RECOGNITION AND ENFORCEMENT OF EMERGENCY ARBITRATOR AWARDS: INDIA VS SINGAPORE

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ABSTRACT

The function of emergency arbitration in modern dispute resolution procedures has been greatly expanded by the growing complexity and urgency of international commercial disputes. Before the arbitral tribunal is constituted, parties can quickly and effectively obtain urgent interim relief through Emergency Arbitrator (EA) proceedings. However, the legal acceptance and enforcement of emergency arbitrator awards in national jurisdictions are crucial to the efficacy of such relief. This study compares the recognition and enforcement of Emergency Arbitrator rulings in Singapore and India, two well-known Asian arbitration countries with different judicial and legislative approaches to emergency arbitration.

The study compares the pro-arbitration framework under the International Arbitration Act and the regulations of the Singapore International Arbitration Center with the statutory framework governing emergency arbitration under the Indian arbitration regime established by the Arbitration and Conciliation Act, 1996. The legal interpretations made by Singaporean and Indian courts regarding the enforceability of emergency arbitrator orders are given special attention. The study compares Singapore's explicit statutory recognition of emergency arbitrators through legislative amendments with important rulings like the Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. case in India, which signaled a substantial shift toward judicial acceptance of emergency arbitration.

The study also assesses the difficulties in enforcing the law, such as jurisdictional restrictions, the lack of clear legislative requirements, procedural ambiguities, and issues with party autonomy and public policy. Despite the lack of thorough legislative codification, India is still developing through judicial innovation and progressive interpretation, while Singapore has become a worldwide arbitration-friendly country by formally recognizing emergency arbitrator orders as enforceable.

The study comes to the conclusion that even while India has made significant

strides toward conforming to international arbitration standards, there are still some unanswered questions about the direct execution of emergency arbitrator awards, especially in arbitrations with foreign seats. Investor confidence and commercial predictability are strengthened by Singapore's approach, which exhibits increased certainty, efficiency, and institutional backing. In order to guarantee clarity, enforceability, and conformity with international arbitration procedures, the report suggests legislative changes in India that specifically include emergency arbitration within the statutory framework.

Introduction

In international commercial arbitration, one of the most suitable methods of solving cross-border commercial disputes, it is often necessary to take time to correctly constitute arbitral tribunals, and in the time period before they are established, parties' business interest may be urgent. For these situations, the Emergency Arbitration has been invented in current international communication arbitrations.[1]

Emergency arbitration was a provision which was adopted in the rules of leading arbitral institutions like the Singapore International Arbitration Centre (SIAC), International Chamber of Commerce (ICC), and the London Court of International Arbitration (LCIA).[2]

Although the use of emergency arbitrators has been increasing, the enforcement and recognition of emergency arbitrators' awards have not been consistent across different jurisdictions. Singapore has a progressive legislation that explicitly provides for emergency arbitrators under its International Arbitration Act.[3]In contrast to Singapore, India never had a statutory route to recognize emergency arbitrators, that created legal uncertainty as regards the enforceability of emergency arbitrators' awards.[4]

However, questions around foreign seated emergency arbitrator awards, legislative uncertainty and enforcement mechanism remain. The landmark judgment of Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. demonstrated a change in the Indian legal landscape, in

[1] Avtar Singh, Law of Arbitration and Conciliation 428–31 (12th ed. 2021).
[2] Singapore International Arbitration Centre Rules, sched. 1 (2025); International Chamber of Commerce Arbitration Rules art. 29 (2021); London Court of International Arbitration Rules art. 9B (2020).
[3] International Arbitration Act 1994, c. 143A, § 2(1) (Sing.).
[4] Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

recognizing emergency arbitrator awards in arbitrations seated in India.[5]

The research problem thus arises by analyzing the extent to which India's existing laws facilitate emergency arbitration from the perspective of more advanced and mature arbitration laws of Singapore. The study also aims to look at whether judicial innovation is alone enough or legislation reform is explicitly required to provide required certainty but also effectiveness for enforcement.

Review of Literature

The interest in emergency arbitration has been steadily growing in the field of international commerce and has led to a greater importance of the concept in the arbitration literature. Emergency arbitrator awards have been the subject of much debate and study by scholars, jurists, and arbitration practitioners, with respect to such awards' status, enforceability, and usefulness, in various jurisdictions.

