HOLDING THE FORT UNTIL TRIBUNAL FORMATION: EMERGENCY ARBITRATION'S EVOLUTION AND THE CASE FOR STATUTORY RECOGNITION IN INDIA

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ABSTRACT

Emergency arbitration has moved from being a procedural experiment to an assumed feature of serious institutional arbitration, yet its position within Indian arbitration law remains unsettled. This article examines that dissonance. It situates emergency arbitration as a response to the structural limits of court-centric interim relief and tribunal-dependent authority, tracing how leading arbitral institutions have redesigned urgency as an internal arbitral function rather than a judicial fallback. Against this comparative backdrop, the article turns to the Indian framework, where Section 9 of the Arbitration and Conciliation Act has been stretched to absorb demands it was never designed to meet. Through an analysis of recent judicial developments, particularly Amazon v. Future Retail, and policy material including the 2024 Expert Committee Report and earlier High Level Committee recommendations, the article argues that judicial accommodation has reached its limits. It concludes by advancing targeted policy suggestions for statutory recognition of emergency arbitration in India, proposing calibrated amendments to the Act that preserve judicial oversight while restoring coherence, predictability, and credibility to interim relief within arbitration.

I. Introduction

Emergency arbitration ["**EA**"] is a mechanism that allows a disputing party to apply for urgent interim relief before an arbitral tribunal has been formally constituted[1]. It is designed to operate within the arbitral framework rather than as an external adjunct to it, drawing its authority directly from party consent. Distinct from court-ordered interim measures, EA preserves the internal purpose of arbitration by allowing disputes to remain within the arbitral process during periods of pressing urgency. Its defining feature is temporal rather than substantive[2]. As a result, EA occupies a distinct space within contemporary arbitral practice, situated at the crucial juncture between judicial intervention and tribunal-based adjudication.

The article proceeds upon the premise that emergency arbitration has achieved widespread acceptance in multi-jurisdictional arbitral practice. However, its accommodation within domestic arbitration statutes remains uneven, particularly in jurisdictions closely aligned with the standards of the UNCITRAL Model Law ["**Model Law**']. The central question addressed over the course of this article is whether EA can be coherently integrated into the Indian legal system without diminishing the role and authority of the domestic Arbitration and Conciliation Act, 1996 ["**1996 Act**"]. To answer this, the article undertakes a comparative analysis of leading institutional rules to distil the conceptual logic underlying contemporary EA and evaluates the Indian response through the lens of Section 9[3], recent judicial decisions, and the adequacy of pre-existing reform proposals. The objective is not merely to describe the evolution of EA, but to identify the policy choices that shape its design and to develop principled suggestions for the future of the mechanism within India's broader arbitration framework.

The article is structured into four parts. Part I situates emergency arbitration within the assumptions embedded in the Model Law, which forms the architectural foundation of the 1996 Act, and explains why EA initially struggled to acquire statutory legitimacy. Part II turns to contemporary arbitral procedure, examining EA frameworks adopted by institutions such as the London Court of International Arbitration ["**LCIA**"], the Singapore International

[1] See Singapore Int'l Arbitration Centre (SIAC), Emergency Arbitration, at https://siac.org.sg/emergency arbitrat ion (describing the special procedure whereby an emergency arbitrator is appointed to hear urgent interim relief applications prior to the constitution of the tribunal).
[2] Dániel Pap, *When Justice Delayed Is Justice Denied: Advantages and Disadvantages of Emergency Arbitration in Comparison with Interim Relief*, 59 Annales Univ. Sci. Budap. Rolando Eötvös Nominate Sectio Iuridica 51, 51–60 (2020).
[3] Arbitration and Conciliation Act, 1996 ["1996 Act"], § 9 (India).

Arbitration Centre ["**SIAC**"], the Swiss Arbitration Centre, and the Hong Kong International Arbitration Centre ["**HKIAC**"] with passing reference to earlier and more rudimentary models. Part III focuses on the trajectory of Indian judicial engagement with EA, culminating in the Supreme Court's decision in *Amazon NV Investment Holdings LLC v. Future Retail Ltd.* ["**Amazon v. Future Retail**"] This phase reflects a judicial movement from caution to limited acknowledgment, albeit without binding force, alongside a controversial interpretative move suggesting the exclusion of a crucial statutory provision from arbitration proceedings altogether.

The article concludes by turning to questions of policy and legislative design. It draws upon recent Expert Committee reports and interrogates the structural limits of Section 9 as presently framed. The central argument advanced is that emergency arbitration can no longer remain confined to a doctrinal grey area. Statutory recognition is necessary to consolidate existing judicial gains and to align Indian arbitration law with contemporary international practice. The question, ultimately, is not whether EA can be made to function within Indian law, but whether India can afford to leave EA unresolved within its legal system.

II. Race Against Time: The Market-Driven Rise of Emergency Arbitration

Arbitration's promise of speed often collapses in situations requiring urgent relief, as delays in constituting the tribunal leave parties vulnerable to irreparable harm. Although courts function as a formal substitute, concerns relating to delay, neutrality, confidentiality, and cross-border enforceability have limited their practical appeal, particularly in the Indian context. Emergency arbitration emerged as an institutional response to this structural gap by enabling interim relief at the pre-constitution stage. However, this mechanism represents a pragmatic departure from the Model Law, which deliberately confines interim powers to a duly constituted tribunal.

A. Commercial Urgency and the Need for Emergency Arbitration

Arbitration owes a lot of its acclaim to being considered a speedy alternative to the time-consuming justice system and its well-known pitfalls, but it cannot be said that this speedy alternative is without any faults.[4] There still exists a significant inconvenience which is caused when matters are such that require urgent protection. It must be said that the Courts are still

[4] Dr. Sonali Anant Burte et al., *Arbitration vs. Litigation: Comparative Analysis of Outcomes and Costs*, 3 Int'l J. Emerging Tech. & Innov. Rsch. 7, 12–13 (2023).

better equipped to deal with situations that require such intervention, this presents a structural problem within the current regime[5]. This problem is highlighted primarily in commercial disputes which turn urgent at any point without a warning into a predicament where time becomes of essence. Under the current arbitration regime, any relief would be invariably delayed until a tribunal is constituted by which point the dispute would be lost for all practical purposes[6]. This is the very reason that a multitude of jurisdictions created the provision that shall be explored further in this article.

