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EMERGENCY ARBITRATION IN INDIA: LEGAL STATUS, JUDICIAL TRENDS AND FUTURE PROSPECTS

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ABSTRACT

The world is getting smaller and more connected which means people are doing business with each other across borders often. This has led to an increase in disputes that need to be resolved efficiently. One way to resolve these disputes is through Emergency Arbitration.

Emergency Arbitration is a way for companies to get help quickly when they need it before a formal arbitration process starts. This is especially useful when one company needs relief like an order to stop the other company from doing something.

This paper looks at how Emergency Arbitration works in India. It examines the laws and rules that govern this process, including the Arbitration and Conciliation Act of 1996. The paper also looks at how Emergency Arbitration works in countries and compares it to the system in India. The paper finds that while India has made progress in making Emergency Arbitration more effective there are still some challenges to overcome. These challenges include making sure that Emergency Arbitration awards are enforced clarifying the procedures for Emergency Arbitration and avoiding conflicts between courts and arbitration institutions.

To make Emergency Arbitration work better in India the government and arbitration institutions need to work to make the rules and procedures clearer and more consistent. This will help India become an attractive place for international businesses to resolve their disputes. Emergency Arbitration is a tool for companies that do business internationally. It helps them resolve disputes quickly and efficiently which is essential for doing business across borders. By strengthening Emergency Arbitration in India the country can become a leading centre, for commercial arbitration.

Keywords: Emergency Arbitration, Emergency Arbitrator, Institutional Arbitration, Interim Relief, Arbitration and Conciliation Act, 1996 International Commercial Arbitration, Party Autonomy.

Introduction

Businesses are doing more trade across borders and making more commercial deals. So they need ways to solve disputes that're not only good but also fast and work well for business. Going to court can be slow and expensive with a lot of steps especially when the parties are in different countries.

Arbitration became an alternative because it is flexible, private and the parties have control. Arbitration also has a big problem, which is what to do when something urgent comes up before the arbitration team is ready.

This problem led to emergency arbitration. With emergency arbitration a party can ask for an Emergency Arbitrator to give protection before the main arbitration team is set up. These orders can include stopping someone from doing something protecting assets telling people to keep evidence stopping actions that could cause big losses that cannot be fixed.

Major international groups like SIAC, ICC, LCIA and HKIAC use emergency arbitration. In India people were not sure if it was legal, for a long time. This was because the Arbitration and Conciliation Act of 1996 did not clearly say that emergency arbitration was allowed.

Concept of Emergency Arbitration

Emergency arbitration is something that's part of the rules in institutional arbitration. It lets a party ask for help before the arbitral tribunal is even formed.

When someone asks for this kind of help an Emergency Arbitrator is usually appointed fast like within one or two days to look at the request.

The reason we have emergency arbitration is that it can take weeks to put a tribunal. And during that time one side might do something like move assets around ignore what they are supposed to do according to the contract or ruin the value of what the argument is about.

Emergency arbitration is meant to make sure the arbitration process is still useful by stopping anything that cannot be undone from happening.

One of the things about emergency arbitration is that it is fast. It is different from going to court because it can give people help quickly while still making sure the parties involved have control and that everything stays private. Emergency arbitration is really good, at delivering help fast.

Legal Position in India

The Arbitration and Conciliation Act of 1996 does not say anything about an Emergency Arbitrator. This made people wonder if emergency awards could be enforced in India.

For a time Indian courts were not consistent in their decisions. People often went to court under Section 9 of the Act to get some help even when the rules of the institution had a way to handle emergencies.

Something big changed when the Supreme Court made a decision in the case of Amazon.com NV Investment Holdings LLC versus Future Retail Ltd. In 2022. This case was a problem between Amazon and the Future Group. Amazon wanted emergency help from the Singapore International Arbitration Centre. They got an emergency award that stopped Future Retail from making a deal with Reliance.

The Court said that if people agree to follow the rules of an institution that has a way to handle emergencies then that is what will happen because the people involved have decided it.

This decision was very important because it showed that the Supreme Court is in favor of Arbitration and Conciliation Act and it made India a better place, for arbitration. The Arbitration and Conciliation Act is what matters here and the decision helped The Arbitration and Conciliation Act.

Judicial Trends

In recent years Indian courts have started to support arbitration more and limit court interference. Before the Amazon case the Delhi High Court had accepted emergency arbitration in a case involving Raffles Design International India Pvt Ltd and Educomp Professional Education Ltd. The court noted that parties could still go to court under Section 9 for relief.

The Bombay High Court also recognized the growing importance of emergency arbitration in commercial cases as seen in the case of HSBC PI Holdings Mauritius Ltd v Avitel Post Studios Ltd. These court decisions show that Indian courts are now more in line with international arbitration standards. Judges are giving importance to the choices made by parties the rules of arbitration institutions and the need for quick temporary protection in commercial cases.

