

A LEGAL FRAMEWORK OF EMERGENCY ARBITRATION AWARDS IN INDIA

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ABSTRACT

Emergency arbitration is an arrangement that “allows a disputing party to apply for urgent interim relief before the arbitral tribunal is formally constituted.” The Supreme Court in a landmark judgment (*Amazon v Future*) has clarified the enforceability of emergency arbitration awards in India by stating that such awards can serve as interim orders under Section 17(2) of the Indian Arbitration Act. This judgment reflects Indian judicial support for arbitration and respect for parties opting for emergency arbitration provisions from entities. However, the enforceability of emergency arbitration awards in foreign-situated arbitrations remains more complex. While the *Amazon v Future* judgment made necessary progress, the issue of enforcing foreign emergency awards remains unclear. In such situations, parties may need to rely on Section 9 of the Act for interim relief, which does not allow direct enforcement of foreign emergency awards but enables Indian courts to grant similar interim relief to foreign arbitrations. In the present paper, the researcher has attempted to explain the enforceability of emergency arbitration awards through his research. In this context, the legal provisions and the approach of courts in India have been studied. The decision also highlighted the absence of any express or implied restriction within the Arbitration Act that would prohibit emergency arbitration proceedings or invalidate awards resulting from them. Furthermore, the Supreme Court's decision reflected the broader pro-arbitration stance adopted by the Indian judiciary, which aims to promote arbitration as an effective and efficient mechanism for dispute resolution, thereby reducing the burden on the national court system. The legal rationale behind the Supreme Court's decision was based on the principle of party autonomy. The Court emphasised that commercial parties have the freedom to agree to be governed by institutional rules for emergency arbitration, and having made such a choice, they cannot later seek to avoid the consequences of such rules.

KEYWORDS: - Supreme Court, Legal Framework, Enforceability & Emergency Arbitration Awards

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INTRODUCTION

Emergency arbitration is an arrangement that “allows a disputing party to apply for urgent interim relief before the arbitral tribunal is formally constituted.”² The enforceability of emergency awards in arbitrations established abroad remains a complex issue, with some courts recognising their enforceability, while others express concerns over procedural irregularities and public policy. Following a landmark decision by the Supreme Court, emergency arbitral awards are generally enforceable in India, particularly in arbitrations established in India. The decision clarified that such awards are enforceable under Section 17(2) of the Indian Arbitration Act, and are treated as interim orders of the arbitral tribunal. In this paper, the author attempts to analyse the legal provisions and court decisions with reference to the enforceability of emergency arbitration. The Indian Arbitration Act does not contain any specific provisions with respect to emergency arbitration. The Indian Arbitration Act is based on the fundamental principle of party autonomy. Under Sections 2(6), 2(8), and 19(2) of the Indian Arbitration Act, parties are given the right to decide on the procedure and rules governing their arbitration. This freedom includes the use of references to the rules of arbitral institutions in their arbitration agreement. However, the Act does not define the emergency arbitrator, his powers, the procedure for his appointment, or the finality of orders or awards made by him. This is particularly evident and has been a cause of historical debate and uncertainty regarding the validity and enforceability of emergency arbitration awards in India.

LITERATURE REVIEW OF RESEARCH PROBLEM

The legal framework governing emergency arbitration awards in India is a developing area of law, with various studies and reports highlighting its potential benefits and challenges.

Benefits of Emergency Arbitration in India

Speed and Efficiency: Emergency arbitration provides a quick and efficient mechanism for resolving urgent disputes, with the entire process typically completed within 14-20 days.

² Alnaber, R., *Emergency Arbitration: Mere Innovation or Vast Improvement*, Arbitration International, Vol. 35, 2019, pp. 441-472.

Confidentiality: Emergency arbitration maintains the confidentiality of parties, which is essential for businesses and individuals seeking to resolve disputes without public scrutiny.

Uniformity and Efficiency: Emergency arbitration ensures uniformity and efficiency in dispute resolution, eliminating the risk of conflicting decisions in various jurisdictions.³

Challenges and Limitations- Enforceability: The enforceability of emergency arbitration awards in India is uncertain, particularly for foreign-seated arbitrations. Indian courts have indirectly enforced emergency awards as orders under Section 17 of the Arbitration and Conciliation Act, 1996, but there is a need for clarity on this issue.