It would be a disservice to say that arbitral institutions were not aware of this gap that existed which led to various mechanisms like summary arbitral proceedings for interim relief[7], expedited constitution of arbitral tribunals[8] and pre arbitral referee procedures[9]. Their applications were conceptually sound but required express party consent which is almost impossible to receive at a preliminary stage of contract drafting[10]. However, it might be said that the primary reason for the failure of any of these measures is the ideological subservience to the notion that arbitral tribunals could be constituted quickly enough to address the urgency they seek to solve.

Experience demonstrated that this assumption is misplaced, tribunal constitution is often highly contested and requires time which cannot be given under the exact circumstances that arbitration was devised to solve[11]. Internal disagreements, challenges to arbitrator, procedural delays and maneuvering can substantially prolong the process. This carries the potential to result in an unjust enrichment to the party using such procedural steps in order to delay the formation of the tribunal. Hence, directly benefiting from the entire process[12].

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[5] Rishab Gupta & Aonkan Ghosh, *Choice Between Interim Relief from Indian Courts and Emergency Arbitrator*, Kluwer Arbitration Blog (May 10, 2017), https://legalblogs.wolterskluwer.com/arbitration-blog/choice-between-interim-relief-from-indian-courts-and-emergency-arbitrator/.

[6] Abhisar Vidyarthi, *Time for Indian Courts to Make Way for Emergency Arbitrators?*, IndiaCorpLaw (Sept. 3, 2022), https://indiacorplaw.in/2022/09/03/time-for-indian-courts-to-make-way-for-emergency-arbitrators/.

[7] SCC Arbitration Rules, 2023, Art. 39(1) (Stockholm Chamber of Commerce) ["SCC Rules"].

[8] LCIA Arbitration Rules, 2020, Art. 9A (London Court of Int'l Arbitration) ["LCIA Rules"].

[9] ICC Pre-Arbitral Referee Rules, 1990, Art. 1.1 (Int'l Chamber of Commerce).

[10] Abhinav Agrawal & Deepali Poddar, *The Enforceability of Arbitration Clauses in Draft Agreements*, SCC Times Blog (Apr. 9, 2025), https://www.scconline.com/blog/post/2025/04/09/the-enforceability-of-arbitration-clauses-in-draft-agreements/.

[11] Sharada R. Shindhe, *Time Is of the Essence: Judicial Intervention in the Appointment of Arbitrators: Analysing the Order in "Shree Vishnu Constructions,"* NLS Forum (June 20, 2022), https://forum.nls.ac.in/nls-blog/time-is-of-the-essence-judicial-intervention-in-the-appointment-of-arbitrators-analysing-the-order-in-shree-vishnu-constructions/.

[12] 37 Alain Frécon, *Delaying Tactics in Arbitration*, in AAA Handbook on Arbitration Practice – Second Edition 5–8 (Am. Arb. Ass'n ed., 2d ed. 2016).

Recourse to the national courts has always remained a conceptual avenue of pursuance. The provisions that permit parties to seek interim relief from courts during arbitral proceedings are the promulgation of the conceptual backing of this option[13]. However, court intervention especially in India is notorious for poor management, extremely long and complicated processes and is even expressly excluded by the parties themselves[14]. Even when courts were available, the concerns related to confidentiality and neutrality proved to be consistent. Another crucial issue is that of cross border disputes wherein the foreign company's belief is even less than that of the domestic parties due to the apprehension of being strategically risky and commercially unattractive[15]. This resulted in courts being thrown out for being neither neutral nor convenient.

This is exactly what led to the rise of the market driven principle which seeks to resolve the time gap between the dispute that may arise and the constitution of the arbitral tribunal[16]. Despite the innate conflict between the iterations of emergency arbitration, they did show a high level of convergence on a few key factors like a shorter timeframe for the appointment of an arbitrator as well as the temporary nature of the mandate which dissolves as soon as the regular tribunal is constituted. Emergency arbitrators are generally, expressly or implicitly, precluded from participating in subsequent arbitration to stress upon the importance of independence and continuity of the main tribunal[17][18][19]. Relief is reserved for cases which require genuine urgency and are held to a strict standard which shows the exceptional nature of this mechanism[20][21].

A determinative shift from earlier regimes was the adoption of an opt-out model. Emergency arbitration applies by default when the parties choose institutional rules unless they explicitly

[13] 1996 Act, § 9.
[14] Law Commission of India, *Report No. 245: Arrears and Backlog: Creating Additional Judicial (wo)manpower* (July 2014).
[15] Gabrielle Kaufmann-Kohler & Michele Potestà, "Why Investment Arbitration and Not Domestic Courts? The Origins of the Modern Investment Dispute Resolution System, Criticism, and Future Outlook," in Investor-State Dispute Settlement and National Courts: Current Framework and Reform Options 7, 10–11 (Gabrielle Kaufmann-Kohler & Michele Potestà eds., Springer 2020).
[16] Shivam Kumar, *Emergency Arbitration — Its Advantages, Challenges and Legal Status in India*, SCC Times (Mar. 26, 2022), https://www.scconline.com/blog/post/2022/03/26/emergency-arbitration/.
[17] SIAC Arbitration Rules, 2025, Sched. 1 (Singapore Int'l Arbitration Centre) ["SIAC Rules"].
[18] ICC Arbitration Rules, 2021, Art. 2 & app. V (International Chamber of Commerce) ["ICC Rules"].
[19] LCIA Rules, Art. 9B.
[20] ICC Commission Report on Emergency Arbitrator Proceedings (Int'l Chamber of Commerce, 2021).
[21] LCIA Rules, Arts. 9A & 9B.

file for a representation against such a provision[22]. This decision was taken intentionally to align with the commercial reality in which emergency mechanisms are almost never negotiated in advance. The invariable failure of the proposed "opt in" model would have happened on similar grounds to the prior failures of other similar interim measures[23].

Hence, we can understand emergency arbitration to be a market driven response to structural deficiency within arbitration[24]. It puts an innate emphasis on traditional ideas of speed and effectiveness over strict adherence to the assumptions of old regimes regarding the authority of the arbitrator. This departure from the more traditional regimes is found to be significantly more efficient at resolving disputes in comparison to classical arbitration which failed, specifically in disputes of an urgent nature[25]. This has naturally enhanced the practical utility of arbitration and raises questions about legitimacy, enforceability and consistency within the statutory framework. The legitimacy of EA inevitably turns on how far such market-driven innovations can be reconciled with the foundational design principles of that framework. Hence, any such mechanism must also be assessed through its alignment with the Model law which forms an exhaustive authority for the same.

