice. The draft Arbitration and Conciliation (Amendment) Bill, 2024 follows the same trajectory and, if enacted, would accord formal recognition to emergency arbitrators, set out guidelines on enforceability and provide greater certainty for the use of the process to seek interim relief. Going forward, courts should exercise caution and intervene only in exceptional cases, consistent with Section 5 of the Act. At the same time, the effective functioning of institutional arbitration, supported by the Arbitration Council of India, can assist in capacity building, accreditation and standardisation. It is also important to establish clear timelines for appointments, decision-making and enforcement, so as to preserve the sense of urgency that justifies emergency relief. While statutory recognition would relieve some of the legal

²³ *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, (2022) 1 SCC 209.

²⁴ *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, (2022) 1 SCC 209.

uncertainties of the pre-Amazon period, the future of emergency arbitration in India will depend on robust institutional support, judicial restraint and effective enforcement procedures that make emergency relief genuinely effective.
