
EMERGENCY ARBITRATION AND ARTIFICIAL INTELLIGENCE: RE-ASSESSING PROCEDURAL FAIRNESS AND DUE PROCESS IN INSTITUTIONAL ARBITRATION

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PART A

I. Introduction

In recent years, emergency arbitration has become a major procedural innovation in the field of international business arbitration. This may help parties avoid going to domestic courts by allowing them to obtain interim relief quickly before the arbitral panel is formed. Over the last decade, the incorporation of emergency arbitrator provisions into the rules of leading arbitral institutions has reflected a broader institutional shift towards efficiency, flexibility, and party autonomy. Emergency arbitration has consequently evolved from an experimental mechanism into an established feature of institutional arbitration.

The fundamental rationale for emergency arbitration is its capacity to maintain arbitration's efficacy as a method of conflict resolution. Postponement could render final remedy useless in business disputes involving sensitive information, intellectual property, assets with a near-term expiration date, or impending violations of contracts. If a party needs time-sensitive protection but still wants the arbitral process to remain impartial and secret, they may seek it via emergency arbitration. This is especially helpful in international conflicts where court involvement might be inconvenient, unexpected, or both.

Parallel to this procedural evolution, arbitration practice has witnessed a steady increase in the use of artificial intelligence-based tools. Artificial intelligence is now routinely employed for document review, legal research, translation, case management, and procedural scheduling. These tools are designed to assist in processing large volumes of data efficiently and in identifying relevant legal and factual issues within limited timeframes. In arbitration, artificial intelligence has primarily been deployed as an assistive mechanism rather than as a substitute for human decision-making.

The convergence of emergency arbitration and artificial intelligence raises important procedural concerns. Emergency arbitration is inherently characterised by procedural compression, limited hearings, and heightened reliance on written submissions and arbitrator discretion. In such circumstances, even limited reliance on artificial intelligence may have a disproportionate impact on the outcome of proceedings. All parties are required to be treated fairly and given an equal chance to state their case in emergency procedures, as outlined in the UNCITRAL Model Law on International Commercial Arbitration. However, regarding the oversight of AI, especially in times of crisis, the majority of institutional regulations are mute.

This article adopts a balanced analytical approach to examine whether existing institutional frameworks and due process standards are sufficient to address the procedural risks posed by artificial intelligence-assisted emergency arbitration. It proceeds on the premise that efficiency, while important, cannot override fundamental principles of fairness, transparency, and equality of arms.

II. Emergency Arbitration: Concept, Rationale, and Institutional Framework

Emergency arbitration emerged in response to the limitations of traditional interim relief mechanisms in arbitration. Historically, parties seeking urgent relief prior to the constitution of an arbitral tribunal were required to approach national courts. This often resulted in delays, jurisdictional complications, and concerns regarding confidentiality and neutrality. Courts were not always equipped to respond promptly to commercial emergencies, particularly in transnational disputes involving complex jurisdictional and enforcement issues.¹

In response to these restrictions, arbitration organizations implemented emergency arbitrator provisions that enable parties to seek immediate temporary relief inside the arbitration process. Rules for emergency arbitrators have been included by the International Chamber of Commerce (ICC), Singapore International Arbitration Centre (SIAC), London Court of International Arbitration (LCIA), and International Centre for Dispute Resolution (ICDR).² In most cases, parties are able to request the appointment of an emergency arbitrator using these clauses prior to the main tribunal's creation, within very specific timeframes.

When the arbitral tribunal is not yet formed but immediate relief is needed, a party may seek

¹ Gary Born, *International Commercial Arbitration* (2nd ed. 2014).

² ICC Arbitration Rules. <https://iccwbo.org>

emergency procedures under the ICC Arbitration Rules.³ In most cases, the emergency arbitrator has fifteen days from the date of file receipt to make a ruling. Decisions are often required within fourteen days, and the SIAC Rules include a thorough framework for the appointment of an emergency arbitrator and the conduct of accelerated hearings.⁴ LCIA and ICDR rules adopt comparable approaches, emphasising procedural flexibility and speed.