B. Learning from the Global Playbook: UNCITRAL as a Benchmark for EA

The Arbitration and Conciliation Act, 1996 is squarely built on the Model Law[26]. This is something which is both intrinsically and explicitly mentioned as the guiding framework for the act itself. The preamble clearly sets out the principles as well as the core ideas laid down by the UNCITRAL, which were consciously adopted while shaping the Indian arbitration regime, with the objective of promoting uniformity, fairness and due process within international commercial arbitration. This statutory intent has consistently been reinforced by the Indian courts, which have repeatedly held the opinion of interpreting the 1996 Act in consonance with the UNCITRAL principles and it's drafting history[27]. Decisions such as

[22] Monika Feigerlová, *Emergency Measures of Protection in International Arbitration*, 18 Int'l & Comp. L. Rev. 155, 161–62 (2018).
[23] *ibid.*
[24] Shivam Kumar, *Emergency Arbitration — Its Advantages, Challenges and Legal Status in India*, SCC Times (Mar. 26, 2022), https://www.scconline.com/blog/post/2022/03/26/emergency-arbitration/.
[25] Advait Talatule, *Emergency Arbitration Procedures in International Arbitration: Assessing the Use and Efficiency of Emergency Arbitration Mechanisms*, IJLLR (Indian J. Law & Legal Rsch.) 6668, 6676–77 (2025).
[26] 1996 Act, § Preamble.
[27] Aishwary Kumar Tiwari, *Indian Supreme Court's Internationalist Approach to Arbitration: Justified Under the 1985 Model Law? Should It Apply to Domestic Disputes?*, Daily Jus (Mar. 19, 2025), https://dailyjus.com/world/2025/03/indian-supreme-courts-internationalist-approach-to-arbitration/.

Sundaram Finance Ltd. v. NEPC India Ltd.[28], *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.*[29], and *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* ["**BALCO**"][30] clearly reflect this approach. In these cases, the Supreme Court has looked to the Model Law as a guiding reference, especially where the statute is silent or leaves scope for interpretation.

Although the Model Law does not carry direct statutory force in India, it still plays a pivotal role in understanding how arbitral authority, procedural legitimacy and interim reliefs are put into operation within the Indian framework. The most pronounced expression of UNCITRAL's design can be observed in Articles 17 and 17A to 17I of the Model Law, introduced through the 2006 amendments[31], which were deliberately formulated to strengthen the framework governing interim measures and reduce the excessive reliance on national courts. However, the manner in which this objective was pursued tells a story of it's own. Article 17 vests the power to grant interim measures exclusively in the arbitral tribunal, while Articles 17A[32] and 17B[33] lay down substantive and procedural safeguards such as irreparable harm, proportionality, a reasonable possibility of success on the merits among others. Even where ex parte relief is sought, the Model Law introduces the concept of a "preliminary order", emphasising its temporary and non-enforceable nature[34].

The framework rests on certain clear preconditions. First, the existence of a constituted arbitral tribunal is treated as indispensable. Every form of interim or preliminary relief under the Model Law is expressly linked to tribunal authority[35]. Second, due process lies at the heart of the system. Preliminary orders are short-lived, open to immediate reconsideration once the affected party has their say, and intentionally kept beyond the reach of court enforcement[36]. Third, interim measures are conceived as part of a continuous adjudicatory process, undertaken by the same tribunal that will ultimately decide the merits of the dispute. Emergency arbitration breaks this rigidity. It functions before the tribunal is constituted, relying on a temporary adjudicator,

[28] Sundaram Finance Ltd. v. NEPC India Ltd., (1999) 2 SCC 479 (India).
[29] Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2011) 8 SCC 333 (India).
[30] Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., 2012 (9) SCC 552 (India) ["BALCO"].
[31] UNCITRAL Model Law on International Commercial Arbitration,1985, as amended in 2006, Arts. 17, 17A–17I (UNCITRAL) ["Model Law"].
[32] *ibid*, Art. 17A.
[33] *ibid*, Art. 17B.
[34] *ibid*, Arts. 17B & 17C.
[35] *ibid*, Arts. 17A(1), 17B(2) & 17C(1).
[36] *ibid*, Art. 17C(2), (4) & (5).

and granting relief separate from the final award marking a clear shift from the premises of Model Law[37].

The 2006 amendments reinforce this conclusion by precisely embodying the intentions revealed in their drafting history. The travaux préparatoires of Working Group II demonstrate that UNCITRAL was conscious of the tension between effectiveness and legitimacy of the entire process[38]. The Working Group acknowledged the practical necessity of urgent protection but it consistently operated on the understanding that such powers were to be exercised solely by a fully constituted arbitral tribunal, a position evidenced through a careful study on the scope of interim and preliminary measures, particularly regarding ex parte relief, as envisaged in documents such as WP.131[39] and WP.138[40].

Significantly, no proposal was made to vest interim authority in a pre-constitution decision maker. Such an omission was not accidental but a quiet acceptance of inherent delays in tribunal constitution as a much needed limitation for preserving party consent, due process and the legitimacy of arbitral adjudication. By the time of WP.141[41], the Working Group expressed satisfaction that the revised regime struck an appropriate balance without taking the possibility of pre-tribunal adjudication into consideration.

Hence, emergency arbitration emerges not as an extension of the Model Law framework but a market-driven response to a structural gap that the UNCITRAL consciously chose not to fill.

III. From Doctrine to Design: Theoretical Models of Emergency Arbitration in Different Jurisdictions

The key convergence point of the new emergency arbitration regimes from their predecessors is not merely speed but related to the theory of authority that they quietly embed. Such contemporary frameworks do not subscribe to the idea that EA is merely a prelude to 'real'

[37] Gayatri Kondapalli & Aditi Kanoongo, *Emergency Arbitration: Will the SIAC's New Rules Face Judicial Resistance in India?*, IndiaCorpLaw (Feb. 24, 2025), https://indiacorplaw.in/2025/02/24/emergency-arbitration-will-the-siacs-new-rules-face-judicial-resistance-in-india/.

[38] Travaux préparatoires: UNCITRAL Model Law on International Commercial Arbitration (1985) (United Nations Commission on International Trade Law), https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/travaux.

[39] U.N. Comm'n on Int'l Trade Law, Working Group II, *Settlement of Commercial Disputes: Interim Measures of Protection — Note by the Secretariat*, U.N. Doc. A/CN.9/WG.II/WP.131 (26 July 2004) ["Working Group II"].