As discussed by Gary Born in his comparative study, International Commercial Arbitration, emergency arbitration has become an important tool for safeguarding parties against irreparable harm when the constitution of the arbitral tribunal has not yet taken place.As Gary Born notes in his comparative study, International Commercial Arbitration, the function of emergency arbitration is to protect parties against irreparable harm prior to the constitution of the arbitral tribunal, thereby reinforcing party autonomy and decreasing reliance on domestic courts for interim measures. It would follow that emergency arbitrations are effective only if national states ensure the enforceability of interim orders. This is what Born calls "the Achilles heel of emergency arbitration.This, according to Born, is the "Achilles heel of emergency arbitration."[6]

In his discussion on the emergency arbitration in institutional arbitration systems, Nigel Blackaby and Constantine Partasides in Redfern and Hunter on International Arbitration highlight that the institutionalization of arbitration, with the introduction of procedures governing emergency arbitrators by institutions like the Singapore International Arbitration Centre (SIAC), the International Chamber of Commerce (ICC), or the London Court of International Arbitration (LCIA), has been an important factor behind the modernization of arbitration. They report that, however, this lack of uniformity in the international recognition

[5] Amazon.com NV Investment Holdings LLC v. Future Retail Ltd., (2022) 1 S.C.C. 209 (India).
[6] Gary B. Born, International Commercial Arbitration 2496–2501 (3d ed. 2021).

leads to some difficulties in international enforcement.[7]

As Margaret Moses points out, emergency arbitration embodies and mirrors the general preference for institutional arbitration over litigation in modern domestic contexts, given the speed, flexibility and confidentiality of arbitration.[8]It requires judicial assistance and legislative clarity in domestic legal systems, she adds, for it to work. Moses reports that "those jurisdictions that explicitly have legal recognition for emergency arbitrators instill more certainty and confidence in international investors.

Julian D.M. Lew underscores that, while institutional arbitration rules may allow for emergency arbitrators, it is still the domestic law which would ultimately govern the enforceability of such an order. Lew stresses that even if emergency arbitrators are authorized under an institutional arbitration rule, the ability to enforce such an order effectively would be governed by the domestic law.[9]

There have been extensive debates on the law of India as to the nature of emergency arbitration in the Arbitration and Conciliation Act, 1996. Avtar Singh explains that initially the Indian court had taken a cautious stance as this was not included in the definition of "arbitral tribunal" in the Act, however, later Indian courts took a liberal route toward recognising emergency arbitration.

There are several contemporary journal articles addressing the issue of the impact of the landmark decision Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. Many commentators also note that the judgment does not necessarily bring all the issues raised with respect to the award made by the Emergency Arbitrator to stand in the shoes of foreign-seated arbitrators to a final resolution, as the Arbitration and Conciliation Act does not yet have an explicit statutory provision.[10]Nevertheless, the Supreme Court has undoubtedly given a significant boost to the pro-arbitration regime in India by virtue of the ruling in the impugned case.

Singapore is consistently ranked as one of the arbitration friendly jurisdictions in the world.

[7] Nigel Blackaby et al., Redfern and Hunter on International Arbitration 526–31 (7th ed. 2022).
[8] Margaret L. Moses, The Principles and Practice of International Commercial Arbitration 191–95 (4th ed. 2023).
[9] Julian D.M. Lew et al., Comparative International Commercial Arbitration 623–29 (Kluwer Law Int'l 2003).
[10] Amazon.com NV Investment Holdings LLC v. Future Retail Ltd., (2022) 1 S.C.C. 209 (India).

Academic authors have studied the International Arbitration Act in Singapore and find that 'Singapore's legislation has expressly recognised the emergency arbitrator and had a profound impact on the certainty, enforceability and investor confidence'. Furthermore, scholars have noted that 'Singapore's courts have a policy of minimal judicial intervention and strong support for institutional arbitration'.

The literature reveal that in the world today, emergency arbitrations have become an irreplaceable part of international dispute resolution. Yet, significant variation between jurisdictions, in terms of recognition and enforcement still exists. Despite the fact that Singapore has a robust statutory foundation for emergency arbitration, Indian practice still continues to be fundamentally based on judicial interpretation. The literature thus indicates an urgent need for legislative reform in India to make the arbitration itself and its enforcement more in tune with international standards and provide more certainty.