The rationale underlying emergency arbitration is threefold. First, it preserves party autonomy by allowing disputes to remain within the arbitral system rather than being diverted to domestic courts. Second, it limits judicial intervention, thereby maintaining the neutrality and confidentiality of arbitration. Third, it ensures continuity within the arbitral process by allowing interim protection to be integrated with final adjudication.⁵

However, these advantages come at the cost of procedural compression. Emergency arbitrators are often compelled to decide applications within extremely short timeframes, sometimes on the basis of limited submissions and without oral hearings. The emergency arbitrator exercises wide discretion and must balance urgency against fairness. This compressed procedural environment creates a unique context in which due process concerns are heightened.

The Supreme Court of India made it clear in the case of *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.* that emergency arbitration is fully legitimate in India. The Court acknowledged emergency arbitration as a component of India's arbitration structure when it determined that, according to Section 17 of the Arbitration and Conciliation Act, 1996, the decisions of emergency arbitrators are enforceable.⁶ This decision marked a significant step towards strengthening institutional arbitration in India and reducing judicial intervention.

At the same time, the Supreme Court emphasised that arbitral proceedings must adhere to fundamental principles of natural justice. The enforceability of emergency arbitrator orders is therefore contingent upon compliance with due process standards. As emergency arbitration

³ Id. Art. 29. <https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/#block-accordion-29>

⁴ SIAC Rules 2025, Schedule 1. <https://siac.org.sg/siac-rules-2025>

⁵ Julian Lew et al. *Comparative International Commercial Arbitration* (2003)

⁶ Nupur Thapliyal, (March 19, 2021) *Amazon-Future Case : Emergency Arbitration Recognized By Current Legal Framework; No Need For Amendment, Says Delhi High Court* <https://www.livelaw.in/news-updates/amazon-future-case-emergency-arbitration-recognized-by-current-legal-framework-delhi-high-court-171395>

becomes more prevalent, the procedural integrity of such proceedings becomes central to their legitimacy.

III. Artificial Intelligence in Arbitration Practice

Artificial intelligence, in the arbitration context, primarily refers to machine-learning systems that assist in data analysis, pattern recognition, and the automation of repetitive tasks. Artificial intelligence does not replace arbitrators but supports them by enhancing efficiency and accuracy. The use of artificial intelligence in arbitration is largely limited to assistive functions, rather than determinative decision-making.⁷

Common applications of artificial intelligence in arbitration include document review, legal research, translation, transcription, procedural scheduling, and drafting assistance. These tools are particularly useful in large commercial disputes involving extensive documentation, where manual review would be time-consuming and costly. Artificial intelligence-based analytics are also increasingly used to assess litigation risks and predict outcomes based on patterns observed in previous arbitral awards.⁸

Arbitral institutions have gradually adopted digital technologies for case management. Online filing systems, electronic communication platforms, and virtual hearings have become standard features of arbitration practice. During the COVID-19 pandemic, the adoption of digital tools accelerated significantly, demonstrating that arbitration can function effectively in a technologically mediated environment.⁹

Artificial intelligence, on the other hand, extends well beyond simple digitization. Artificial intelligence systems, in contrast to conventional software, often function as "black boxes," generating results without providing transparent justifications for their decisions. Particularly in adjudicatory proceedings, where parties have a right to know how judgments impacting their rights were reached, this opaqueness raises questions about responsibility.

From a practical perspective, artificial intelligence offers several benefits in emergency

⁷ Richard Susskind. *Online Courts and the Future of Justice* (2019).

https://www.researchgate.net/publication/350408712_Online_Courts_and_the_Future_of_Justice

⁸ Maxi Scherer. (May 22, 2019). *Artificial Intelligence and Legal Decision-Making: Artificial Intelligence and Legal Decision-Making: The Wide Open? Study on the Example of International Arbitration.*

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3392669

⁹ ICC Guidance Note on COVID-19. <https://iccwbo.org/>

arbitration. It enables rapid analysis of documents, reduces administrative burdens, and facilitates efficient case management. Artificial intelligence may also enhance consistency by reducing human error and oversight. These advantages align closely with the objectives of emergency arbitration.

