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Emergency Arbitration: Status and Applicability in the Indian Context

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ABSTRACT

In legal disputes, delays in obtaining a resolution may cause the party seeking a remedy to be in a precarious or potentially irreparable position. This issue is particularly evident in arbitration, where parties are given the autonomy to dictate their own procedural framework. Emergency arbitration has become a crucial remedy in addressing these concerns by allowing parties to apply for urgent interim relief from an emergency arbitrator prior to a formal arbitration tribunal being constituted. However, the enforcement of such emergency arbitrators' decisions is still a contested issue, especially in jurisdictions that do not provide for its recognition and adoption, due to a lack of national legislation provision, such as India. This article aims to focus on the status emergency arbitration as a mechanism for dispute resolution particularly with regards to foreign-seated arbitration and its enforcement under the Indian law.

Keywords: *Emergency Arbitration, Foreign Seat, Interim Relief.*

I. INTRODUCTION

Arbitration is a process for dispute resolution that is voluntary, and occurs upon the consent of the parties to submit themselves to an arbitral tribunal to resolve their presented disputes. This is conducted under the auspices of the terms of the parties' arbitration agreement, often included in a commercial contract or an investment treaty. One of the core benefits of arbitration is the flexibility of the nature of the procedures, which facilitates the parties participating in a confidential, fair and efficient process that results in a final, binding and enforceable determination. Cases can arise where the parties face irreparable harm, such as the loss or dissipation of assets, prior to the establishment of the arbitral tribunal. To prevent such loss, India must opt for emergency arbitration to cope with the challenges in the exiting statutory regulations for granting interim relief.

The International Chamber of Commerce (ICC) established pre-arbitral emergency measures in the early 1990s, to cater to such issues .² It was later adopted by organizations such as the

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Emergency Arbitration hereinafter referred to as "EA"

Arbitration & Conciliation Act, 1996 hereinafter referred to as the "Act"

Seat- "legal concept referring to the jurisdiction in which the arbitration is deemed to take place"

Stockholm Chamber of Commerce (SCC) and the Singapore International Arbitration Centre (SIAC) in 2010.³ With organizations like ICC and SIAC handling more than 100 cases a year by 2020, EA had gained international recognition as a technique to prevent aggrieved parties from facing damage to their assets.⁴

EA's objective is to provide a party who cannot wait for the establishment of an arbitral tribunal with urgent reliefs. Only when a party's request for emergency arbitration is backed by the following grounds, would it stand valid.

- 1) Fumus Boni Luris- The likelihood that the party seeking relief will succeed based solely on the merits.
- 2) Periculum in Mora- the loss cannot be financially compensated for if the relief was not provided immediately.

Emergency arbitration is generally used in situations where an arbitral tribunal is either nonexistent or would take too long to set up. Several other systematic issues would also lead parties to opt for EA, such as lack of confidence in national courts to provide immediate remedy, disclosing private information, exorbitant litigation costs, etc.

EA has been extensively implemented under institutional regulations (SIAC, ICC, LCIA) and is described as a method for immediate pre-tribunal relief.⁵ Although domestic EA awards were recognized by the Supreme Court in India, there still remains a question whether awards based on foreign seated rulings would be enforceable or not.⁶ EA's transition from the ICC's now-defunct "Pre-Arbitral Referee" system to contemporary "opt-out" models is highlighted by academics such as Srivastava (2021)⁷ and Dixit et al⁸, who stress the necessity for more transparent cross-border enforcement. In order to bring India's arbitration structure into line with international best practices and solidify its standing as a favored arbitration hub, this report assesses judicial procedures, institutional mechanisms, and required reforms.

Foreign-seated arbitration- "designated seat of arbitration situated outside India"

² International Chamber of Commerce, *ICC Rules for a Pre-Arbitral Referee Procedure* (1990)

³ Singapore International Arbitration Centre, *SIAC Arbitration Rules* (2010)

⁴ Singapore International Arbitration Centre, *SIAC Annual Report* (2020).

⁵ Vardaan Bajaj, "Emergency Arbitrators and the Issues Surrounding Enforcement of their Awards: An Indian Perspective," *1 SCC J-30* (2020), J-30.