Lack of Clarity: The Arbitration and Conciliation Act, 1996 does not provide clear guidelines on emergency arbitration, leading to confusion and inconsistencies in its application. **Recognition:** Emergency arbitration awards are considered "interim binding," and their recognition and enforcement face challenges due to the lack of legislation on the same.⁴

Recent Developments and Recommendations- Judicial Recognition: Recent judicial decisions, such as the Supreme Court's judgment in *Amazon v. Future Retail*, have recognized the enforceability of emergency arbitration awards in India-seated arbitrations.

Institutional Rules: Major Arbitral institutions in India, such as the Delhi International Arbitration Centre (DIAC) and the Mumbai Centre for International Arbitration (MCIA), have incorporated emergency arbitration provisions in their rules.

Recommendations for Improvement: To strengthen the mechanism of emergency arbitration in India, it is recommended to provide clarity in arbitration laws, maintain a panel of emergency arbitrators, and utilize technological resources for efficient dispute resolution.⁵

STATEMENT OF THE RESEARCH PROBLEM

³ At available on- <https://nliulawreview.nliu.ac.in/blog/the-way-forward-for-emergency-arbitration-in-india/>

⁴ At available on- <https://www.cadrnlud.in/post/navigating-jurisdictional-labyrinths-enforceability-of-emergency-awards-in-international-arbitration>

⁵ At available on-<https://www.mondaq.com/india/arbitration-dispute-resolution/1228202/enforcement-of-emergency-arbitration-the-indian-perspective> & <https://www.thearbitrationworkshop.com/post/the-role-of-emergency-arbitration-in-india-navigating-urgent-relief-in-arbitral-proceedings>

The legal framework governing emergency arbitration awards in India is plagued by ambiguities, inconsistencies, and enforcement challenges, which undermine the effectiveness of emergency arbitration as a dispute resolution mechanism. Despite the growing importance of emergency arbitration in India, there is a lack of clarity on the enforceability, consistency, and scope of emergency arbitration awards, leading to uncertainty and unpredictability for parties involved in arbitration proceedings.

RESEARCH OBJECTIVES

1. To analyze the legal framework governing emergency arbitration awards in India: Examine the provisions of the Arbitration and Conciliation Act, 1996, and institutional rules governing emergency arbitration in India.
2. To evaluate the effectiveness of emergency arbitration awards in India: Assess the impact of emergency arbitration awards on dispute resolution in India, including their enforceability, consistency, and speed.
3. To identify challenges and limitations: Identify the challenges and limitations of emergency arbitration awards in India, including ambiguities in the law, inconsistent institutional rules, and enforcement issues.
4. To provide recommendations for improvement: Provide recommendations for legislative or institutional reforms to improve the effectiveness of emergency arbitration awards in India.

RESEARCH GAP

The research gap lies in the lack of comprehensive analysis of the legal framework governing emergency arbitration awards in India, including the Arbitration and Conciliation Act, 1996, institutional rules, and judicial decisions. This study aims to fill this gap by providing a critical analysis of the legal framework and identifying areas for improvement to enhance the effectiveness of emergency arbitration in India.

RESEARCH QUESTIONS

1. What is the current state of the legal framework governing emergency arbitration awards in India, and how does it impact the effectiveness of emergency arbitration?

2. How do the provisions of the Arbitration and Conciliation Act, 1996, and institutional rules governing emergency arbitration in India affect the enforceability and consistency of emergency arbitration awards?
3. What are the challenges and limitations of emergency arbitration awards in India, and how can they be addressed through legislative or institutional reforms?
4. How does the Indian legal framework on emergency arbitration awards compare with international best practices? And what lessons can be learned from other jurisdictions?

HYPOTHESIS

The legal framework governing emergency arbitration awards in India is effective in providing a speedy and efficient mechanism for resolving urgent disputes, but its enforceability and consistency are hindered by ambiguities in the Arbitration and Conciliation Act, 1996, and varying institutional rules.

RESEARCH METHODOLOGY

Researcher adopted in this research doctrinal method with analytical. Here researcher Analysis of the Arbitration and Conciliation Act, 1996, institutional rules, and relevant case law.

SCOPE OF THE STUDY

The study will focus on the legal framework governing emergency arbitration awards in India, including: A) the Arbitration and Conciliation Act, 1996. B) Institutional rules governing emergency arbitration in India C) Relevant case law and judicial decisions. D) International best practices and comparative analysis with other jurisdictions.