[40] *ibid*, U.N. Doc. A/CN.9/WG.II/WP.138 (8 Aug. 2005).

[41] *ibid*, U.N. Doc. A/CN.9/WG.II/WP.138 (8 Aug. 2005).

and 'substantive' proceedings.

A clear trend across all leading institutions is an ostensible move towards preserving integrity of the arbitral process rather than merely filling procedural gaps. It would be an unfair assumption to say that delay is the sole concern anymore. Factors such as informational asymmetry and the risk of one party irreversibly shaping the dispute before the tribunal comes into existence among others, form new aspects that warranted a repair by the newer frameworks[42].

A. London Court of International Arbitration

The LCIA Rules reflect an inherently cautious iteration of emergency arbitration. The approach or conceptual framework adopted by the LCIA is distinctive due to its rejection of EA as a quasi-Judicial substitute for courts[43]. They instead present EA as an extension of party autonomy which is narrowly empowered and restrained through clear procedure. The aforementioned rules insist that an emergency arbitrator cannot even later sit on the tribunal without express consent, further reinforcing the stance[44]. This signals that the LCIA rules consider EA to not be an early phase of the arbitration but a separate procedural moment that must leave no trace once the task at hand is complete.

A salient point of the LCIA framework is its innate resistance to adjudicatory overreach. The Rules do not insist upon the binding or enforceable nature of emergency decisions but rely on compliance by institutional legitimacy and party autonomy[45]. There exists a growing view that EA should intervene only to act as a stabilizing factor and not a replacement for courts or arbitral tribunals.

B. Singapore International Arbitration Centre

The SIAC rules present a clearly different analysis of the ever-evolving framework. The SIAC rules present more procedural and conceptual confidence in the award given by an emergency

[42] Dániel Pap, *When Justice Delayed Is Justice Denied: Advantages and Disadvantages of Emergency Arbitration in Comparison with Interim Relief*, Annales 51, 51–60 (2020).
[43] LCIA Rules, Art. 9.13.
[44] *ibid*, Art. 9.11.
[45] *ibid*, Art. 9.4.

arbitrator. EA is considered res integra to the arbitral process and not just an afterthought[46]. The Rules explicitly place emphasis on speed, efficiency and substantive engagement with the urgency of the dispute.

Recent revisions to the SIAC Rules further reinforce the position that, this substructure seeks to hold EA as a meaningful site of adjudication with a veil of finality in decisions taken by the tribunal[47]. This is particularly evident in the SIAC's articulation of the standard for relief under these rules where urgency is not a formal threshold, but a conceptual inquiry required into deciding whether waiting for the tribunal would defeat the purpose of the relief sought. In doing so, it invites a complete assessment of harm rather than a temporal one[48].

At the same time, SIAC preserves provisional character of the emergency decisions. Tribunal retains full authority to modify or set aside any given relief and emergency arbitrators remain procedurally precluded from the phase concerned with the merits[49].

C. Swiss Arbitration Centre

The Swiss Arbitration Centre indubitably presents a more cautious and well calibrated framework among the institutions being analyzed here. The Swiss Rules explicitly frame EA as an exceptional measure that requires specific urgency to be articulated with an ostensible clarity[50]. There exists a strong emphasis on justifiable decision making even with the ever-existing threat of strict timelines.

Another hallmark of the Swiss approach is its sensitivity to legitimacy. EA is treated as a serious procedural intervention that must justify its own insistence under each case. The reasoning underlying this approach manifests in the Rules that conceptualize emergency measures as interim measures which are absorbed into the tribunal's authority once constituted. The emergency decision does not exist independently; it is designed to transfer seamlessly into the larger arbitration process.

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[46] Edward Taylor, *SIAC Rules 2025's New Ex Parte Emergency Arbitration Mechanism — A Revolutionary Step?*, Mondaq (Jan. 3, 2025), https://www.mondaq.com/arbitration-dispute-resolution/1563580/siac-rules-2025s-new-ex-parte-emergency-arbitration-mechanism-a-revolutionary-step.
[47] *ibid.*
[48] SIAC Rules, sched. 1, Rule 3(g).
[49] *ibid*, sched. 1, Rule 2.
[50] Swiss Rules of International Arbitration 2021, Art. 43(2) (Swiss Arbitration Centre) ["Swiss Rules"].

The Swiss framework adopts a more calculated stance on retroactivity and the opt-out approach. While EA applies automatically under the Rules, there is an evident concern with fairness and foreseeability. This remains consistent with the broader philosophy underpinning Swiss arbitration, which prioritises procedural balance over institutional privilege[51]. EA is neither transformative nor symbolic. It is purely functional but with procedural guardrails.

D. Hong Kong International Arbitration Centre

The HKIAC Rules, especially in their more recent versions, represent one of the most sophisticated and detailed EA regimes currently in operation. HKIAC treats EA as a fully integrated component of arbitral architecture and does so with exemplary clarity. Appointment timelines are absolutely precise[52]; powers of the emergency arbitrator are delineated with great clarity[53] and the relationship between the decisions given by such emergency arbitrators carry tribunal authority which is explicitly addressed and afforded a meaningful resolution[54].

The key development advanced by the HKIAC lies in its engagement with, and reassurance on, questions of enforceability. While the Rules seek not to override national laws, they openly anticipate judicial interaction with emergency decisions. The framework's drafting is undertaken with an awareness about courts facing queries on emergency reliefs and the structure of EA accordingly[55]. This reflects Hong Kong's broader arbitration ecosystem which is closely aligned with pro-enforcement judicial practice.

HKIAC's treatment of emergency relief unveils a pragmatic analysis of commercial disputes. The Rules do not artificially separate urgency from substance. They instead allow emergency arbitrators to engage meaningfully with the factual matrix while still avoiding determinations that would bind the tribunal on its merits. This is admittedly a different tightrope to walk but the HKIAC appears unusually comfortable at this juncture of uncertainty.

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[51] *ibid*, Art. 43(1).
[52] HKIAC Administered Arbitration Rules 2024, sched. 4, para. 10 (Hong Kong Int'l Arbitration Centre) ["HKIAC Rules"]
[53] *ibid*, sched. 4, at ¶ 12.
[54] *ibid*, sched. 4, at ¶ 21.
[55] Kevin Hong, Katie Chung & Jasmine Chan, *HKIAC's 2024 Administered Arbitration Rules (Effective on 1 June 2024): Key Points and Implications on Arbitral Proceedings*, Norton Rose Fulbright (May 3, 2024), https://www.nortonrosefulbright.com/en/knowledge/publications/18d3eb8a/hkiac-rules.