⁶ Arbitration and Conciliation Act, 1996, s 17.

⁷ Akash Srivastava, *Emergency Arbitration and India—A Long Overdue Friendship* (2021) 10 Indian J Arb L 98, 99.

⁸ Niti Dixit, Raunaq Bahadur & Zahra Aziz, 'Emergency Arbitrations in India: Viability and Enforceability' (2020) 15 Indian J Arb L 125.

II. BENEFITS OF EMERGENCY ARBITRATION OVER COURT-ORDERED INTERIM MEASURES

Emergency Arbitration (EA) provides a number of advantages over conventional interim measures. These advantages include the speedy justice, flexibility, confidentiality, and increased party autonomy. Court-ordered interim relief is accompanied by additional risks of delay in procedural timeframes and jurisdictional and procedural issues, while EA can provide parties with urgent relief in a timelier manner. Orders are usually granted in a matter of days during EA processes, which are usually time-bound (Gupta & Neogi, 2021)⁹. Unlike court proceedings, emergency arbitrators have the freedom to customize remedy without being constrained by rigid procedural rules, protecting privacy and avoiding public scrutiny. EA is the perfect vehicle for providing immediate remedy in cross-border conflicts since it allows parties to select arbitrators with specialized knowledge and skill (Gupta & Neogi, 2021).¹⁰

(A) Status of Emergency Arbitrators under Indian Law

The Indian emergency arbitration (EA) regime has gaps between judicial interpretation and the statutes enacted by the legislature. An example can be drawn from Section 2(1)(d)¹¹ of the Arbitration and Conciliation Act 1996, which does not provide the definition of "arbitral tribunal" which identifies EA arbitrators in it. This structural gap in the Act confers an additional legal hurdle for enforcement of foreign seated EA awards against the domestic EA awards which should have a streamlined enactment. However, the Supreme Court of India clarified position to narrow down the gap, by extending the purview of enforcement under EA in *Amazon.com NV Investment Holdings LLC v. Future Retail Limited (2022)*¹² The court marked the EA orders as interim measures in the context of Section 17(1) of the Act, even though there exists no legislative recognition of it. The court held that emergency arbitration orders allow an enforcement as an enforceable interim measure under Section 17(2) of the Act, which reflects the judicial application in line with international arbitration practices and enshrines the role of emergency arbitration in India.

It is unclear, however, whether foreign-seated EA awards can be enforced due to the absence of specific acknowledgement of EA in the Act. According to scholars like Srivastava, the

⁹ Abhinav Gupta & Sriroopa Neogi, 'Emergency Arbitration in India: A Critical Appraisal of the Institutional Framework' (2021) 14 NUJS L Rev 189.

¹⁰ Abhinav Gupta & Sriroopa Neogi, 'Emergency Arbitration in India: A Critical Appraisal of the Institutional Framework' (2021) 14 NUJS L Rev 189.

¹¹ **Arbitration and Conciliation Act 1996, s 2(1)(d).**

¹² *Amazon.com NV Investment Holdings LLC v Future Retail Ltd* [2022] 1 SCC 209

efficacy of EA is compromised by this legislative gap (Srivastava, 2021).¹³ Even though EA clauses are legitimate under party autonomy, their absence of legislative enforceability means that real-world issues such as forum shopping and uneven enforcement continue to exist. For EA enforcement to be clear and consistent, legislative action is necessary to address the judiciary's dependence on judicial discretion (Law Commission of India, 2014)¹⁴.

Judicial Recognition and Evolution of Emergency Arbitration in India

In the landmark judgement of *Raffles Design International India Pvt. Ltd. v. Educomp Professional Education Ltd. (2016)*¹⁵, the Delhi High Court recognized the validity of EA in foreign seated arbitrations, but limited enforcement to Section 9 petitions under the Arbitration and Conciliation Act, 1996.¹⁶ This marked the beginning of the judicial trajectory. In *HSBC PI Holdings (Mauritius) Ltd. v. Avitel Post Studioz Ltd. (2014)*¹⁷, the Bombay High Court adopted a similar strategy, awarding parallel relief under Section 9 without immediately implementing the EA ruling. These decisions demonstrated the courts' early reluctance to incorporate EA in its totality, into India's arbitration system.

