A CRITICAL ANALYSIS OF THE ROLE OF EMERGENCY ARBITRATORS IN PRESERVING THE STATUS QUO IN INDIA

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ABSTRACT

This article explores the role of emergency arbitrators in preserving the status quo in India. Emergency arbitration provides urgent interim relief before the constitution of an arbitral tribunal, ensuring that no irreversible harm occurs to the disputing parties and that the arbitration process remains effective. While emergency arbitration is widely recognised in jurisdictions like Singapore, Hong Kong, United States and the United Kingdom, India lacks explicit statutory recognition for emergency arbitrators in the Arbitration and Conciliation Act, 1996. The 2015 Amendment to the Act widened the meaning of "Arbitrator" to implicitly include emergency arbitrators, but the enforceability of their awards remains uncertain.

Through landmark cases such as *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, Indian courts have provided some clarity, but challenges to the legal status and enforceability of emergency arbitration awards persist. The article examines the legal framework in India, analyzes key judicial precedents, and compares India's approach with more established arbitration-friendly jurisdictions.

This article highlights the importance of statutory recognition and enforcement mechanisms for emergency arbitration to make it more effective in India. It recommends legislative amendments to formally recognize emergency arbitration, along with institutional reforms to align Indian arbitration practices with global practices. Strengthening arbitration institutions, streamlining procedures, and ensuring judicial cooperation are essential steps for positioning India as a leading international arbitration hub while improving investor confidence and reducing reliance on courts for interim relief.

Keywords: Emergency Arbitration, status quo, interim relief, Arbitration and Conciliation Act, 1996.

I. Introduction

Emergency arbitration is a specialized branch under the concept of arbitration which aids in providing urgent interim relief to the parties in dispute even before the constitution of an arbitral tribunal. An emergency arbitrator addresses a situation where there is a need for immediate action and without which there is a high possibility of irreversible harm to either parties or to preserve the status quo. Emergency Arbitration is a swift process wherein an arbitrator is appointed within 24-48 hours and the dispute is settled within 7-14 days. The primary objective of emergency arbitration is to provide interim reliefs such as freezing of assets, preventing the transfer or disposal of property and preserving evidence, to ensure that the eventual arbitral award is not rendered meaningless due to actions taken during the interim period.

The concept of emergency arbitration is adopted globally. Countries like the United Kingdom, Singapore and Hong Kong have embraced it. In India there is no explicit provision for the concept of emergency arbitrator, however the 2015 Amendment to the Arbitration and Conciliation Act. 1996 have widened the meaning and scope of the term Arbitrator, an arbitrator includes an Emergency Arbitrator. And the Supreme court has also clarified its stance on the recognition of Emergency Arbitration in the landmark case of Amazon.com NV Investment Holdings LLC v. Future Retail Ltd[1].

Preservation of status quo in a dispute is the fundamental principle in any arbitration or litigation, it ensures that both the parties are not aggrieved in any manner before the commencement of the arbitration proceeding or the trial. In the context of arbitration, appointment of an emergency arbitrator, before the constitution of the arbitral tribunal, is vital in preserving the status quo and to ensure fairness to parties in dispute. Emergency arbitration does not only hold the parties in dispute in balance, but also upholds the whole process of the arbitration.

II. Legal Framework In India

Under §17(1), an arbitral tribunal is vested with the powers to order interim measures. §17, much like §9, provides a list of matters for which the parties can seek interim measures.[2]

[1] (2022) 1 Supreme Court Cases 209.
[2] The Arbitration and Conciliation Act, 1996, §17(1)(ii).

However, prior to the 2015 Amendment, the statute had failed to incorporate any provision for the arbitral tribunal to enforce its orders, rendering the mechanism under it completely ineffective. The 2015 Amendment sought to eliminate this disparity and bring §17 at par with §9. It inserted §17(2), which stipulates that the orders passed under §17 shall be deemed to be orders of the court and shall be enforceable under the CPC.[3]

Section 17 dealing with the interim measures granted by the arbitral tribunal, does not mention the concept of Emergency arbitration. This absence has resulted in parties arguing for the non-recognition of Emergency arbitration under the Indian jurisprudence. In order to prevent such objections, certain recommendations had been made by the Law Commission of India ('Law Commission') and the Ministry of Law and Justice, which have been discussed below.

A. The 246th Law Commission Report

The 20th Law Commission, constituted under chairman Justice A. P. Shah undertook the task of reviewing the provisions under the 1996 Act, and finally presented the 246th Law Commission Report ('the Report') before the Ministry of Law and Justice.[4]

To give legal sanctity to rules of institutional arbitration, the Report recommends that several amendments be made to the 1996 Act in order to incorporate the concept of Emergency arbitration. It generally suggested that the High Courts and the Supreme Court promote and encourage the concept of Emergency arbitration and take effective steps to refer disputes to institutionalised arbitration.[5] Further, the Report strongly recommended that appropriate amendment be made to the definition of 'arbitral tribunal' under §2(1)(d) of the 1996 Act and that the provision explicitly include the emergency arbitrator under its ambit.[6] Such an amendment would come in light of an active recognition of institutional rules, such as those of SIAC and MCIA, which already provide for an emergency arbitrator.[7] However, the government did not incorporate these recommendations under the 2015 or the 2019 Amendments and thereby failed to provide statutory support to the concept and mechanism for Emergency arbitration in India.