Objectives of the Study

1. To explore the emergency arbitration and its relevance to the dispute in international commercial arbitration.

2. To conduct a study of the legal structure of Emergency arbitrator Awards in India.

3. To examine the legal and institutional HCCR for emergency arbitration in Singapore.

4. To visualize the difference between the recognition and enforcement procedure in India and Singapore.

5. To discuss legal and practical issues concerning enforcement of emergency arbitrator awards.

6. To make recommendations on improvement of the Indian arbitration system in the context of emergency arbitration.

Research Questions

1. Are Emergency Arbitrator Awards in India and Singapore legally binding?

2. How is statutory recognition and enforcement of an award of the emergency arbitrator achieved in Singapore?

3. Should the judiciary be the sole means of implementing it in India?

4. What is the difficulty of enforcing foreign seated EAB award in India?

5. What changes are needed to make India's framework adoptable to the international arbitration standards?

Research Methodology

The present work has been attempted using a doctrinal and a comparative research approach to analyse the recognition and enforcement of emergency arbitrator awards in India and Singapore. The study has mainly relied on secondary information sources such as books, articles, research papers, statutes, arbitration rules and judicial decisions and government reports, legal portals etc. The study critically examines the legal framework relating to emergency arbitration in India (as provided in the Arbitration and Conciliation Act, 1996) and Singapore (as provided in the International Arbitration Act of Singapore). A comparative method has been used in looking at the three systems and assessing the difference and similarity in the areas of statutory recognition, judicial interpretation, enforceability of the emergency arbitrator awards and institutional support for arbitration. The previous court cases, especially the Amazon.Com NV Investment Holdings LLC vs Future Retail Ltd. case have been studied to know the current judicial stand in India. Emergency arbitration practices under institutional arbitration rules of other arbitration centres, for instance, the Singapore International Arbitration Centre (SIAC), the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA) have also been examined. The study is analytical and descriptive and seeks to highlight the current lacunae, practical issues and potential reforms in the Indian legal scaffolding along emergency arbitration mechanism.

Discussion / Analysis

1. Concept and Importance of Emergency Arbitration

One of the most important procedural developments in international commercial arbitration is that of emergency arbitration. In today's international cross-border business relations, it is not

uncommon to have cases in which the parties seek immediate interim relief prior to the establishment of an arbitral tribunal. Typical arbitration processes involve a significant amount of time spent in appointing and organizing arbitrators before the actual arbitral hearing begins; and parties can suffer damages of real consequence during this 'time of the week' through dissipation of assets, breach of party confidentiality obligations, transfer of property subject to arbitration, or breaches of parties' contractual rights. To overcome this practical challenge, prominent arbitral institutions provided for the use of emergency arbitrators that can be appointed to issue urgent interim relief in advance of the formation of a tribunal.[11]

The two main roles of emergency arbitration are as a protective mechanism and to maintain the force of the arbitration process. It enables parties to obtain interim relief to preserve the status quo until the final arbitral award comes out, so as not to be frustrated. Emergency facilities provided by an emergency arbitrator include the power to order injunction, asset freezing, preservation of evidence, anti-suit injunction, order of confidentiality and restraining order on activities that may prejudice the arbitration proceeding.[12] The emergency arbitrator only possesses the exercise of these powers on an interim basis and usually after the arbitral tribunal is in place.

The most significant benefit of the emergency arbitration is that it serves the interests of party autonomy. The adoption of institutional arbitration rules with emergency arbitration clauses further enhances the contractarian nature of arbitration, reducing the number of arbitral rules that the courts will intervene in solving commercial disputes.Emergency arbitration also serves to achieve neutrality, by avoiding the risk of the parties having to litigate interim disputes in national courts that may be reluctant to favor the foreign party or to give effect to the applicable procedural standards.[13]

Emergency arbitration also lacks two other crucial features: confidentiality. Many court cases are open to the public; emergency arbitration proceedings are not open to the public and are kept private and confidential. Emergency arbitration is also increasing in popularity among multinational companies and international investors, due to its speed and flexibility in dealings with trade secrets and confidential business information, or in the context of protecting

[11] Gary B. Born, International Commercial Arbitration 2496–2501 (3d ed. 2021).
[12] Margaret L. Moses, The Principles and Practice of International Commercial Arbitration 191–95 (4th ed. 2023).
[13] Julian D.M. Lew et al., Comparative International Commercial Arbitration 623–29 (Kluwer Law Int'l 2003).

intellectual property rights or performing sensitive commercial transactions.