With *Ashwani Minda v. U-Shin Ltd. (2020)*¹⁸, a watershed was reached when courts construed Section 9(3) as limiting court participation when EA relief was available and started treating EA orders as being equal to interim measures given by tribunals. A major step towards the judicial adoption of EA mechanisms was taken with this interpretation. Further advancement came in *Amazon v. Future Retail (2020)*, where the Delhi High Court firmly rejected challenges to EA's validity, laying the groundwork for the Supreme Court's decisive ruling.

(B) Persistent Challenges and Legislative Gaps

Notwithstanding the judicial advancements, emergency arbitrators are still not included in the statutory definition of "arbitral tribunal" under Section 2(1)(d) as stipulated above. The Law Commission of India in its 246th Report recommended expanding the concept of "arbitral tribunal" to encompass an emergency arbitrator constituted in accordance with institutional regulations. However, the 2015 Arbitration and Conciliation(Amendment) Act did not include this recommendation. Interestingly, during the discussion of the 2015 Amendment Bill, the Lok

¹³ Akash Srivastava, *Emergency Arbitration and India—A Long Overdue Friendship* (2021) 10 Indian J Arb L 98, 99.

¹⁴ Law Commission of India, *Report No. 246: Amendments to the Arbitration and Conciliation Act, 1996* (August 2014).

¹⁵ **Raffles Design International India Pvt Ltd v. Educomp Professional Education Ltd** [2016] 6 Arb LR 426 (Delhi HC).

¹⁶ Arbitration and Conciliation Act, 1996, s 9.

¹⁷ **HSBC PI Holdings (Mauritius) Ltd v. Avitel Post Studioz Ltd** [2014] 2 Arb LR 251(Bom HC)

¹⁸ *Ashwani Minda v. U-Shin Ltd.* [2020] SCC OnLine Del 448.

Sabha did not even bring up this point. The Act would have made it clear that judgements made by emergency arbitrators are considered court orders, making them binding and eliminating any room for doubt, had the change to specifically include emergency arbitrators in the definition been included.

India's current strategy creates a two-tiered system: *Amazon* offers clarification for arbitrations with an Indian seat by enforcing Section 17, while parties must rely on Section 9 petitions for cases pertaining to international disputes, as demonstrated in the cases of *Avitel and Raffles Design*. By necessitating redundant procedures, this parallel process reduces EA's efficiency and raises expenses and delays. Legal experts have pointed out that these inefficiencies make India less appealing as a country that supports arbitration, especially to foreign investors and multinational firms. Foreign-seated EA decisions are still unenforceable. This undermines India's potential as a global arbitration hub by forcing parties to start new Section 9 actions for interim relief. The lack of EA procedures in ad hoc arbitrations combined with the preference of parties for Section 9 due to its more robust enforcement creates further difficulties with the enforceability of emergency arbitration.

To effectively address these challenges, three key reforms are necessary. First, to eliminate ambiguities in categorization, emergency arbitrators should be explicitly included within the definition provided under Section 2(1)(d). Second, to align with international standards, Part II of the Act should be expanded to recognize and enforce foreign-seated emergency arbitration awards. Third, accessibility and efficiency would be improved by institutional upgrades including specialized arbitrator training and an EA panel under the Arbitration Council of India.”¹⁹ The necessity of these reform is supported by comparative international models. Hong Kong's Arbitration Ordinance (Sections 22A-22B) enforces EA rulings as court orders irrespective of the arbitral seat. Similarly, Singapore's International Arbitration Act (Section 2[1]) explicitly recognizes emergency arbitrators.²⁰ In order to maintain its competitiveness in the rapidly changing global arbitration market, India must take significant action to update its EA framework.