Nevertheless, efficiency cannot justify practices that undermine due process. Artificial intelligence tools may embed biases, operate opaquely, or be accessible only to certain parties. In emergency arbitration, where decisions are made quickly and with limited procedural safeguards, such risks are amplified. The concern is not merely technological, but institutional: the arbitral framework was not designed with artificial intelligence in mind, and existing rules do not adequately regulate its use.

IV. Procedural Fairness and Due Process under the UNCITRAL Model Law

United Nations Commission on International Trade Law Model Law on International Commercial Arbitration Article 18 explicitly recognizes procedural fairness as a foundational principle of arbitration. Equal treatment of the parties and a fair chance to state their case are requirements of Article 18.¹⁰ This principle applies to all arbitral proceedings, including emergency arbitration.

Emergency arbitration already tests these principles due to compressed timelines and limited hearings. The adoption of artificial intelligence tools may further strain procedural safeguards, particularly if one party enjoys greater access to advanced technology. The principle of equality of arms requires that neither party be placed at a significant disadvantage in presenting its case.

In emergency arbitration, disparities in technological resources may create procedural imbalance. Well-resourced parties may deploy sophisticated artificial intelligence tools for document analysis and strategic assessment, while smaller parties may lack comparable capabilities. If emergency arbitrators rely on artificial intelligence-generated materials without ensuring equal access or adequate scrutiny, the procedural balance between parties may be distorted.

Transparency is another essential component of procedural fairness. Parties must be able to

¹⁰ UNCITRAL Model Law. Art. 18. https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09955_e_ebook.pdf

understand the basis of decisions affecting their rights. Artificial intelligence systems, particularly those based on machine learning, often generate outputs without explainable reasoning. If artificial intelligence influences the decision-making process without disclosure, the legitimacy of emergency arbitration may be undermined.

Explainability becomes particularly important in enforcement proceedings. Courts reviewing emergency arbitrator orders may require clear reasoning to assess whether due process was observed. A lack of transparency in artificial intelligence-assisted reasoning may complicate judicial scrutiny and increase the likelihood of challenges.

V. Comparative Jurisdictional Perspectives

Different jurisdictions have adopted varied approaches to emergency arbitration and technological integration. In Singapore, courts have consistently adopted a pro-arbitration stance and have recognised emergency arbitrator orders as enforceable under domestic arbitration law.¹¹ In the United States, emergency arbitrator orders are generally enforced as contractual obligations rather than as arbitral awards, depending on the governing institutional rules.¹²

European jurisdictions such as France and Switzerland have also shown openness towards emergency arbitration, though judicial scrutiny remains high where procedural fairness is questioned.¹³ These comparative perspectives demonstrate that while emergency arbitration is increasingly accepted, its legitimacy remains closely tied to due process compliance.

PART B

VI. Arbitrator Independence, Disclosure, and Ethical Concerns

Arbitrator independence is a foundational principle of international arbitration and is essential to the legitimacy of the arbitral process. Parties agree to arbitrate disputes on the assumption that the arbitrator will act impartially, independently, and free from external influence. The growing use of artificial intelligence in arbitration introduces new ethical considerations that

¹¹ *AQZ v. ARA [2015] SGHC 49*. https://www.elitigation.sg/gd/s/2015_SGHC_49

¹² AAA-ICDR Rules, Emergency Measures, https://www.icdr.org/rules_forms_fees

¹³ Emmanuel Gaillard. *Legal Theory of International Arbitration* (2010). https://www.gbsdisputes.com/wp-content/uploads/2024/05/Gaillard-E-Legal-Theory-of-International-Arbitration_Intro.pdf

challenge traditional conceptions of arbitrator independence.