Many arbitral institutions, including the Singapore International Arbitration Centre (SIAC), International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA), have included comprehensive emergency arbitration provisions as part of their arbitration rules. Generally, the rules allow for the appointment of an emergency arbitrator within a very short period, and the arbitrator is allowed to use a virtual platform, written submissions, or expedite procedures to quickly expedite the process of disposing of any urgent applications.

However, there are still a few jurisdictions where challenges to the enforcement of emergency arbitrations exist. There is no mention of emergency arbitrators in the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and court interpretation approaches vary by jurisdiction.[14] Some jurisdictions, including Singapore and Hong Kong, have amended arbitration laws expressly to recognize emergency arbitrators; others leave it to judicial construction. Enforceability of emergency awards, therefore, rely heavily on the domestic arbitration law and attitude of the domestic courts towards institutional arbitration.

Emergency arbitration is becoming more important in the context of international trade and arbitration. With the growing commercial internationalisation and time sensitivity of commercial relations, a quick and effective interim protection mechanism is needed that is able, at least in part, to respond to the urgent need for interim protection during commercial disputes. Emergency arbitration is designed to address this need while still ensuring the efficiency of the arbitration process, the autonomy of the parties, and the quality of the arbitral proceedings.

2. Legal Framework and Enforcement in Singapore

Singapore has established itself as one of the world's premier arbitration centres thanks to its highly reputed judiciary, its well-developed legal system and its strong institutional backing of international commercial arbitration. The country has consistently taken an pro-arbitration stance with the aim of such as to promote certainty, enforceability and minimal involvement of court. What matters is that the Singapore laws on emergency arbitration provide for specific recognition of emergency arbitrators, which is something which is not reflected in other

[14] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 3.

jurisdictions where emergency arbitrators are only recognised by judicial interpretation.

International arbitration in Singapore is regulated by the main piece of legislation, the International Arbitration Act, 1994. In 2012, Singapore made an historic change to the Act by specifically adding emergency arbitrators into the definition of an "arbitral tribunal."[15]This change in the Act was a significant development in international arbitration law as it gave statutory force and binding effect to emergency arbitrator awards. Thus, as with interim orders granted by arbitral tribunals, orders and directions issued by emergency arbitrators are enforceable under Section 12(6) of the Act.[16]

The arbitration regime in Singapore is closely linked to the Singapore International Arbitration Centre (SIAC), one of the leading arbitral institutes in the world. The SIAC Rules offer a full-blown procedural regime for emergency arbitration. SIAC will generally promptly appoint an emergency arbitrator within twenty-four (24) hours as of the date of the receipt of the application under the Rules.[17]

The emergency arbitrator has the very euphemistic "broad" powers to order interim measures designed to preserve assets, prevent changes in the status quo, prevent the loss or destruction of "relevant" documents, or restrain actors from doing anything that may prejudice the arbitration process. The interim order is binding on the parties and only until superseded or set aside by the arbitral tribunal.

In Singapore, courts have consistently shown great judicial appreciation for arbitration and its emergency procedures. There is a general policy of courts not intervening in arbitral process unless otherwise allowed by law. Additionally, this judicial restraint can boost party confidence and further make Singapore an appealing dispute resolution hub.[18] Singapore's courts also appreciate the concept of party autonomy and enforce party agreements within which institutional arbitration provisions have been included.

Yet another significant aspect of the arbitration system in Singapore is the procedurally efficiency. Relevant emergency arbitration applications need to be disposed of quickly, the

[15] International Arbitration Act 1994, c. 143A, § 2(1) (Sing.).
[16] Id. § 12(6).
[17] Singapore International Arbitration Centre Rules, sched. 1 (2025).
[18] Sundaresh Menon, International Arbitration: The Coming of a New Age for Asia (and Elsewhere), 19 Sing. Acad. L.J. 1, 12–18 (2017).

hearing can be held using a videoconferencing platform, and there's flexibility in the procedures to enable parties to get urgent relief without ongoing litigation. It has contributed to a significant improvement in the enforceability of emergency arbitrator awards in Singapore thanks to the convergence of legislative certainty, institutional efficiency and judicial support.

Singapore's attractiveness as an arbitration centre has been further boosted by its openness to international best practices and by harmonising with the UNCITRAL Model Law. Foreign investors and cross-border transactions have legal security thanks to the regulation. This makes Singapore an attractive choice to be a seat of arbitration in international commercial agreements.

By providing clarity and support for the recognition and enforcement of emergency arbitrator awards in Singapore, the legislation contributes to the effectiveness of arbitration. Singapore's model is an example of those jurisdictions looking to update their arbitration laws to boost investor confidence.