E. International Centre for Dispute Resolution & Stockholm Chamber of Commerce

When compared to the prior yardsticks, the ICDR and SCC frameworks can be considered substantially crucial but as reference points, they are of little importance to India, particularly when drawing upon it in formulating its own emergency arbitration framework. Both institutions were early movers in the field, and their rules laid the groundwork for more advanced frameworks[56]. The ICDR's emergency arbitrator provisions[57] introduced core ideas behind pre-tribunal adjudication and the SCC's adoption of the opt-out model[58], as discussed earlier, constituted key advancements and continues to form part of the modern framework governing EA. It must be said however, that these frameworks pale in comparison to the more sophisticated and advanced rules of the LCIA, SIAC, Swiss or HKIAC regimes.

EA is no longer justified merely because it is fast. It is justified because it preserves the conditions under which arbitration remains meaningful. At the same time, a common feature of these frameworks is the acceptance of certain intrinsic limits. Emergency arbitrators are temporary, their decisions are provisional and their authority is derivative rather than inherent. None of the institutions attempt to collapse EA into the arbitral tribunal or replace courts entirely. This restraint shows that such a decision was taken under full acknowledgement of EA operating at the edge of consent-based adjudication.

For contemporary purposes, this comparative landscape serves a particular function. It offers a clear backdrop against which future reforms can be measured. The innate contradictions between these regimes reveal underlying choices concerning urgency, legitimacy, enforceability and institutional ambition. These choices clearly prove to be crucial in evaluating whether EA can be accommodated within the domestic legal system, which remains ideologically tethered to the preceding arbitration models[59].

The next step, therefore, is not to abstractly ask which institutional framework may fit the best. It is to ask which elements of such frameworks can be meaningfully adapted without

[56] Jake Lowther & Frederik Hummelmose, *SCC Practice Note: Emergency Arbitrator Decisions Rendered 2023–2025 and Reflections on 15 Years* at ch. 3 (SCC Arbitration Institute, Jan. 2026).
[57] *International Arbitration Rules,* Art. 37(2) (Int'l Centre for Dispute Resolution) ["ICDR Rules"].
[58] SCC Rules, app. II, art. 9(1).
[59] Jenna Anne de Jong, *Enforceability of Interim Measures and Emergency Arbitrator Decisions*, Norton Rose Fulbright (May 2018), https://www.nortonrosefulbright.com/enin/knowledge/publications/6651d077/enfor-ceability-of-interim-measures-and-emergency-arbitrator-decisions.

destabilising the statutory foundations of arbitration. The inquiry thus establishes the analytical framework for the examination that follows.

IV. Emergency Arbitration in Judicial Limbo: The Indian Position Before Amazon v. Future Retail

Before emergency arbitration was carried any meaningful judicial footing in India, its position within the statutory framework of the 1996 Act remained uncertain[60]. Questions regarding the primacy of seat, the legitimacy of the adjudicatory body yet to be constituted and the enforceability of interim measures remained surfacing, often in a manner which kept the procedural legitimacy of emergency intact while denying to accord it any legal consequences[61]. This pattern of adjudication is neither accidental nor inconsistent but portrays a sincere adherence to the structure of the statute itself.

The jurisprudence leading up to *Amazon v. Future Retail*[62] through *Raffles Design International India Private Limited & Ors. v. Educomp Professional Education Limited & Ors.* ["**Raffles Design**"][63], *HSBC PI Holdings (Mauritius) Ltd. v. Avitel Post Studioz Ltd. & Ors.* ["**Avitel**"][64] and *Ashwani Minda & Ors. v. U-Shin Ltd. & Ors.* ["**Ashwani Minda**"][65] reveals a judiciary willing to accommodate emergency arbitration in practise yet reluctant to assimilate it into the statutory framework, choosing instead to keep at its arm's length.

A. Raffles Design: Acknowledged in Procedure, Absent in Statute

The decision in *Raffles Design* represents one of the earliest and most sustained judicial engagement with emergency arbitration in India. The Delhi High Court was confronted with an emergency order issued under the SIAC Rules in a Singapore-seated arbitration, and the question that followed was not of formal recognition but practical effect- could such an order

[60] Jyoti K. Chaudhary, Sidharth Sharma & Bushra Alam, *The Scope of Emergency Arbitration in India: An Overview*, Mondaq (Sept. 22, 2025), https://www.mondaq.com/india/civil-law/1680430/the-scope-of-emergency-arbitration-in-india-an-overview.

[61] Aanchal Jain, *Resolving the Issues Arising from Emergency Arbitration*, IndiaCorpLaw (Feb. 7, 2018), https://indiacorplaw.in/2018/02/07/resolving-issues-arising-emerging-arbitration/.

[62] Amazon.Com NV Investment Holdings LLC v. Future Retail Ltd., (2022) 1 SCC 209 (India) ["Amazon v. Future Retail"].

[63] Raffles Design International India (P) Ltd. v. Educomp Professional Education Ltd., 2016 SCC OnLine Del 5521 (India) ["Raffles Design"].

[64] Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd., (2021) 4 SCC 713 (India) ["Avitel"].

[65] Ashwani Minda v. U-Shin Ltd., 2020 SCC OnLine Del 1648 (India) ["Ashwani Minda"].

be enforced in India[66], or function as a restraint on proceedings under Section 9 of the 1996 Act[67]?

The court's answer ultimately depended on how the legislation was structured. It's analysis rested heavily upon the history and purpose of Section 9, particularly as reiterated by the 2015 amendment to section 2(2)[68]. Relying upon the 176[th][69] and 246[th][70] Law Commission Reports and the Government's Consultation article, the court duly took a note of the primary concern that drove Section 9's extension to foreign-seated arbitrations, that is to ensure that parties were not left without any real remedy when assets happened to be located in India.

The amendment was neither treated as a direct gateway for new arbitral mechanisms, nor as a back-door recognition of interim powers exercised by a tribunal that had not yet been constituted. Such a distinction turned out to be crucial insofar as the recognition and enforcement of interim measures under Article 17H[71] of the UNCITRAL Model law is concerned because the court upon it's contemplation, was of the opinion that the Indian statute carries no parallel provision. Section 17[72], by its own terms, was held to be confined to India-seated arbitrations. The outcome followed naturally, the emergency arbitrator's order was not enforceable under the Act and could only be pursued, if at all, through a separate civil action[73].