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[3] The Arbitration and Conciliation Act, 1996, §17(2).
[4] 246th Law Commission Report, supra note 57, at para 10(c).
[5] Id., para 7(iv).
[6] Id., para 7.
[7] The SIAC Rules, 2016, Rule 26, Schedule 1.

B. The High-Level Committee Report

In addition to the series of pro-arbitration initiatives, the Ministry of Law and Justice constituted a High-Level Committee ('the Committee') on January 13, 2017, to review the institutionalisation of arbitration under the chairmanship of Justice B. N. Srikrishna.[8] The Committee was entrusted with the task of making recommendations for the reformation of arbitration in India and it submitted its report on August 3, 2017.

In order to strengthen institutional arbitration, the Committee suggested an amendment to the definition of an arbitral award under §2(1)(c) of the 1996 Act to include 'emergency award' in its definition.[9]

The recommendations of the Committee regarding amending the definition of 'arbitral tribunal' under §2(1)(d) nor §2(1)(d) were not implemented by the legislature under the 2015 and 2019 Amendments to the 1996 Act. Naturally, in the absence of such a statutory recognition of Emergency arbitration, the Indian courts have dealt with cases involving challenges to the validity of Emergency arbitration orders.

III. Landmark cases and Precedents

Courts in India have rendered three notable decisions that deal with the issue of the recognition of the concept of emergency arbitration under the Indian jurisprudence. They are as follows:

a) *HSBC PI Holdings V. Avitel Post*

The Bombay High Court's judgment in *HSBC PI Holdings v. Avitel Post*[10] marked as the first to recognize emergency arbitration in India. The arbitration, seated in Singapore, was governed by the Singapore International Arbitration Centre Rules, 2016. The petitioner invoked the emergency arbitration mechanism under these rules, leading to an order from the emergency arbitrator. Subsequently, the petitioner filed an application under Section 9 of the Arbitration

[8] The High Level Committee, Report of the High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India (July 2017) available at HLC https://legalaffairs.gov.in/sites/default/files/Report-HLC.pdf (Last visited on January 28, 2025) ('High Level Committee Report').
[9] Id., Part I, Chapter VI, §E.
[10] 2014 Indlaw Mum 29 ('HSBC').

and Conciliation Act, 1996, seeking to enforce the emergency arbitrator's order under Indian law.

The primary issue was whether Section 9 of the 1996 Act, under Part I, applied to arbitrations seated outside India. This question arose in light of the *Bharat Aluminium v. Kaiser Aluminium Technical Services*[11] decision, which barred the application of Part I to foreign-seated arbitrations. However, the Court noted that the arbitration agreement predated the Bharat Aluminium decision, which applied prospectively. Moreover, the parties' agreement specifically excluded Part I except for Section 9. As a result, the Court upheld the applicability of Section 9 and issued an order aligned with the emergency arbitrator's decision.

Although the Court did not explicitly determine whether emergency arbitration is recognized under the 1996 Act, it relied on the emergency arbitrator's order to grant similar relief under Section 9. This implicitly affirmed the relevance of emergency arbitrator orders in India, provided Section 9 is applicable to the case.

b) Raffles Design V. Educomp Professional

In *Raffles Design International India v. Educomp Professional Education*[12], the Delhi High Court addressed the applicability of Section 9 of the Arbitration and Conciliation Act, 1996, to international commercial arbitrations with a foreign seat, specifically Singapore. Unlike in *HSBC PI Holdings v. Avitel Post,* the arbitration agreement in this case was executed after the Bharat Aluminium decision, and the parties had not expressly agreed to be governed by Section 9. The respondent argued that the petition was not maintainable due to the foreign seat.

The Court relied on the 2015 amendment to Section 2(2) of the Act, which allows certain provisions of Part I, including Section 9, to apply to international arbitrations seated outside India. It noted the amendment aimed to address practical concerns, such as allowing Indian courts to provide interim relief when assets of foreign entities are located in India, thereby aligning the Act with the UNCITRAL Model Law.

The Court further highlighted that under Rule 30.3 of the SIAC Rules, parties could seek interim measures from judicial authorities, which did not conflict with arbitral proceedings.

[11] 2012 (9) SCC 552.
[12] 2016 (6) ARB LR 426 (Delhi) ('Raffles Design').

However, it clarified that while Section 9 allows interim relief, it does not enable direct enforcement of emergency arbitration orders. Instead, the Court independently assesses the request for relief without relying on prior emergency arbitrator decisions.