3. Legal Position of Emergency Arbitration in India

In India, the para-legal landscape around emergency arbitrations has undergone a considerable development in the past decade on the basis of court rulings and the growing recognition of institutional arbitration mechanism. In contrast, Singapore's Arbitration and Conciliation Act, 1996 did not have specific provisions to recognise emergency arbitrators. This legislative ignored and left the enforceability of emergency arbitrator awards in limbo in the Indian system of law.[19]

This is because Section 2(1)(d) of the Arbitration and Conciliation Act refers to an arbitral tribunal as a single arbitrator or a body of arbitrators, with no reference or mention of emergency arbitrators.[20]Parties in need of urgent issues were thus most often pushed towards approaching the Indian courts under Section 9 of the Act instead of using emergency arbitration proceedings. Since it was not expressly provided in the act that there would be any recognition of emergency arbitrators and a separate enforcement of emergency awards, Indian courts adopted a cautious approach initially.

[19] Avtar Singh, Law of Arbitration and Conciliation 431–36 (12th ed. 2021).
[20] Arbitraion and Conciliation Act, No. 26 of 1996, § 2(1)(d), India Code (1996).

In Raffles Design International India Pvt. Ltd. v. Educomp Professional Education Ltd.[21] the Delhi High Court recognized the validity of emergency arbitrations held under the Singapore International Arbitration Centre (SIAC) Rules. The Court, however, did not rule on enforcing the emergency order as such, but noted that there may be a possibility of interim protection under Section 9 of the Arbitration and Conciliation Act, 1996.

Indian courts later on showed a greater inclination towards supporting institutional arbitration. The Delhi High Court has held that parties to a contract choosing to adopt institutional arbitration rules with emergency arbitrations are bound by the process.[4] Parties must be given their due and emergency arbitration has become an increasingly significant aspect of international commercial arbitration.

The case which gave the largest and most important boost to the arbitration jurisprudence in India is Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.[22] This case stemmed from a shareholders' agreement with an SIAC arbitration clause. In the case, Amazon had initiated emergency arbitration before SIAC for a time-bound interim relief restraining Future Retail from carrying out a "disputed transaction" with Reliance Retail.

In doing so, the Court took an expansive reading of the Arbitration and Conciliation Act and found that the word “arbitral tribunal” must encompass emergency arbitrators, where parties have intentionally opted for the rules governing the arbitral process and provide for emergency arbitration. The judgment had a heavy focus on the principle of party autonomy, the limited role for the court, and the standardisation of the arbitration with international practices.

The Amazon judgements have been a watershed moment in the Indian arbitration regime since they essentially gave a fresh lease of life to Emergency Arbitration, which lacked any explicit legislative mandate. The decision was a major boost to India's arbitration-friendly profile and more in sync with international arbitration trends.

Yet some problems remain relating to emergency arbitrator awards made by the foreign seats. There is also a lack of specific legislative provision in Indian law on recognition and enforcement of foreign emergency measures, which has led to uncertainty for parties looking to take action to obtain foreign emergency measures.[7] Another crucial factor affecting the

[21] Raffles Design Int’l India Pvt. Ltd. v. Educomp Prof’l Educ. Ltd., 2016 SCC OnLine Del 5521 (India).
[22] Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd., (2022) 1 S.C.C. 209 (India).

efficiency of emergency arbitration in India is judicial inconsistencies and the delay in the process.

As the Indian experience shows, however, judicial innovation can have better effect in significantly fortifying arbitration law, though merely judicial interpretation can be no panacea for certainty in the long run. This would, of course, bring even greater clarity to the procedures for emergency arbitrators and to their enforceability by having them expressly mentioned in the Arbitration and Conciliation Act.

4. Comparative Analysis and Need for Reform

The comparative analysis of the recognition and enforcement aspects of emergency arbitrator award in India and Singapore reveals significant differences in both the legislative clarity and the judicial approach and also the degree of certainty in the procedures and institutional support. Although both Singapore and Hong Kong have been increasingly aware of the value of emergency arbitration for resolving international commercial disputes, Singapore has a more well advanced and predictable system of arbitration for emergency proceedings as a result of its express statutory recognition and support by the court.

