
EMERGENCY ARBITRATION IN INDIA: FROM JUDICIAL RECOGNITION TO LEGISLATIVE REFORM

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ABSTRACT

As courts worldwide face delays in delivering justice, arbitration has become a vital alternative for efficient dispute resolution. One of its most significant innovations is Emergency Arbitration (EA), which allows parties to seek urgent interim relief before an arbitral tribunal is constituted. While institutions such as SIAC and ICC have formally recognized EA, its legal status in India remains uncertain due to the absence of statutory recognition under the Arbitration and Conciliation Act, 1996. Indian courts, especially in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.* (2022), have acknowledged EA through the principle of party autonomy and Section 17 of the Act. However, ambiguity persists regarding foreign-seated arbitrations, enforcement mechanisms, and appellate procedures. This paper examines the development of EA in India, compares international practices, and highlights the need for legislative reform. It concludes that incorporating the concept of an “Emergency Arbitrator” and clarifying enforcement provisions are essential steps for India to establish itself as a credible global arbitration hub.

While the Courts around the world buckle under the pressure of delayed justice, Arbitration stands as a credible and increasingly indispensable method of dispute resolution. The arbitral framework is structured upon principles like party autonomy, confidentiality, procedural flexibility and above all efficiency. In the recent years, the most significant development in the world of arbitration has been Emergency Arbitration (EA). EA enables parties to seek urgent interim relief before the arbitral tribunal has been formed, it's crucial in situations where urgent relief is sought for the preservation of status quo, prevent irreparable harm or preserve the subject matter of the dispute. These orders are passed by an Emergency Arbitrator and his orders are binding, confidential and are generally not open to appeal which ensures efficacy and efficiency, while ensuring that the Arbitral Tribunal can revise the order at a future date. While EA is widely recognized by institutions like SIAC, ICC and HKIAC, the legal status of EA in India

still stands in a gray area. The Arbitration and Conciliation Act (Hereby referred to as the Arbitration Act) does not give statutory recognition to the concept of EA or Emergency Arbitrator. Despite this legislative gap Indian courts through landmark cases have incorporated the concept of EA into the Indian legislation, yet the pressing requirement for statutory recognition looms large, as India aims to become an international hub for Arbitration.

EA: A Necessity for Relevancy

India has been progressing positively towards becoming a legislation that nurtures a legal environment for growth of Arbitration as a sought-after method of dispute resolution. The Permeant Court of Arbitration (PCA) has announced that they are opening a permanent office in Delhi, elevating the global standing of India as an arbitration hub.¹ The President of Arbitration Bar of India, Senior Advocate Gourab Banerji has been appointed as a member of PCA at the headquarters at Hague.² Domestic Institutions like Mumbai Centre for International Arbitration (MCIA) has seen 48% growth in cases compared to 2023 and the Delhi International Arbitration Centre (DIAC) recorded its highest activity in 2023 with 9,707 cases and 8,153 hearings which is four times the cases listed in 2015.³ The Above-mentioned statistics showcase the future of India as an Arbitration Hub and the significant strides India has been making in the recent years, but this momentum doesn't act as mere encouragement, but also underscores a need for having a robust Arbitration regime and compliance with international standards. The inclusion of EA is one such requirement that India must undertake in order to continue attracting parties towards seeking Arbitration in India.

EA Across other Arbitral Forums:

Before we understand the status of EA in India and suggest specific reforms, we must understand how other forums have incorporated the concept of EA as an addition to their institutional rules. Under SIAC rules 2025, EA comes under rule 12 schedule 1.⁴ A party may seek emergency relief even before filing the notice of Arbitration, provided the notice is filed within 7 days.⁵ The President of SIAC appoints an Emergency Arbitrator within 24 hours,⁶ and under urgent situations the Arbitrator may issue a Protective Preliminary Order (PPO) without hearing the other side, which expires within 24 hours if not further

¹ PCA to Open in Delhi, GLOBAL ARBITRATION REVIEW (Sept. 19, 2024), <https://globalarbitrationreview.com/article/pca-open-in-delhi>

² Arbitration Bar of India, Home, <https://arbitrationbarofindia.com>

³ Mumbai Centre for International Arbitration, *Annual Report 2024* (forthcoming).