(C) Court- Ordered Interim Relief vs. Emergency Arbitration

<i>Criteria</i>	<i>Emergency Arbitration</i>	<i>Court-Ordered Interim Relief</i>
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¹⁹ Niti Dixit, Raunaq Bahadur & Zahra Aziz, 'Emergency Arbitrations in India: Viability and Enforceability' (2020) 15 Indian J Arb L 125

²⁰ *Singapore International Arbitration Act* (Cap. 143A, 2002 Rev. Ed.).
Hong Kong Arbitration Ordinance (Cap. 609)

<i>Authority and scope</i>	EA is limited to parties bound by arbitration and cannot grant relief against third parties. ²¹	Courts have broader jurisdiction and can issue relief against third parties.
<i>Speed and Efficiency</i>	Proceedings governed by institutional rules such as SIAC ²² , are typically concluded within 8-15 days, ensuring speedy resolutions	Court proceedings face delays due to procedural requirements and case backlogs. ²³
<i>Cost Considerations</i>	EA involved institutional costs set by the SIAC Rules, Schedule 1 ²⁴ , but due to its expedited nature the overall costs are minimal.	Though not subjected to institutional fees, can be costlier in the long run due to prolonged proceedings and financial impact of delayed relief

III. PROPOSED REFORMS FOR STRENGTHENING EMERGENCY ARBITRATION IN INDIA

To strengthen India's EA framework and align it with global best practices, several key reforms are necessary:

- 1) **Legislative Amendments** are required which would include explicit inclusion of emergency arbitrators within the definition of "arbitral tribunal" under Section 2(1)(d), as recommended by the Law Commission. Additionally, adoption of UNCITRAL Model Law Article 17-H by India would ensure clear enforcement mechanisms for interim measures, including foreign-seated EA awards.²⁵ Amendments should be made of Section 2(2) to extend Section 17's interim relief to foreign-seated arbitrations and would consequently prevent reliance on Section 9. By doing this, uncertainties would be removed and the legal basis for implementing EA awards would be strengthened.
- 2) **Judicial Clarifications** is crucial in determining the applicability of EA orders in accordance to international standards, this would facilitate in their recognition and

²¹ International Chamber of Commerce (ICC), *ICC Rules of Arbitration* art 29(5).

²² Singapore International Arbitration Centre (SIAC), *SIAC Rules* sch 1(9).

²³ Abhinav Gupta & Sriroopa Neogi, 'Emergency Arbitration in India: A Critical Appraisal of the Institutional Framework' (2021) 14 NUJS L Rev 189.

²⁴ SIAC Rules, *Schedule 1, para 2* (Singapore International Arbitration Centre, 2016).

²⁵ UNCITRAL Model Law, art 17-H.

enforcement. Courts must establish clear principles regarding the part of parallel relief under Section 9 of the Act. Further, effective coordination between courts and emergency arbitrators is essential to maintain procedural consistency, especially in complex disputes that require immediate intervention. Section 17 also needs to be made clearer to guarantee that EA orders are seen as temporary measures that provide smooth enforcement without needless judicial involvement.

- 3) Article 17H of the UNCITRAL Model Law²⁶, which guarantees the enforcement of interim measures across jurisdictions, must be incorporated into Part II of the Act to permit recognition of foreign-seated EA awards. To expedite cross-border enforcement, India should also seek reciprocity agreements with prominent arbitration centers such as Singapore and Hong Kong.²⁷ thereby strengthening its position as an arbitration-friendly jurisdiction. Drawing inspiration from the Singapore International Arbitration Center (SIAC), where EA petitions are normally decided within 15 days, the Arbitration Council of India should expedite appointment procedures and enhance procedural efficiency by establishing a specialized Emergency Arbitrator Panel (SIAC Rules, Schedule 1).²⁸ For domestic arbitrations, standardized EA rules would further guarantee procedural dependability and consistency.
- 4) Implementation Timeline and Expected Impact- Phased implementation of the reforms is recommended. EA regulations and legislative modifications ought to be created and implemented during the first year. Negotiating international agreements for reciprocal enforcement and operationalizing the Emergency Arbitrator Panel should be the main priorities of the upcoming 12 to 24 months.²⁹ These adjustments would simplify court requirements, increase arbitrations in India, and lessen reliance on Section 9 petitions. India may establish itself as a leading arbitration centre and increase its attractiveness to international investors and business organizations by moving away from judicial improvisation and towards a structured EA framework.