Singapore's arbitration framework is characterized by legislative certainty. This express recognition and enforceability of emergency arbitrators and emergency award provide statutory clarity and decrease litigation about validity of emergency awards.[23]Furthermore, Singapore courts have a pro-arbitration attitude and do not unnecessarily intervene in arbitration proceedings, leading to the efficient conduct of proceedings and fostering a sense of investors' confidence for arbitration.[24] The Singapore International Arbitration Centre (SIAC) also offers well established institutional procedures for quick appointment of emergency arbitrators and for expedient hearing procedures.

However, in India, there is a lack of statutory recognition for arbitral proceedings on an ad hoc basis to resolve disputes in emergency situations, unlike the subject that is the scene of this discussion. No legislation gives parameters to enforce the market restrictions, leaving courts to fill in the gaps, the supply side certainly involuntary. While the judicial pronouncements, like

[23] International Arbitration Act 1994, c. 143A, § 2(1) (Sing.).
[24] Sundaresh Menon, International Arbitration: The Coming of a New Age for Asia (and Elsewhere), 19 Sing. Acad. L.J. 1, 12–18 (2017).

those in Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. represent a substantial improvement in the functioning of emergency arbitration in India, the mechanism is still heavily reliant on judicial interpretation and not legislative certainty.[25]

One of the other significant differences relates to the enforcement of foreign seated EAB awards. Singapore's law positively encourages recognition and enforcement of emergency awards, no matter where the arbitration is conducted, which enhances its global arbitration status. However, India remains uncertain with respect to the enforcement of foreign emergency awards as Part II of the Arbitration and Conciliation Act does not expressly reference emergency arbitration.This can be problematic for foreign parties with disputes involving India.

There are also differences in the procedures of the two jurisdictions in terms of their efficiency. There are no frills enforcement processes, technologically advanced hearings in courts and only a small degree of court delays in Singapore. However, even though Indian courts have taken a more friendly stance on arbitration in recent years, some delays and uncertainty in court decisions remain. All of these might make urgent interim relief less effective.

This test result reveals that the law needs to be reformed to improve the Indian emergency arbitration system. Firstly, the Arbitration and Conciliation Act needs to be amended to give emergency arbitrators an express recognition as part of arbitral tribunal. India should include provisions pertaining to enforcement of foreign-seated emergency arbitrator awards in the Indian arbitration act. Third, an increase in institutional support and development of arbitration centres would lead to increasing efficiency and dependence on judicial intervention would be reduced.[26]

India could also take ideas from foreign bodies, like the UNCITRAL Model Law, or from other countries which have implemented foreign arbitration, e.g., Hong Kong and Singapore. Harmonisation with international standards would ensure greater investor confidence and India's status as a competitive arbitration centre.

Finally it may be said that though India has made considerable advances by means of judicial

[25] Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd., (2022) 1 S.C.C. 209 (India).
[26] Niyati Kohli, Emergency Arbitration in India: A Need for Legislative Recognition, 8 Asian Int'l Arb. J. 97, 108–14 (2022).

innovation, only a thorough-going legislative renewal will bring about a sense of duration and real efficiency. As experience in Singapore shows, a combination of statutory clarity, judicial support and the efficiency and effectiveness of institutions, can establish a stable and effective emergency arbitration regime, each of which has its part to play in satisfying the requirements of contemporary international trade.

Cases Analyses

Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.

The case is a welcome precedent to the Indian arbitration jurisprudence regarding recognition and enforcement of emergency arbitrator decrees. The dispute is in relation to an investment agreement between Amazon and Future Coupons Pvt. Ltd which had agreed to settle their disputes under the arbitration rules of the Singapore International Arbitration Centre (SIAC). Amazon held emergency arbitrations before SIAC, and secured an interim award blocking the sale from Future Retail to Reliance Retail.[27]

The main question that came before the Supreme Court of India was whether a award rendered by emergency arbitator in pursuance of institutional arbitration rules could be enforced under the Arbitration and Conciliation Act, 1996. The Supreme Court ruled that an award made by an emergency arbitrator in India-seated arbitrations is enforceable under Section 17(2) of the Act and upheld the principle of party autonomy that once the parties opt to follow rules of a particular arbitration association which contemplate the existence of emergency arbitration, it becomes binding on them.

The judgment gave a big boost to Indian pro-arbitration jurisprudence and harmonized Indian arbitration law with international commercial arbitration. This judgment was a sea change in emergency arbitration jurisprudence in India as it held emergency arbitration to be ‘a part and parcel of modern day institutional arbitration'.The Court further held that it is incumbent upon the courts to extend such assistance to 'facilitate effective implementation' of dispute resolution mechanisms.