Equally telling was the court's decision to decline the treatment of emergency arbitration as a constraint on its own jurisdiction. Further, It was clarified that Section 9 is not an enforcement mechanism for arbitral determinations but an independent judicial power to assess whether interim protection is needful under particular circumstances. The existence of an emergency award neither displaced that discretion nor curtailed the court's discretion. A party was not barred from seeking interim relief merely because similar relief had been granted or refused by

[66] Monalisha Chowdhury, *View of Indian Courts Towards Implementing the Interim Orders of Emergency Arbitrators*, Mondaq (Sept. 1, 2020), https://www.mondaq.com/india/arbitrationdisputeresolution/980750/view-of-indian-courts-towards-implementing-the-interim-orders-of-emergency-arbitrators.
[67] 1996 Act, § 9.
[68] Arbitration and Conciliation (Amendment) Act, 2015, § 2(2) (India) ["2015 Amendment"].
[69] Law Commission of India, *One Hundred and Seventy-Sixth Report on The Arbitration and Conciliation (Amendment) Bill, 2001* (Sept. 2001).
[70] Law Commission of India, *Report No. 246: Amendments to the Arbitration and Conciliation Act, 1996* (Aug. 2014).
[71] Model Law, Art. 17H.
[72] 2015 Amendment, § 17.
[73] *Raffles Design*, at ¶ 99.

an emergency arbitrator[74].

What emerges from *Raffles Design* is a carefully maintained separation. Emergency arbitration was acknowledged as a procedural step within the arbitral process, but one without any direct statutory weight[75].

B. HSBC-Avitel: Section 9 as an Independent Judicial Pathway

The Supreme Court adopted a similar, though noticeably more cautious approach, in the *Avitel* case. The main question being dealt with in this case arose from a Section 9[76] petition connected to a foreign-seated arbitration in which emergency arbitration proceedings had already taken place in Singapore. The parties' non-compliance with the emergency arbitrator's directions merely formed part of the factual backdrop never moving beyond the margins[77].

In granting interim protection, the Court confined itself to the statutory framework of Section 9 and repeatedly emphasised the prima facie nature of its findings. The emergency order did not carry any legal authority, nor did it function as a reference point for the court's reasoning. Relief was granted because the Court was satisfied, on its own assessment, that the statutory threshold had been met.[78]

Notably, the Court refrained from characterising the emergency arbitrator as an "arbitral tribunal" under Section 2(1)(d)[7980]. There was no suggestion that emergency determinations could be enforced through Sections 17[81] or 27[82], nor any attempt to interpret emergency arbitration in a manner consistent with the structure of the 1996 Act. Even when the courts recognised that the emergency proceedings mattered in practice, they still didn't give them full legal backing.

Avitel thus carried forward the logic of *Raffles Design*. Emergency arbitration remained external to the statute as it was still recognised as part of the parties' chosen process, but not

[74] *ibid*, at ¶ 100.
[75] *ibid*, at ¶ 101.
[76] 1996 Act, § 9.
[77] *Avitel*, at ¶ 22.
[78] *ibid*, at ¶ 24.
[79] 1996 Act, § 2(1)(d).
[80] *Avitel*, at ¶ 10.
[81] 2015 Amendment, § 17.
[82] 1996 Act, § 27.

absorbed into the legal reasoning governing interim relief. Hence, Section 9[83] continued to operate independently[84].

C. Ashwani Minda: Misplaced Reliance on Pre-BALCO Logic in a Post-Amendment Regime

In *Ashwani Minda.*, the Delhi High Court was required to examine the maintainability of a petition under Section 9 of the Arbitration and Conciliation Act, 1996 in the context of a foreign-seated arbitration where the parties had already invoked emergency arbitration under the Japan Commercial Arbitration Association (JCAA) Rules[85]. While the factual backdrop was relatively circumscribed, the issues raised went to the core of how far Indian courts were willing to accommodate EA within the statutory scheme prior to its later judicial acceptance.

The Court first examined the dispute resolution clause and noted that the seat of arbitration and the applicable institutional rules depended on which party initiated proceedings. Since arbitration was invoked by the Indian entity, the seat shifted to Japan and the JCAA Rules applied, a position that was not in dispute[86]. Proceeding on the accepted basis that the arbitration was an international commercial arbitration seated outside India, the Court, relying on the BALCO case and the 2015 amendment to Section 2(2)[87], reaffirmed that Section 9 could apply to foreign-seated arbitrations unless expressly or impliedly excluded, with such exclusion capable of being inferred from the contractual arrangement[88].

The Court ultimately held that, on the facts, the parties had impliedly excluded the applicability of Section 9. Emphasis was placed on the JCAA Rules, which were found to provide a detailed and comprehensive mechanism for interim and emergency relief. A factor of particular relevance was that emergency measures under the JCAA Rules are deemed to be interim measures of the arbitral tribunal once constituted.[89] When read together with the arbitration

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[83] *ibid*, § 9.
[84] Indranil Deshmukh, Vineet Unnikrishnan & Samhita Mehra, *Avitel v. HSBC – Finality on the Question of Arbitrability when Allegations of Fraud are Raised*, Cyril Amarchand Mangaldas Blog (Aug. 28, 2020), https://corporate.cyrilamarchandblogs.com/2020/08/avitel-v-hsbc-finality-on-the-question-of-arbitrability-when-allegations-of-fraud-are-raised-smm/.
[85] *Ashwani Minda*, at ¶ 47.
[86] *ibid.*
[87] 1996 Act, § 2(2).
[88] *Ashwani Minda*, at ¶ 49.
[89] *ibid*, at ¶ 54.

clause, this framework was held to reflect a conscious intention to exclude recourse to Indian courts.

Additionally, the applicants had already approached the emergency arbitrator and obtained a detailed order refusing relief with no significant change in the circumstances either[90]. Allowing a Section 9 petition in such a situation was viewed as permitting a second attempt at securing the same relief, which the Court considered incompatible with the procedural arrangement agreed upon by the parties[91].

While the Court's inclination to respect party autonomy and avoid parallel proceedings is understandable, the reasoning adopted raises certain difficulties. The conclusion that Section 9[92] was impliedly excluded appears to rest on an application of pre-BALCO logic to a post-amendment framework. The mere choice of a foreign seat cannot, by itself, imply exclusion of Section 9 without undermining the very purpose of the proviso to Section 2(2)[93], which was introduced to preserve access to interim relief in such cases[94].