IV. GLOBAL APPROACHES TO EMERGENCY ARBITRATION

Despite differences in acceptance and implementation, emergency arbitration (EA) has becoming more popular globally. Through an amendment to its International Arbitration Act

²⁶ UNCITRAL Model Law, art 17-H.

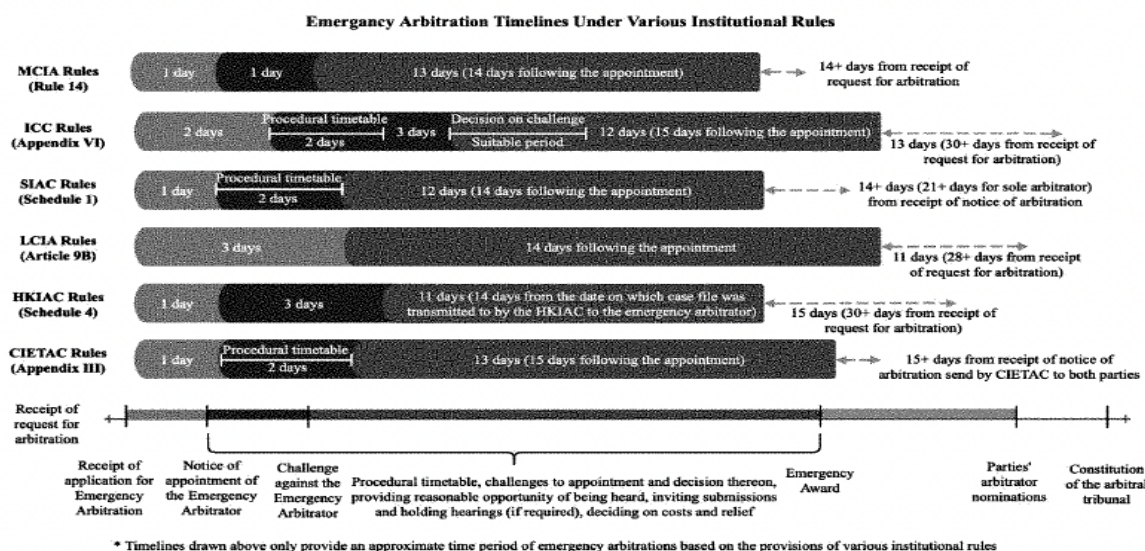
²⁷ Vardaan Bajaj, "Emergency Arbitrators and the Issues Surrounding Enforcement of their Awards: An Indian Perspective," *1 SCC J-30* (2020), J-30.

²⁸ SIAC Rules, *Schedule 1*, (Singapore International Arbitration Centre, 2016).

²⁹ Vardaan Bajaj, "Emergency Arbitrators and the Issues Surrounding Enforcement of their Awards: An Indian Perspective," *1 SCC J-30* (2020), J-30.

(2012), Singapore has set the standard for statutory clarity by adding emergency arbitrators to the "Arbitral Tribunal." In *AQZ v. ARA (2015)*³⁰, the Singapore High Court upheld this, stating that EA awards need to be handled similarly to other arbitral orders. This proactive stance has cemented Singapore as Asia's top arbitration hub. With the Arbitration (Amendment) Ordinance (2013), Hong Kong adopts a similar strategy, permitting courts to enforce EA relief irrespective of the jurisdiction where the arbitration proceedings are conducted (Sections 22-A, 22-B).

“ In the United States, enforcement is not uniform. According to the New York Convention, some courts have upheld EA awards (*Yahoo! Inc. v. Microsoft Corp., 2013*), while others have rejected them as not binding (*Chinmax Medical v. Alere San Diego, 2011*). This discrepancy emphasizes the necessity of more precise criteria. United Kingdom on the other hand has no explicit EA legislation. In *Gerald Metals SA v. Timis (2016)*, the High Court refused to intervene when the LCIA declined to appoint an emergency arbitrator, emphasizing judicial non-interference in arbitration. Different jurisdictions have their own models for emergency arbitration. While the Netherlands considers EA awards to be fully enforceable arbitral findings, Bolivia enforces a rigorous five-day EA decision timeline. Switzerland does not rely on laws, but rather on institutional regulations.”³¹ There is growing international agreement regarding the value of EA, with the best systems fusing judicial support with well-defined legislative frameworks. Streamlining EA enforcement will give jurisdictions a competitive advantage in luring high-value disputes.