[27] Amazon.com NV Investment Holdings LLC v. Future Retail Ltd., (2022) 1 S.C.C. 209, ¶¶ 2–8 (India).

Raffles Design International India Pvt Ltd v. Educomp Professional Education Ltd.

This dispute in particular, came from an arbitration under SIAC Rules, which was seated in Singapore. The question before the Delhi High Court was as to the validity of such an emergency arbitral award for its direct enforcement in India under the Arbitration and Conciliation Act (1996).

Though the Act did not expressly talk of emergency arbitrator, the Delhi High Court said it did not preclude a party from seeking interim relief from Indian courts under Section 9 of the Act made emergency arbitration a legitimate and important awards in international commercial disputes[28]

The judgment pointed out that under the provisions of Indian arbitration law at the time, there was a lack of legislation. However, it showed an appreciation by the judiciary towards institutional arbitral processes and also set the stage for further judicial evolution of emergency arbitration.

Ashwani Minda v. U-Shin Ltd.

In this case Delhi High Court examined the enforceability of interim measures prepared by the arbitral tribunals in a disciplinary arbitral proceeding in Japan in the framework of an institutional arbitral proceeding.

Delhi High Court noted that once parties choose institutional arbitration provisions that require emergency arbitration, they are governed by such arbitration provisions and unnecessary and uncalled for judicial interventions would vitiate the effectiveness of such a mechanism, especially for emergency relief.[29]

While the Court did not award overlapping relief under Section 9 of the Arbitration and Conciliation Act, the judgment was indicative of the growing sentiment of the courts towards the salutary role court can play in international commercial arbitration agreements executed by parties in respect of reliefs at that stage.

[28] Raffles Design International India Pvt Ltd v. Educomp Professional Education Ltd., 2016 SCC OnLine Del 5521, ¶¶ 5–10 (India).
[29] Ashwani Minda v. U-Shin Ltd., 2020 SCC OnLine Del 721, ¶¶ 4–9 (India).

Comparative Significance of the Cases

All the above highlighted decisions highlight the progressive development of the emergency an arbitration jurisprudence in India. The decision in Raffles Design was driven by party legislative silence with a judicial caution while Ashwani Minda showed an increase in acceptance of the institutional arbitration mechanism for emergency situations. In the end, the Supreme Court's decision in Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. accorded much-needed recognition and enforceability to emergency arbitrator awards in arbitrations with Indian seats.

These cases manifestation the judicial turn towards pro-arbitration outlook in a direction of harmonization of Indian arbitration law with international standards. But there are still uncertainties, as there are no specific statutory provisions on emergency arbitrators.

Findings

The increasing requirement for urgent interim relief in cross-border commercial disputes has led to emergency arbitration as an integral part of modern international commercial arbitration, as found by the study. The mechanism allows parties to obtain the quick response needed to protect their commercial interests prior to forming of the arbitral tribunal, thus maintaining the effectiveness of the arbitration.

Similarly, the research discovered a well established and arbitration-friendly legal system and that emergency arbitrators are explicitly mentioned in statutory provisions under the Singapore International Arbitration Act 2002 (IAA). With its legislative clarity, Singapore guarantees that emergency arbitrator awards are effectively enforced and reduces the amount of judicial uncertainty. The courts in Singapore have been consistently taking a pro-arbitration stance which supports party autonomy and minimises judicial interference in arbitral proceedings.

However, there is no statutory recognition of the notion of ‘emergency arbitrators' under Indian arbitration and conciliation law. Such a silence in legislation occasioned confusion about its enforceability and led to inconsistent judiciary attitudes. But, bit by bit, the Indian judiciary has adapted towards the acceptance of institutional emergency arbitration provisions.

The research highlights the Amazon.com NV Investment Holdings LLC v Future Retail Ltd. case by the Supreme Court of India to be a turning point in the Indian arbitration law. The

judgment was a large boost to enforcing emergency arbitrator awards in India-seated arbitrations and further underscored the notions of party autonomy and minimal judicial intervention.

The study further reveals that challenges are still significant in India to enforce the arbitral awards of foreign seated emergency arbitrators. Lack of formal recognition in the law leads to uncertainty regarding the enforcement of the procedure, foreign emergency arbitrators' acceptance of jurisdiction and application of interim orders issued.