Similarly, the selection of institutional rules, standing alone, should not be treated as sufficient to exclude Section 9. The absence of an express provision permitting court intervention, as found in the SIAC or ICC Rules, does not necessarily imply that parties intended to relinquish their right to seek judicial protection. Such provisions are clarificatory in nature and do not themselves confer jurisdiction[95]. To infer exclusion from silence risks overstating the significance of institutional drafting choices.

D. The Pre-Amazon Position

Before *Amazon v. Future Retail*, Indian courts approached emergency arbitration with caution. In *Raffles Design* and *Avitel*, emergency orders were acknowledged but carried no binding effect, and Section 9 remained the sole route for interim relief[9697]. *Avitel* maintained this strict

[90] *ibid.*
[91] *ibid*, at ¶ 55.
[92] 1996 Act, § 9.
[93] 2015 Amendment, § 2(2).
[94] Ashish Kabra & Vyapak Desai, *India — Parties Cannot Apply to Courts After Emergency Arbitration (Ashwani Minda v U Shin)*, Nishith Desai Associates (published on Lexis®PSL Arbitration, June 17,2020), https://nishith-desai.com/fileadmin/user_upload/pdfs/NDA%20In%20The%20Media/News%20Articles/200626_A_India_parties_cannot_apply_to_courts_after_emergency_arbitration.pdf.
[95] *ibid.*
[96] *Raffles Design*, at ¶ 100.
[97] *Avitel*, at ¶ 24.

separation, while *Ashwini Minda* controversially suggested that Section 9[98] could be impliedly excluded where institutional rules offered a complete emergency mechanism[99]. Across these decisions, courts treated EA as a procedural choice by parties without conferring statutory weight, balancing practical utility with adherence to the principle Act. This prduent evolution highlighted the judiciary's effort to accommodate party autonomy while preserving the independent authority of Indian courts.

V. From Exception to Uncertainty: The Road Ahead After Amazon v. Future Retail

The watershed moment in Indian discourse on emergency arbitration is best located in *Amazon NV Investment Holdings LLC v. Future Retail Ltd*[100]. The Supreme Court decision was significant as it not only resolved a dispute carrying substantial commercial stakes but also recognised an emergency arbitrator's award under Section 17(1)[101] for the very first time and allowed enforcement under Section 17(2)[102]. It would, however, be far too great a leap to conclude this move as an unqualified endorsement for EA. The Court demonstrated a willingness to adopt a more enforcement-oriented reading of the statute by grounding the emergency arbitrator's authority in party autonomy and the agreed institutional rules[103]. Additionally, it brought EA within the understanding of the concept of arbitral authority under the Indian legal framework, thereby shifting attention away from the long-standing debate over whether such mechanisms are alien to the statutory framework, and towards the substantive adoption of a more accommodative approach.

The reasoning adopted in *Amazon v. Future Retail* exposes the inherent fragility of the existing legal position. The recognition of emergency award was heavily reliant on the specific facts and contextual circumstances of the case, rooted in the post-2015[104] architecture of Section 17[105], the SIAC Rules, and a carefully calibrated effort to avoid legislative overreach. The judgement not only fell short of acknowledging emergency arbitration EA's statutory power

[98] 1996 Act, § 9.
[99] *Ashwani Minda*, at ¶ 55.
[100] Future Coupons (P) Ltd. v. Amazon.Com NV Investment Holdings LLC, (2022) 6 SCC 121 (India).
[101] 2015 Amendment, § 17(1).
[102] *ibid*, § 17(2).
[103] Ankit Goyal, *Indian Supreme Court Enforces SIAC's Emergency Arbitrator Order in India-Seated Arbitration: Impact and Consideration for Foreign Investors*, Allen & Gledhill (Sept. 22, 2021), https://www.allenandgledhill.com/perspectives/articles/19285/sgkh-indian-supreme-court-enforces-siac-s-emergency-arbitrator-order-in-india-seated-arbitration-impact-and-consideration-for-foreign-investors.
[104] 2015 Amendment.
[105] *ibid*, § 17.

but also did not articulate its status across various institutional frameworks. As a result, the judgement operates less as a settled anchor but more as a carefully crafted exception. The corresponding ratio decidendi is not easily transferrable into situations involving divergent institutional rules or cases where Section 17 is unavailable, leaving a broader question concerning consistency and predictability to be determined[106].

Finally, the judgment demonstrates with clarity why judicial accommodation on its own cannot suffice. The enforceability of emergency arbitration continues to depend on interpretive goodwill rather than legislative clarity, further diluting its implementation and creating new problems of procedural variance as well as strategic inconsistencies. Such overreliance on case-specific reasoning keeps courts positioned as ultimate arbiters of urgency perpetuating the same rot within the system which EA aimed to specifically reduce. The decision sharpens the policy question instead of settling it. Therefore, establishing that EA can be made to work within the larger framework of Indian Arbitration but it can no longer sustain through judicial interpretation alone. It is this unresolved tension that sets the stage for the final inquiry of this article: How should such statutory intervention be drafted to consolidate the gains of *Amazon v. Future Retail* and provide a coherent legislative framework for EA rather than leaving its legitimacy to be determined on a case-by-case basis.

A. Stretching Section 9 Beyond Design: The Limits of Judicial Substitution

Any discussion on the future of emergency arbitration in India is incomplete without acknowledging the notion that institutional practice of Indian Arbitration has moved at a much faster pace than statutory imagination. EA is no longer an experimental device or a procedural innovation. It has emerged as a standard feature of international arbitration, relied upon by commercial parties in the majority of cases. However, as seen previously, India has always been cautious or averse to the idea of its institutionalization and has outrightly denied its application[107]. Such a mismatch transcends theoretical boundaries and incurs an ostensible impact on party confidence, enforcement strategy and India's growing credibility as an

[106] Ashish Virmani, *Rekindling the Debate on Enforcement of Foreign-Seated Emergency Awards in India*, Kluwer Arbitration Blog (Oct. 3, 2021), https://legalblogs.wolterskluwer.com/arbitration-blog/rekindling-the-debate-on-enforcement-of-foreign-seated-emergency-awards-in-india/.