Ultimately, the Court ruled that parties in international commercial arbitrations, even with a foreign seat, could seek interim relief under Section 9. However, emergency arbitrator orders in such cases are not enforceable under Indian law and are irrelevant to the Court's determination. This marked a departure from HSBC, where relief was more closely aligned with the emergency arbitrator's decision.

c) Amazon V. Future Retail

In *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*[13], the Supreme Court addressed a case where the arbitration was seated in Delhi, but the parties opted for emergency arbitration under SIAC rules. The petitioner argued that the award should be enforceable under Section 17(2), while the respondent disagreed, claiming that the definition of "tribunal" under Section 2(1)(d) did not include emergency arbitrators, and that the award was not enforceable because Section 17(1) does not recognize orders by emergency arbitrators. The Court ruled that an order from an emergency arbitrator is considered an interim order of the arbitral tribunal under Section 17(1), making it enforceable under Section 17(2) of the Arbitration and Conciliation Act. This decision provided clarity regarding domestic arbitration, but uncertainty remains concerning foreign-seated arbitrations.[14]

IV. Role of Emergency Arbitrators

Emergency arbitrators play a vital role in protecting the rights and interests of the parties in dispute by providing them with urgent interim reliefs before the constitution of the Arbitral tribunal. Their key roles are as follows:

a) Granting urgent interim reliefs

b) Maintaining the status quo

[13] 2021 SCC OnLine Del 1279.

[14] *'The Way Forward for Emergency Arbitration in India'* (NLIU Law Review, [*23 January 2025*]) https://nliulawreview.nliu.ac.in/blog/the-way-forward-for-emergency-arbitration-in-india/#

c) Enhancing efficiency of Arbitration

d) Reducing the reliance on courts

Emergency arbitrators serve as a vital part in safeguarding the parties to arbitration from undue harm and they aid in preserving the rights of the parties, overall upholding the integrity of the arbitration process.

V. Legal Recognition of Emergency Arbitration in Global Jurisprudence

Emergency arbitration has gained significance worldwide and various jurisdictions have adopted distinct approaches towards this subject. The following table is a pictorial representation of the legal recognition of emergency arbitration globally.

Jurisdiction	**Legal Recognition of Emergency Arbitration**
India	No explicit statutory recognition under the Arbitration and Conciliation Act, 1996; enforceability of emergency awards remains unclear.
Singapore	Fully recognized under the International Arbitration Act and SIAC Rules
United Kingdom	Recognized under the Arbitration Act, with strong judicial support for enforcement.
United States	Recognized under the Federal Arbitration Act; courts generally enforce emergency awards.
Hong Kong	Recognized under the Hong Kong Arbitration Ordinance; interim relief orders are enforceable.

The key takeaway is that India can learn from leading arbitration-friendly jurisdictions like Singapore, Hong Kong, the UK, and the US to strengthen its emergency arbitration framework. There is a vital need for explicit statutory recognition of emergency arbitrators, as seen in Singapore's International Arbitration Act and Hong Kong's Arbitration Ordinance, which ensure seamless enforcement of emergency awards. Additionally, judicial support plays a crucial role—courts in the UK and the US uphold emergency arbitrator decisions with minimal interference, enhancing arbitration's credibility. India should also adopt clear enforcement mechanisms, treating emergency awards as binding interim measures, similar to Singapore and Hong Kong. Lastly, strong institutional support from arbitration centers like SIAC and ICC, which offer swift procedures and binding relief, should inspire Indian institutions like MCIA to refine their rules. By implementing these best practices, India can enhance its arbitration ecosystem and boost investor confidence.

VI. Recommendations and Way Forward

To strengthen Emergency Arbitration in India, reforms are needed in both legislative and institutional frameworks.

A. Suggestions For Legislative Amendments

It is the need of the hour to bring statutory recognition to the concept of Emergency Arbitration. The legislature has to amend the Arbitration and Conciliation Act, 1996 to recognise and enforce Emergency arbitration in India. The legislature has to clarify their legal standing on binding of the Orders or Awards passed through Emergency Arbitration.

B. Role of Arbitration Institutions in Promoting Emergency Arbitration

Indian arbitration institutions like MCIA and NDIAC should refine their rules to align with global best practices, ensuring quicker appointment of emergency arbitrators and clear enforcement mechanisms. Arbitration institutions should work with Indian courts to develop guidelines on enforcing emergency awards, fostering a pro-arbitration judicial approach.

By implementing the aforesaid reforms India can establish a robust Emergency Arbitration system.

VII. Conclusion

Emergency arbitration plays a crucial role in preserving the status quo and ensuring effective dispute resolution before the constitution of an arbitral tribunal. The analysis highlights the lack of explicit statutory recognition in India, creating challenges in enforceability and judicial consistency. A comparative study of global jurisdictions like Singapore, Hong Kong, the UK, and the US demonstrates that clear legal frameworks, strong institutional support, and minimal judicial interference enhance the effectiveness of emergency arbitration.

To balance efficiency with judicial oversight, India must introduce legislative amendments to formally recognize emergency arbitration while ensuring courts have a limited but necessary role in reviewing awards. Strengthening arbitration institutions, streamlining procedures, and fostering judicial cooperation will help build a more arbitration-friendly environment. By adopting these reforms, India can enhance investor confidence, reduce reliance on courts for interim relief, and position itself as a leading international arbitration hub.

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