One of the central concerns relates to the nature of artificial intelligence tools used in arbitration. Many AI systems are developed and maintained by private technology companies and operate through proprietary algorithms. Where an arbitrator relies on such tools for legal research, document analysis, or decision-support, questions arise as to whether the arbitrator remains fully independent or becomes indirectly dependent on third-party technological providers. This concern is particularly relevant in emergency arbitration, where the arbitrator's decision may rely heavily on rapid technological assistance due to time constraints.

Existing ethical frameworks do not adequately address these issues. The IBA Guidelines on Conflicts of Interest in International Arbitration, which remain the most widely accepted soft-law instrument on arbitrator ethics, do not contain any express provisions relating to the use of artificial intelligence or technological decision-support tools.¹⁴ The Guidelines focus primarily on financial, professional, and personal relationships but do not contemplate technological dependencies or algorithmic influence.

There is a lack of clarity on the extent of disclosure duties due to this regulatory gap. Generally speaking, arbitrators have an obligation to reveal anything that may cast reasonable doubt on their impartiality or independence. However, it is unclear whether reliance on artificial intelligence tools constitutes a disclosable circumstance. If an arbitrator uses a widely available legal research tool, disclosure may appear unnecessary. Conversely, if the arbitrator relies on proprietary AI software provided by the administering institution or a commercial vendor, disclosure may be required to preserve transparency.

Disclosure plays a crucial role in maintaining trust in arbitration. Parties are entitled to know whether external tools influence the decision-making process. Even where artificial intelligence remains purely assistive, its role in shaping legal reasoning should not be concealed. The absence of disclosure may create the perception that decisions are influenced by opaque or unaccountable processes, thereby undermining confidence in the arbitral system.

In emergency arbitration, the need for transparency is even more pronounced. Emergency arbitrators often issue decisions within days, based on limited submissions and without detailed

¹⁴ *IBA Guidelines on Conflicts of Interest in International Arbitration (2014)*.
<https://www.ibanet.org/MediaHandler?id=e2fe5e72-eb14-4bba-b10d-d33dafce8918>

reasoning. If artificial intelligence tools are used in such circumstances, parties may be left without any meaningful opportunity to assess how the decision was reached. Mandatory disclosure of artificial intelligence usage would therefore enhance procedural legitimacy and allow parties to raise objections at an early stage.

VII. Technology, Legitimacy, and Institutional Responsibility

The legitimacy of arbitration depends not only on the independence of individual arbitrators but also on the institutional framework within which arbitration operates. Arbitral institutions play a central role in shaping procedural norms, administering cases, and ensuring compliance with due process standards. As artificial intelligence becomes more prevalent in arbitration, institutional responsibility assumes greater significance.

Arbitral institutions have historically adapted their rules to reflect evolving commercial realities. The introduction of emergency arbitration itself demonstrates institutional responsiveness to party needs. However, most institutional rules remain silent on the regulation of artificial intelligence. While institutions have embraced digital platforms for case management, they have not developed formal policies on the use of algorithmic tools in adjudication.

This silence may be attributed to the rapid pace of technological development and the lack of consensus on best practices. Nevertheless, the absence of institutional guidance creates regulatory uncertainty and leaves arbitrators and parties to navigate complex ethical and procedural issues on their own. Such decentralised regulation risks inconsistent practices and undermines the predictability of arbitration.

Institutional responsibility is particularly relevant in emergency arbitration, where procedural safeguards are already limited. Institutions appoint emergency arbitrators, administer expedited proceedings, and often provide digital platforms through which cases are conducted. Where institutions facilitate or endorse the use of artificial intelligence, they may bear indirect responsibility for ensuring that such tools comply with due process standards.