However there are still some issues because the Arbitration Act does not clearly mention emergency arbitration.

This can lead to questions, about whether emergency arbitration awards can be enforced in cases especially if the arbitration is held outside of India.

Challenges in Emergency Arbitration

Despite signs from courts, emergency arbitration in India still faces many problems.

First there is no mention of Emergency Arbitrators in the Arbitration and Conciliation Act. The system today relies heavily on what judges think the law says.

Second enforcing emergency awards from countries may be hard because the Act talks about arbitral awards in general but does not specifically mention emergency awards.

Third emergency arbitration is usually available through arbitration and that can be expensive for many Indian parties.

Another problem is that businesses and people who are, in disputes do not know much about emergency mechanisms through institutions. Many still prefer to go to court when they need urgent help.

Future Prospects

The future of emergency arbitration in India is looking good. The Supreme Court is supporting emergency awards like we saw in the case of Amazon versus Future Retail and that is helping people trust the arbitration system.

India wants to be a place for international commercial arbitration so it needs to support emergency arbitration. People from countries who invest and trade like to do business in places where they can get help quickly and reliably when they need it.

There are talks about changing the law to recognize Emergency Arbitrators under the Arbitration and Conciliation Act. This change would make things clearer. Reduce confusion about what to do.

Places like the Mumbai Centre for International Arbitration are also working to make arbitration a bigger part of the culture, in India.

Concept Of Emergency Arbitration

The way businesses work with each other across the world has become really complicated. This has changed the way people resolve disputes. Companies that work in different countries often need a way to solve problems quickly and quietly. They want something that's fair and works for everyone. One way to do this is through something called Arbitration. People like Arbitration because it is flexible and fair.

Arbitration is a method of dispute resolution that people use to solve problems. It is popular because it gives people a lot of control over the process. However sometimes Arbitration can be slow. If someone needs help away they might have to wait. To solve this problem people came up with something called Emergency Arbitration.

Emergency Arbitration is a way for people to get help quickly. It is like a solution. Someone called an Emergency Arbitrator is appointed to help. They can make decisions that will protect

peoples rights. This person only works for a while. They do not make decisions about the problem. When the main Arbitration team is ready they take over.

The reason people needed Emergency Arbitration is that business is moving fast. Sometimes if people wait it can cause problems. For example someone might move their money. Destroy important papers. If this happens it can be hard to solve the problem. Emergency Arbitration helps people get protection without having to go to a court.

Before if someone needed help away they had to go to a regular court. The court could help,. It was not always the best solution. The court might get in the way of the Arbitration process. This could make things slower and more expensive. So people who help with Arbitration started looking for a way.

Now many organizations that help with Arbitration have a system for Emergency Arbitration. These organizations, like the Singapore International Arbitration Centre have rules that allow for Emergency Arbitration. This means people can get help in a few days. It has made Arbitration an effective way to solve problems.

The person who helps with Emergency Arbitration gets their power from the people involved in the dispute. When people agree to use a set of rules they are also agreeing to use Emergency Arbitration if they need it. This is based on the idea that people should have control over how they solve their problems.

Emergency Arbitration is important because it helps keep Arbitration strong. If people cannot get help when they need it the whole process can be useless. For example if someone hides their money it might be impossible to get it back. Emergency Arbitration prevents this kind of problem.

More and more people are using Emergency Arbitration. It is now a part of solving disputes in business. It helps people get the protection they need quickly. This is important, for making sure Arbitration works well in a world where business is becoming more global.

LEGAL FRAMEWORK GOVERNING EMERGENCY ARBITRATION

IN INDIA

The Arbitration and Conciliation Act of 1996 is the law that governs arbitration in India. This Act was made to update Indias arbitration laws reduce court interference and make laws similar to the UNCITRAL Model Law on International Commercial Arbitration. The Act does give a framework for arbitration processes. It does not clearly mention Emergency Arbitrators. This lack of mention has caused much discussion about whether emergency awards can be enforced

and what the role of Emergency Arbitrators is in India. The Arbitration and Conciliation Act of 1996 helps in understanding arbitration in India. It was created to make Indian arbitration laws better. The law also tries to make sure domestic laws match standards like the UNCITRAL Model Law. There is still confusion, about Emergency Arbitrators. The Arbitration and Conciliation Act of 1996 does not directly talk about them. This makes people question how emergency awards work under law.

Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act of 1996 is an important law for arbitration in India. This law helps people solve disputes quickly and easily. It also makes sure that the people involved have control over what happens. The law does not want courts to get involved unless it is really necessary.

Section 5 of the Arbitration and Conciliation Act says that courts should not get involved in arbitration unless the law says they can. This is because the people who made the law want arbitration to be independent and not have much court interference.