³⁰Vardaan Bajaj, "Emergency Arbitrators and the Issues Surrounding Enforcement of their Awards: An Indian Perspective," *1 SCC J-30* (2020), J-30.

³¹Vardaan Bajaj, "Emergency Arbitrators and the Issues Surrounding Enforcement of their Awards: An Indian Perspective," *1 SCC J-30* (2020), J-30.

V. CONCLUSION

In summary, emergency arbitration (EA) has emerged as a crucial tool for efficiently resolving pressing conflicts and providing urgent interim relief in commercial disputes, especially in cross-border arbitration. Unlike traditional court proceedings, which often tend to involve prolonged litigation and procedural formalities. EA ensure that aggrieved parties receive expedited relief from independent arbitrator, thereby preserving their status quo. Despite India making great strides in recognizing EA through court decisions there remains crucial statutory gaps, especially with regards to foreign seated EA awards. India must implement important revisions to bring it into line with international standards and bring upon greater certainty and predictability in commercial disputes. Such reforms would not only boost India's reputation as a pro-arbitration nation but also foster confidence among foreign investors by ensuring immediate relief in international dispute. With addressing the current statutory issues, India can become a desired arbitration destination, strengthen its arbitration framework, and become more competitive internationally.

VI. BIBLIOGRAPHY

(A) Legislation

- Arbitration and Conciliation Act, 1996, ss2(1)(d), 9, 27
- Hong Kong Arbitration Ordinance (Cap. 609).
- Singapore International Arbitration Act (Cap. 143A, 2002 Rev. Ed)
- UNCITRAL Model Law, art 17-H

(B) Secondary Sources

- Abhinav Gupta & Sriroopa Neogi, 'Emergency Arbitration in India: A Critical Appraisal of the Institutional Framework' (2021) 14 NUJS L Rev 189.
- Akash Srivastava, 'Emergency Arbitration and India—A Long Overdue Friendship' (2021) 10 Indian J Arb L 98, 99.
- International Chamber of Commerce, 'ICC Rules for a Pre-Arbitral Referee Procedure' (1990). International Chamber of Commerce (ICC),
- 'ICC Rules of Arbitration' art 29(5). Law Commission of India, 'Report No. 246: Amendments to the Arbitration and Conciliation Act, 1996' (August 2014).
- Niti Dixit, Raunaq Bahadur & Zahra Aziz, 'Emergency Arbitrations in India: Viability and Enforceability' (2020) 15 Indian J Arb L 125.
- Singapore International Arbitration Centre (SIAC), 'SIAC Annual Report' (2020).
- Singapore International Arbitration Centre (SIAC), 'SIAC Arbitration Rules' (2010).
- Singapore International Arbitration Centre (SIAC), 'SIAC Rules' sch 1, para 2 (2016).
- Vardaan Bajaj, 'Emergency Arbitrators and the Issues Surrounding Enforcement of their Awards: An Indian Perspective' (2020) 1 SCC J-30, J-30.

(C) Case Laws

- Amazon.com NV Investment Holdings LLC v Future Retail Ltd [2022] 1 SCC 209
- *Ashwani Minda v. U-Shin Ltd.* [2020] SCC OnLine Del 448.
- *Chinmax Medical v. Alere San Diego*, 2011
- **HSBC PI Holdings (Mauritius) Ltd v. Avitel Post Studioz Ltd** [2014] 2 Arb LR 251(Bom HC)
- **Raffles Design International India Pvt Ltd v. Educomp Professional Education Ltd**

[2016] 6 Arb LR 426 (Delhi HC).

- Yahoo! Inc. v. Microsoft Corp., 2013