Legitimacy in arbitration is not merely a formal concept but a functional one. Parties accept arbitral outcomes because they perceive the process as fair, neutral, and transparent. If artificial intelligence introduces elements of opacity or asymmetry, the legitimacy of arbitration may be

compromised. This risk is heightened in emergency arbitration, where decisions have immediate commercial consequences and limited avenues for review.

Institutions are therefore well placed to develop soft-law standards governing the use of artificial intelligence. Such standards could address issues of disclosure, explainability, data protection, and equal access. Institutional guidance would not only promote consistency but also signal a commitment to procedural integrity in the face of technological change.

VIII. Enforcement, Judicial Review, and Public Policy

The ultimate test of emergency arbitration lies in its enforceability. Emergency arbitrator orders, although interim in nature, often require judicial support to be effective. Courts play a crucial role in determining whether such orders will be recognised and enforced under domestic arbitration statutes and international conventions.

The refusal to enforce an arbitral decision may be justified under Article V of the New York Convention in cases where the party seeking enforcement was unable to raise a valid argument or when doing so would go against public policy.¹⁵ Although the Convention does not expressly refer to emergency arbitrator orders, similar principles apply to interim measures under domestic arbitration laws.

If artificial intelligence-assisted emergency arbitration is perceived as undermining procedural fairness, courts may scrutinise such orders more closely. A lack of transparency, absence of disclosure, or unequal access to technological tools could provide grounds for challenging enforcement. Courts may be reluctant to enforce orders where the decision-making process appears opaque or unaccountable.

In India, judicial emphasis on procedural fairness is well established. The idea that awards that do not adhere to the basic principles of natural justice are subject to being overturned is reiterated by the Supreme Court in the case of *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*.¹⁶ This jurisprudence suggests that Indian courts are likely to examine the procedural

¹⁵ *Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Art. V, June 10, 1958.*
https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards

¹⁶ Shivansh Jolly and Sarthak Malhotra. *Ssangyong v. NHAI: Supreme Court of India Fixing Some Troubles, and Creating Some?* <https://legalblogs.wolterskluwer.com/arbitration-blog/ssangyong-v-nhai-supreme-court-of-india-fixing-some-troubles-and-creating-some/>

integrity of emergency arbitration, particularly where novel technologies are involved.

Similarly, courts in other jurisdictions have emphasised the importance of transparency and fairness in arbitral proceedings. In Singapore, courts have adopted a pro-arbitration stance but have not hesitated to intervene where procedural irregularities are established.¹⁷ In the United States, emergency arbitrator orders are often enforced as contractual obligations, but judicial scrutiny remains available where due process concerns arise.¹⁸

Judicial review therefore functions as a safeguard against procedural excess. While arbitration is premised on party autonomy and minimal court intervention, enforcement remains contingent upon compliance with basic standards of fairness. Artificial intelligence cannot be allowed to dilute these standards, particularly in proceedings that already operate under procedural constraints.

IX. Regulatory Gaps and the Need for Safeguards

The analysis thus far reveals a significant regulatory gap in the governance of artificial intelligence in emergency arbitration. Most institutional arbitration rules do not address the use of AI, and existing ethical frameworks do not provide sufficient guidance. This regulatory silence is problematic, as it allows technological practices to develop without clear normative boundaries.

Rather than prohibiting artificial intelligence, a more appropriate response lies in the development of targeted safeguards. These safeguards should seek to balance efficiency with fairness and innovation with legitimacy. Soft-law instruments, such as institutional guidelines and best-practice protocols, offer a flexible means of regulation without undermining party autonomy.

Several safeguards may be considered. First, mandatory disclosure of artificial intelligence usage by emergency arbitrators should be introduced. Arbitrators should be required to disclose whether they have relied on algorithmic tools for legal research, document analysis, or decision-support. Such disclosure would enhance transparency and allow parties to raise concerns at an early stage.