SIGNIFICANCE OF THE STUDY

The study will contribute to a better understanding of the legal framework governing emergency arbitration awards in India and provide insights into the challenges and limitations of emergency arbitration in India. The study's findings and recommendations will be useful for policymakers, arbitration practitioners, and scholars interested in arbitration law and practice.

ENFORCEABILITY OF EMERGENCY ARBITRATION AWARDS IN INDIA

Several leading arbitration institutions have adopted rules providing for emergency arbitrators. While the applicability of such provisions has been widely debated, there is little experience in this regard, particularly with regard to the enforcement of such awards against a recalcitrant party. In India too, there have been proposals to adopt rules for emergency arbitrators. The Supreme Court in a landmark judgment (*Amazon v. Future*) has clarified the enforceability of emergency arbitration awards in India, holding that such awards can act as interim orders under Section 17(2) of the Indian Arbitration Act. This judgment reflects Indian judicial support for arbitration and the respect shown to parties who opt for emergency arbitration provisions from institutions.

The enforceability of orders made by emergency arbitrators is still questionable in most states, mainly because the primary mechanism through which enforcement is usually sought, the New York Convention, is silent on this issue. It is submitted that since the New York Convention applies only to arbitral awards, it excludes the possibility of enforcing interim measures and emergency arbitral awards. The UNCITRAL Model Law, on the basis of which many states adopt their arbitration acts, addresses interim relief adopted by arbitral tribunals, but without regulating its enforcement. Moreover, in the absence of a clear definition, it is also unclear whether the powers granted to arbitral tribunals can also extend to emergency arbitrators. However, in a number of jurisdictions, “arbitral provisional measures are enforceable through executive assistance of national judicial authorities”. Such countries include Switzerland, England, Germany, New Zealand and Egypt⁶

LEGAL FRAMEWORK OF AN EMERGENCY ARBITRATOR UNDER THE A&C ACT

Section 2(1)(d) of the A&C Act defines an arbitral tribunal to mean a sole arbitrator or a panel of arbitrators. Section 2(1)(d), which is based on the UNCITRAL Model Law on International Commercial Arbitration 1985, has not been amended since the A&C Act was passed by the Parliament of India in 1996, when the concept of emergency arbitration was practically unheard of. In 2014, the Law Commission of India issued the 246th Report proposing amendments to the A&C Act.⁷ Taking note of the rise of emergency arbitration, the Law Commission recommended that section 2(1)(d) of the A&C Act be amended to expressly include an emergency arbitrator where the rules of an arbitral institution provided

⁶at available on- <https://www.acerislaw.com/enforcement-of-emergency-arbitration-decisions/>

⁷Report No. 246, Amendment to the Arbitration and Conciliation Act 1996, August 2014, Chapter III

for the appointment of an emergency arbitrator. The Law Commission's recommendation followed the Singaporean example where the definition of an arbitral tribunal was amended to include an emergency arbitrator.⁸ However, when the government of India introduced the proposed amendments to the A&C Act before Parliament in 2015, in line with the 246th Report, this recommendation was not incorporated.

THE INTERNATIONAL PERSPECTIVE OF EMERGENCY AWARDS

This issue was raised by the Singapore High Court when confirming the enforceability of awards issued by a foreign-appointed emergency arbitrator in *CVG v CVH* in the context of an emergency arbitrator's award ("I conclude that the term 'foreign award' in section 29 of the International Arbitration Act 1994 (2020 Revised Edition) ('IAA') includes foreign interim awards made by emergency arbitrators and, as such, the award is enforceable in Singapore."). The seat of arbitration was originally Pennsylvania. Although the Singapore High Court refused to enforce the special award on the grounds that the respondent was unable to present its case, the principle of enforceability was affirmed. One of the reasons given for the refusal was the lack of jurisdiction of the emergency arbitrator as the SCC Rules valid at the time of ratification by Ukraine did not include the emergency arbitration mechanism. The KCA also stated that Ukraine was not given an opportunity to present its case. However, both these reasons were later overturned by the Supreme Court. However, the emergency arbitration award could still not be enforced, as both courts found its potential enforcement to be contrary to public policy, as it would prevent the execution of an already enforced arbitration award.⁹

DIFFERENT BETWEEN INDIA SEATED ARBITRATION AND FOREIGN SEATED ARBITRATION

It is essential to know that in the *Amazon v. Future* case, the Supreme Court decided on the enforceability of emergency arbitration awards in cases where the arbitration is seated in India. The arbitration between Amazon and Future Group was held in New Delhi, and the Supreme Court's decision was based on the interpretation of Section 17(2) of the Indian Arbitration Act, which falls within Part 1 and deals with interim orders made by arbitral tribunals in India-seated arbitrations. The legal status regarding the enforceability of emergency arbitration awards given in arbitrations which are seated outside of India is