See also Mumbai Centre for International Arbitration, Caseload Data, <https://mcia.org.in>
Delhi International Arbitration Centre, *Annual Statistics 2023*, <https://dhcdiac.nic.in>

⁴ Singapore International Arbitration Centre, *Arbitration Rules* (2025), <https://www.siac.org.sg>

⁵ Id. sched. 1, ¶ 2.

⁶ Id. ¶ 3.

confirmed.⁷ The final Emergency Order must be passed within 14 days unless extended.⁸

Under the ICC Arbitration Rules 2021, EA is addressed in Article 29 and Appendix V.⁹ A party can apply for emergency relief before the case file is transmitted to the tribunal. The President of the ICC Court appoints an Emergency Arbitrator within 2 days, and the arbitrator must issue a decision within 15 days from the date the file is transmitted.¹⁰ These decisions are binding, though not final, on the main tribunal.

Status of Emergency Arbitration in India: A legal Lacuna

The effectiveness of EA is based upon *Fumus Boni Iruis* (the party asking for the relief will probably prevail on the merits) and *Periculum in Mora* (if the request isn't granted right away the loss cannot and will not be made up for in damages).¹¹ The Arbitration Act, the primary legal statute that governs arbitration in India does not give statutory recognition to EA. This leads to confusion and inconsistency as people often opt ICC or SIAC institutional rules for their arbitration procedure and these institutions allow for EA, hence when it comes to enforcement of Emergency orders, Indian courts struggle with a lack of statutory guidance. The courts have found a way around this legal loophole, parties can seek emergency awards under Article 17 of the Arbitration Act,¹² and this was ruled in the ratio of *Amazon.Com NV Investment Holdings LLC v. Future Retail Ltd* (2022).¹³ In *Amazon v. Future* the court recognized the principle of party autonomy as highlighted in previous judgments of the court,¹⁴ and applied it in the specific context of emergency arbitration. The court also reasoned that emergency orders come under the definition of "order" under section 17 (a) of Arbitration Act,¹⁵ as long as the parties have agreed to a set of institutional rules that allow for emergency arbitration. Furthermore, the court ruled that, emergency orders can be enforced under section 17 (2) of the Arbitration Act.¹⁶ Finally the concept of EA was recognized as it had no conflict with Indian law and "Emergency Arbitrators" came under the concept of "Arbitration Tribunal" under section 2 (1) (d) of the Arbitration Act.¹⁷

⁷ Id. ¶ 10.

⁸ Id. ¶ 17.

⁹ Int'l Chamber of Com., *ICC Arbitration Rules* (2021), <https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/>, art. 29, app. V.

¹⁰ Id. app. V, arts. 2(1), 6(4).

¹¹ Elamathi J., Enforcement of Emergency Arbitration: Indian Standpoint, 3 **Indian J. Integrated Res. L.** 1 (2023).

¹² Arbitration and Conciliation Act, No. 26 of 1996, § 17 (India).

¹³ *Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd.*, (2022) 1 SCC 2009 (India).

¹⁴ *Bharat Aluminium Co. v. Kaiser Aluminium Tech. Servs. Inc. (BALCO)*, (2012) 9 SCC 552 (India); *Sumitomo Heavy Indus. Ltd. v. ONGC Ltd.*, (1998) 1 SCC 305 (India).

¹⁵ Arbitration and Conciliation Act, No. 26 of 1996, § 17 (India).

¹⁶ *Id.*

¹⁷ Arbitration and Conciliation Act, No. 26 of 1996, § 2(1)(d) (India).

Despite the landmark judgment of the Supreme Court EA persists to be a gap in the Indian arbitration mechanism. There are several legal loopholes that still lead to ambiguity regarding the status of EA in India. Despite its recognition the powers and rules regarding emergency arbitration are unclear as they have not been laid down by *Amazon v. Future* or by a statutory amendment. Also, the judgment of the supreme court recognized emergency arbitration with the pretext that the *lex arbitri*, or the seat of arbitration was India.¹⁸ The court failed to clarify what would be the status of foreign seated arbitration which seek enforcement of emergency orders under Indian law.¹⁹ Furthermore, for enforcement of an emergency order parties have to approach the civil courts under section 17 (2) of the Arbitration Act, defeating the inherent purpose of expedited nature of arbitration. Finally, there is lack of clarity in terms of an appellate mechanism against emergency awards and status of emergency arbitration in ad-hoc arbitrations.