¹⁷ *AQZ v. ARA*, [2015] SGHC 49. https://www.elitigation.sg/gd/s/2015_SGHC_49

¹⁸ AAA-ICDR Arbitration Rules, Emergency Measures. https://www.icdr.org/rules_forms_fees

Second, limits should be placed on determinative reliance on artificial intelligence. While AI may assist in processing information, final decision-making authority must remain with human arbitrators. This safeguard preserves the human character of adjudication and ensures accountability for legal reasoning.

Third, explainability standards should be developed. Arbitrators should be encouraged to explain the role of artificial intelligence in their reasoning process, particularly where AI-generated outputs influence substantive conclusions. Explainability promotes transparency and facilitates judicial review.

Fourth, institutions should promote equal access to technological tools. Where artificial intelligence is used in proceedings, parties should be given reasonable opportunities to understand and respond to AI-assisted submissions. This safeguard addresses concerns regarding equality of arms and procedural imbalance.

These measures would not undermine efficiency. On the contrary, they would strengthen the credibility of emergency arbitration by ensuring that technological innovation does not erode foundational principles of fairness.

X. Conclusion

Emergency arbitration and artificial intelligence represent two of the most prominent developments shaping contemporary international commercial arbitration. Both are driven by a shared objective: improving procedural efficiency and reducing the time and cost associated with dispute resolution. Emergency arbitration seeks to ensure that parties are not left without protection during the critical period before the constitution of the arbitral tribunal, while artificial intelligence aims to enhance the speed and accuracy of legal and factual analysis. However, the interaction between these two developments raises complex procedural questions that cannot be resolved solely through an efficiency-based lens.

This article has demonstrated that emergency arbitration operates within a structurally fragile procedural framework. The compressed timelines, limited opportunities for oral hearings, and wide discretion vested in emergency arbitrators already place significant strain on traditional safeguards of procedural fairness. The introduction of artificial intelligence into this environment intensifies these concerns. While artificial intelligence may assist in managing

urgent proceedings, its unregulated or opaque use has the potential to affect equality of arms, transparency, arbitrator independence, and the right of parties to be heard.

The analysis under the UNCITRAL Model Law highlights that due process remains the normative foundation of arbitration, irrespective of procedural speed or technological innovation. Article 18's guarantee of equal treatment and a full opportunity to present one's case cannot be diluted merely because proceedings are conducted on an emergency basis. Similarly, the principles of party autonomy and procedural fairness under Articles 19 and 24 require that parties retain meaningful participation in the arbitral process, even where digital or artificial intelligence-based tools are employed.

The enforcement dimension further reinforces the importance of procedural integrity. Courts reviewing emergency arbitrator orders under the New York Convention or domestic arbitration statutes are likely to scrutinise whether basic standards of natural justice have been satisfied. Where artificial intelligence has influenced decision-making without disclosure or explainability, the legitimacy of such orders may be called into question. In jurisdictions such as India, where judicial recognition of emergency arbitration has been accompanied by a strong emphasis on fairness and natural justice, procedural deficiencies may undermine confidence in institutional arbitration as a whole.

Rather than rejecting artificial intelligence, this article argues for a cautious and principled approach to its integration. Artificial intelligence should be understood as a procedural aid, not as a substitute for human adjudication. Its role must remain assistive, and its use should be subject to transparency and accountability. The absence of express regulation in institutional rules does not justify unrestrained technological experimentation, particularly in proceedings that already operate at the margins of procedural protection.

The development of soft-law safeguards represents the most viable path forward. Mandatory disclosure of artificial intelligence usage by emergency arbitrators, limitations on determinative reliance, and minimum explainability standards would preserve efficiency while enhancing legitimacy. Such measures would strengthen the credibility of emergency arbitration by ensuring that technological assistance does not erode the foundational values of arbitration.

Ultimately, the legitimacy of emergency arbitration in the age of artificial intelligence will depend not on how quickly disputes are resolved, but on how fairly they are conducted. As

arbitration continues to evolve in response to technological change, procedural fairness and due process must remain the guiding principles. Artificial intelligence may shape the future of arbitration, but it cannot be allowed to redefine its normative foundations.