⁸Section 2(1), International Arbitration Act, 2012 (Singapore) [for international commercial arbitrations]; Section 2(1), Arbitration Act, 2002 (Singapore) [for domestic arbitrations]

⁹. O. Kushch, *Enforcing emergency awards in Ukraine: Near miss or impossibility?*, Global Arbitration Review, 2 February 2022

unclear and is more complex. Different from the direct enforcement provision created for India-seated emergency awards in the *Amazon v. Future*¹⁰ decision, the Indian Arbitration Act does not have a comparable provision in Part II, which pertains to the recognition and enforcement of foreign awards, that specifically deals with interim relief awards issued by foreign-seated tribunals, including emergency arbitrators. However, parties who have been granted an emergency award in a foreign-seated arbitration are not left without any form of redressal in India. They can seek interim relief from Indian courts in terms of Section 9 of the Indian Arbitration Act. It is important to note that Section 9 is not an enforcement proceeding for a foreign emergency award and has a persuasive value. In such cases, the Indian court shall determine the merits of the application for interim relief based on the Section 9 application and may also consider the existence and the terms of the foreign emergency award as a relevant consideration

IMPLEMENTATION AND FUTURE ROAD MAP OF EMERGENCY ARBITRATION AWARD

The Supreme Court's decision in *Amazon v Future* has been an extremely positive development for India as an arbitration-friendly jurisdiction. The international arbitration community has welcomed the decision, and it will play a key role in clarifying and providing the necessary certainty to the enforceability of interim reliefs granted by emergency arbitrators in cases situated in India and may encourage more businesses to choose India for their arbitrations, especially in cases where urgent relief is required. This development may also eliminate the need to approach national courts for interim orders in certain cases, resulting in quicker and more effective resolution of disputes.¹¹ The legislature has also taken note of the lack of statutory recognition of emergency arbitration awards in India. Therefore, the Arbitration and Conciliation (Amendment) Bill, 2024, seeks to insert Section 9-A in the Indian Arbitration Act, allowing parties to seek emergency measures from an emergency arbitrator during arbitration proceedings before the full tribunal. This proposed change represents another step towards providing official acceptance and support to emergency arbitration by the Indian legal system. Although considerable progress has been made in this direction, Section 9 of the Act continues to be important for seeking interim relief through the courts. This observation is particularly relevant in relation to

¹⁰ (2022) 1 SCC 209

¹¹ . At available on- <https://dailyjus.com/world/2025/05/enforceability-of-emergency-arbitration-awards-in-india>.

arbitrations situated outside India as the direct enforceability of emergency awards is still unclear.

CONCLUSION

The healthy and aggressive debate on the status and acceptance of emergency arbitration demonstrates that issues of global importance in arbitration law are currently being contested in India. Indeed, recognition of emergency arbitration in India without an express statutory framework will be groundbreaking. In addition to upholding the bargain of the parties, recognition of emergency arbitration will serve a three-fold objective. It will support the growth of institutional arbitration in India. Many domestic arbitration institutions such as the Mumbai International Arbitration Centre, Delhi International Arbitration Centre and the Madras High Court Arbitration Centre, in addition to international arbitral institutions, provide for emergency arbitration and a final ruling in favour of emergency arbitration will be a much-needed shot in the arm for institutional arbitration in India. Concomitant with the rise of institutional arbitration, the recognition and enforceability of orders passed by an emergency arbitrator will reduce the dockets of Indian courts, which are already overburdened with a significant backlog of cases. Indeed, the covid-19 pandemic and the resultant limited functioning of courts has demonstrated the need for seeking out alternative, efficacious mechanisms for dispute resolution. Recognition of such mechanisms will also be consistent with the principle of minimal judicial intervention in respect of arbitration proceedings, a principle enshrined in article 5 of the UNCITRAL Model Law, which is incorporated in section 5 of the A&C Act. There will be a rise in India-seated arbitration proceedings. If the orders passed by an emergency arbitrator are held to be enforceable under section 17(2) of the A&C Act, which is only available in an India-seated arbitration, international parties may seriously consider choosing India as the seat of arbitration. Finally, and importantly, recognition of emergency arbitration will also be consistent with those two familiar pillars of arbitration: party autonomy and efficiency.