Along with the judicial recognition given to EA, there are several other significant organizations that have tried to incorporate EA into their procedure. The Delhi International Arbitration Centre (DIAC) has incorporated “emergency arbitration” into part III of the rules,²⁰ and the appointment, powers, duration, and process of “emergency arbitrator” has been laid down in section 18A.²¹ The International Chambers of Commerce in India has incorporated EA and emergency arbitrator into appendix V Article 29.²² Terms of EA and Emergency Arbitrator are incorporated into section 33 and section 36(3) of International Commercial Arbitration (ICA).²³ Furthermore, provisions of EA and Emergency Arbitrator are listed in Part IV, Section 20 r/w Schedule A and Schedule D of the Madras High Court Arbitration Centre (MHCAC) Rules, 2014.²⁴ Finally, Mumbai Centre for International Arbitration rules (2016) have also incorporated EA effective from June 15, 2016.²⁵

Conclusion: From Recognition to Reform

The 246th law commission suggested the insertion of emergency arbitration into section 2 (1) (d) of the

¹⁸ Herbert Smith Freehills LLP, *Indian Supreme Court Issues Landmark Decision: Emergency Arbitrator Awards in India-Seated Arbitrations Are Directly Enforceable* (Sept. 7, 2021), <https://www.debevoise.com/insights/publications/2021/09/indian-supreme-court-issues-landmark-decision>

¹⁹ *Id.*

²⁰ Delhi Int'l Arb. Ctr., *DIAC (Arbitration Proceedings) Rules 2023*, <https://dhcdiac.nic.in/diac-arbitration-proceedings-rules-2018/> (last visited June 16, 2025); see also Elamathi, *supra* note 11, at 8.

²¹ *Id.*

²² Int'l Chamber of Com., *ICC Rules of Arbitration* (in force Jan. 1, 2021), <https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/#block-accordion-29>.

²³ Indian Council of Arb., *Rules of International Commercial Arbitration* (as amended Apr. 1, 2016), <https://icaindia.co.in/pdf/Rules%20of%20International%20Commercial%20Arbitration.pdf>.

²⁴ Dep't of Stationery & Printing, Gov't of Tamil Nadu, *Tamil Nadu Gov't Gazette (Extraordinary)*, No. 11_III_2 (2021), https://www.stationeryprinting.tn.gov.in/gazette/2021/11_III_2.pdf.

²⁵ Mumbai Ctr. for Int'l Arb., *MCIA Rules 2016*, <https://mcia.org.in/mcia-rules-2016.php>.

Arbitration Act.²⁶ Implementation of this recommendation will provide statutory recognition to the concept of emergency arbitration and dispel the current confusion and uncertainty. Along with this, insertion of the position of “Emergency Arbitrator” and a clear outline of his/her powers will provide further certainty to parties seeking emergency proceedings. Furthermore, along with abovementioned reforms, a clear appellate procedure should be outlined by legislative initiative and enforcement of emergency awards upon cross-border arbitration, should be mandated through an amendment of part II of the Arbitration Act. Finally, parties should be allowed to approach the arbitral tribunal for enforcement of emergency awards passed by an emergency arbitrator, bypassing painstaking litigation in civil courts, expediting the procedure as intended by the Arbitration Act. The future of India as the axis of arbitration cannot rest merely upon judicial ingenuity alone, but upon legislative clarity. Without statutory recognition and structural reforms, the vision of India as an arbitration hub risks becoming a mere illusion. It is therefore imperative that the legislature implements these crucial reforms to firmly establish India as a progressive and legally robust seat of arbitration internationally.

²⁶ Law Comm'n of India, *Report No. 246: Amendments to the Arbitration and Conciliation Act, 1996* (2014)