Another key outcome of the study is that the institutional arbitration rules adopted by institutions like the Singapore International Arbitration Centre (SIAC), International Chamber of Commerce (ICC), and London Court of International Arbitration (LCIA), have been a key driver of the global promotion of emergency arbitration. These institutions have played a great part towards improving the efficiency, flexibility and commerciality of arbitration.

By comparing the two, it is observed that Singapore provides more certainty of course, better enforcement procedure, and a more stable law for emergency arbitration conducted in Singapore as compared to India. Although India has developed big strides in judicial interpretation, alone judicial innovation may not lead to certainty.

Finally, the study concludes that a reform of the Indian legislation is needed to expressly acknowledge the emergency arbitrators, improve enforcement and ensure that the Indian arbitration framework is aligned with international standards. These changes would lead to increased investor confidence, better positioning of India as an arbitration-friendly jurisdiction and greater effectiveness of emergency arbitrations.

Recommendations / Suggestions

1. Statutory Recognition of Emergency Arbitrators

The definition of the arbitral tribunal should be clarified in the Arbitration and Conciliation Act, 1996 to add emergency arbitrators.

2. Enforcement of Foreign-Seated Emergency Awards

Measures should be adopted for recognising and enforcing foreign emergency arbitrator

awards.

3. Adoption of UNCITRAL Standards

India should introduce reforms relating to interim measures and emergency arbitrations, akin to the UNCITRAL Model provisions.

4. Strengthening Institutional Arbitration

Institutions of India need to modernise its procedures and encourage awareness of emergency arbitration.

5. Judicial Capacity Building

Training of specialists judges in international arbitration should be encouraged to ensure uniform practices in the enforcement of arbitration decisions.

6. Abolition of procedural delays in the judicial system.

Interim enforcements of arbitral orders could be made subject of a fast-track regime.

7. Harmonization with Global Arbitration Practices

India needs to make its arbitration laws on par with world renowned arbitration hubs like Singapore and the United Kingdom.

Conclusion

Emergency arbitration is one of the most important emerging features in international commercial arbitration, which is frequently used in cases involving the need for urgent interim relief prior to the formation of the arbitral panel. In today's international trade world, contracting parties are in search of a speedy, confidential, and efficient process in which to protect their rights without the need to be involved in lengthy litigation. As a means to this end, emergency arbitration ensures that arbitration also offers expedient interim relief that maintains the efficiency and self-determination of the arbitration process.

Two different strategies have been observed towards the recognition and enforcement of emergency arbitrator awards from the comparative study between India and Singapore. The

success of Singapore's highlighted statutory recognition, institutional support and strong pro-arbitration legal framework is exemplified in its emergence onto the international stage as a top-tier arbitration and mediation hub. The Singapore International Arbitration Act is a clear recognition of emergency arbitrators, which brings with it a sense of certainty, enforceability and minimal judicial interference along the way. This legislative certainty has boosted investor confidence and helped propel Singapore as a centre for arbitration in the international commercial arena.

Initially, however, India was beset with considerable hurdles as there were no specific statutory provisions for express arbitration under the Arbitration and Conciliation Act, 1996. The uncertainty that has hung over the legality and enforceability of emergency arbitrator awards posed issues in cases where parties wanted interim relief. But, the judiciary in India slowly followed the progressive doctrine of institutional arbitration and party autonomy.

Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. was the turnaround case in the Indian arbitration jurisprudence, where the Supreme Court of India first noted that emergency arbitrator awards in arbitration seated in India can be enforced. The judgment set India more closely towards international arbitration requirements and reflected the courts' appetite for embracing modern arbitration processes.

Even with this strides, crucial problems remain in the Indian system such as enforcing a foreign-sitting Emergency Arbitrator award and the lack of specific legislative recognition. Translating all of this purely into a court-led process won't be enough for long-term certainty and consistency. The need to legislatively reform the system thus becomes obvious to create a complete and predictable arbitration architecture in India.

Based on this study, the conclusion may be drawn that it would be required to make amendments in the Indian statutes explicitly stating that the arbitrators, working in the Indian context as emergency arbitrators, must be enforced in a very well-defined manner. Having robust institutional arbitration, less litigation delay and aligning domestic arbitration rulebooks with international best practices would help put India ahead as an arbitration friendly jurisdiction. The practices and procedures of emergency arbitration, if improved by such reforms, would strengthen the efficiency of emergency arbitration, which in turn would lead to increased trust in the hands of international merchants and investors in cross-border transactions.

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