[107] Nusrat Hassan & Sameer Thakur, *Emergency Arbitration Under Indian Law: Navigating a Complicated Maze*, Int'l Arbitration & Mediation Ctr. (IAMC), https://iamch.org.in/emergency-arbitration-under-indian-law-navigating-a-complicated-maze.

arbitration friendly jurisdiction.

The current statutory framework centred around the Arbitration and Conciliation Act, 1996 was clearly not designed with such a mechanism of expedited dispute resolution in mind. The act is essentially based on the Model Law and its architecture assumes arbitral authority flowing from a duly constituted arbitral tribunal throughout multiple provisions. Interim measures are tribunal-focused while judicial intervention is discouraged and positioned as a safety valve. EA which fundamentally operates before the juncture of tribunal constitution, sits at a conflicted position within this design.

The Indian response to such a dichotomy has largely been concerned with stretching the existing provisions far beyond what their legislative intent originally was, like observed in section 9[108]. This section is now used as a pre arbitral remedy, a post arbitral enforcement aid and in some cases, an alternative to arbitral interim measures while it was aimed at procuring interim relief under specific cases. The procedures enshrined in section 9 suffer from the same problems as conventional arbitration including but not limited to public hearings, jurisdictional skirmishes and procedural formalism. Hence, It plummets into the same pitfalls it sought to resolve by the virtue of its counter-productive nature.

The flaws in Section 9 should not be understood as merely incidental but majorly entrenched in design. The legislative intent behind Section 9 was never an attempt to replicate a specialised emergency adjudication mechanism. It was framed as an enabling provision and not a default pathway for interim relief even if institutional arbitration might be better suited to hear the case on its merits.

VI. Suggestions

EA is not a new topic under Indian jurisprudence. There have been a significant amount of expert committee reports and other forms of legal literature recommending statutory institutionalization of the mechanism in some way or form but to no avail. There appears to be a collective judicial caution on the issue, which, in effect, borders on a studied disregard of the possibilities and safeguards that this mechanism offers to an emerging power in the evolving global order.

[108] 1996 Act, § 9.

Recent policy discussions like the Expert Committee Report of 2024[109] clearly recognize emergence of EA within the wider context of international arbitration and urges Indian jurisprudence to align with contemporary developments. The Report marks a clear departure from earlier caution and acknowledges the uncomfortable reality that reliance on Section 9 alone is neither efficient nor desirable. It identifies the absence of statutory recognition as a source of doubt and recommends clear legislative intervention to address the problem of pre-constitution arbitration in a streamlined manner rather than beating around the bush.

Similarly, the HLC report on arbitration reform ["**Saikrishna Report**"][110] while slightly less expansive in tone clearly highlights the need to align Indian Arbitration law with the practices which atleast meet the industry standard. The report is cognizant of India's aspirational dream of becoming an international arbitration hub but also acknowledges its impossibility as long as the legal framework remains hostile towards mechanisms which are practically indispensable to the functioning of the system itself.

Hence, we can consider EA to be a litmus test for the new regime as it is not merely focused on interim relief. It primarily concerns itself with the possibility of Indian law accommodating procedural innovation without losing doctrinal coherence. A popular avenue of change which has been endorsed implicitly by the aforementioned reports is the insertion of a dedicated provision within Section 9, thus recognizing emergency arbitrators as a distinct category of arbitral authority with limited purposes. Such a provision will clarify that emergency arbitrators appointed under predetermined rules are deemed to fall within the authoritative structure. This avoids the conceptual leap that courts have historically resisted while still conferring legal reclamation.

Moreover, such a proposed amendment necessitates a reclamation of Section 17. In its present state, Section 17 confers interim powers only on the arbitral tribunal and links enforceability to tribunal-issued orders. An airtight and well-drafted amendment could extend this framework to cover emergency orders with subjugation to appropriate safeguards. Such an action would

[109] See Expert Committee on Arbitration Law, *Report of the Expert Committee Members on Arbitration Law*, at https://www.scobserver.in/wp-content/uploads/2025/02/report-of-the-expert-committee-members-on-arbitration-law-2-526205.pdf (final report submitted to the Ministry of Law & Justice) (on file with Supreme Court Observer).
[110] Ministry of Law & Justice, Government of India, *Report of the High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India* (30 July 2017), at https://legalaffairs.gov.in/sites/default/files/Report-HLC.pdf (High Level Committee report on arbitration reform and institutionalisation).

be undertaken to remedy the principal concern surrounding emergency arbitration in India, namely its enforceability. Without some form of statutory backing, emergency orders remain vulnerable to its non-binding nature forcing parties back into court even after obtaining urgent relief.

Another facet to be noted by any potential drafters is the relationship between EA and courts. Recognition of EA should not result in the exclusion of judicial remedies. Rather than functioning as a parallel or competing mechanism, it should operate as a residual safeguard, invoked only where EA is unavailable. This would reduce duplication and encourage parties to exhaust arbitral remedies before approaching courts, without imposing an inflexible exhaustion requirement.

The proposed amendments such as Section 9A reflect an attempt to move in this direction. However, without calculated drafting, these provisions are at a risk of muddling an already diluted field. The law must clearly articulate whether EA is optional or preferred and how it interacts with the courts' jurisdiction. Silence on such crucial issues would simply reproduce existing uncertainty in a new statutory form.

When analyzed from a policy standpoint, statutory recognition of EA carries significant symbolic importance. It acts as a signal of legislative confidence in arbitral institutions and party autonomy. This gives a reassurance to foreign investors on the competence of the Indian framework on procedural choices that are embedded within arbitration agreements. Further, it also reduces the negative perception of Indian courts acting as the custodians of arbitration rather than active facilitators. These signals hold importance especially in cross-border commerce where perception matters more than the result itself.

VII. Conclusion

Critically, any statutory recognition must be accompanied by judicial guidance. Amendments alone will not suffice if courts continue their conservative demeanor. These changes must be coupled with judicial training, interpretive clarity and consistency with approach to ensure smooth functioning. Courts must understand EA not as an encroachment of their own authority but a complementary mechanism designed to preserve the functioning of arbitration itself.

In conclusion, the case for statutory recognition rests on both a necessity and an opportunity.

Section 9, in its current form, is an imperfect instrument and cannot serve as a functional substitute for a well-drafted arbitration framework. Judicial improvisation has reached its limits and the global landscape has moved on. The ball is now in India's court- Can it keep pace with the demands of a changing legal landscape or stay tethered to the same thought process which has kept it behind all the first movers in an ever-evolving domain.