The Arbitration and Conciliation Act also talks about how to choose arbitrators how to run the arbitration process and what to do in emergency situations. It also says how to challenge decisions and make sure awards are enforced. When the Arbitration and Conciliation Act was made in 1996 something called emergency arbitration was not widely used. So the Arbitration and Conciliation Act does not say anything, about Emergency Arbitrators. Interim Measures under Section 9

Section 9 empowers courts to grant interim measures before commencement of arbitration, during arbitral proceedings, and after issuance of an award but before enforcement.

Historically, parties relied heavily upon Section 9 whenever urgent interim protection was required. Courts exercised powers to preserve assets, grant injunctions, secure disputed amounts, and protect evidence.

Although Section 9 provides an effective remedy, frequent resort to courts may undermine the objectives of arbitration. Excessive judicial involvement can increase costs, delay proceedings, and reduce procedural autonomy. The emergence of emergency arbitration therefore offers an alternative mechanism capable of granting similar relief within the arbitral framework itself.

Interim Measures under Section 17

Section 17 gives tribunals the power to grant interim measures when arbitration is going on. After the changes made in 2015 the orders given under Section 17 can be enforced like court

orders.

The changes made to Section 17 have really increased the power of tribunals. This shows that the lawmakers want to reduce the amount of time courts spend getting involved in these matters. There is still a problem. Section 17 only starts working after the arbitral tribunal is set up. This is where emergency arbitration comes in. It tries to fill this gap by providing some protection before the tribunal is actually formed. Emergency arbitration is, like a solution that helps before the arbitral tribunal starts working. The main goal of emergency arbitration is to provide protection. This is really important because Section 17 is not useful until the arbitral tribunal is set up and working.

Judicial Trends In India

The development of emergency arbitration in India has been largely shaped by court decisions than changes in the law. Unlike some countries that have laws recognizing Emergency Arbitrators, the Arbitration and Conciliation Act 1996 does not mention it. So Indian courts have had to decide on the status, enforceability and practical relevance of emergency arbitral awards. The courts journey on emergency arbitration in India shows a shift from uncertainty to greater recognition of party autonomy and institutional arbitration.

One of the court decisions on emergency arbitration was made by the Delhi High Court in Raffles Design International India Pvt. Ltd. V. Educomp Professional Education Ltd. The dispute involved an emergency award under the Singapore International Arbitration Centre (SIAC) rules. The main issue was whether the emergency award could be enforced in India. The Court said that the Arbitration and Conciliation Act 1996 did not directly recognize Emergency Arbitrators so such awards could not be enforced as orders under the Act. However the Court also said that parties were not left without remedies. A party with an emergency award could approach courts under Section 9 of the Act and seek interim protection based on the emergency award.

The Delhi High Court again addressed issues in Ashwani Minda v. U-Shin Ltd. This dispute involved emergency relief under the Japan Commercial Arbitration Association rules. The Court stressed the importance of respecting party autonomy and institutional arbitration procedures. It also said that emergency awards did not have independent recognition under Indian law. This judgment showed the limitations due to the lack of laws on emergency arbitration.

The significant development in Indian emergency arbitration came through the Supreme Courts decision in Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. The dispute was

between Amazon and Future Retail. Amazon started emergency arbitration under SIAC rules. Got an emergency award stopping Future Retail from proceeding with a disputed transaction. The Supreme Court had to decide if an Emergency Arbitrators order could be enforced under the Arbitration and Conciliation Act, 1996.

The Supreme Court interpreted the law in an purposive way. It said that parties who choose arbitration rules with emergency arbitration provisions are bound by those rules. The Court emphasized that party autonomy is the foundation of arbitration and that courts should respect the mechanisms chosen by parties. It also said that an Emergency Arbitrators order could be treated as an order under Section 17 of the Act and therefore could be enforced under law. This decision was a milestone in Indian arbitration law.

The Amazon judgment is significant not for the dispute. It strengthened confidence in arbitration and aligned Indian arbitration law with international best practices. It showed that Indian courts are willing to interpret arbitration laws in a way that's consistent with commercial realities and global developments. The judgment also reinforced India's goal to become a leading arbitration- jurisdiction.

The broader trend in court decisions shows increasing support for arbitration. Courts have consistently emphasized the importance of minimizing intervention and respecting the choices made by commercial parties. Decisions such as *Centro trade Minerals & Metal Inc. V. Hindustan Copper Ltd.*, *BALCO v. Kaiser Aluminum Technical Services Inc.* And *Vidya Drolia v. Durga Trading Corporation* have contributed to a -arbitration environment by strengthening the principles of party autonomy, limited judicial interference and effective dispute resolution.

Despite these developments some uncertainty remains. Questions still arise regarding the enforcement of emergency awards the interaction between emergency arbitration and court-ordered interim measures and the precise status of Emergency Arbitrators under Indian law. However the overall trend of court decisions shows a movement towards greater acceptance of emergency arbitration.

The evolution of court thinking in India shows that arbitration law is dynamic. While changes in the law are desirable the judiciary has played a role in bridging gaps and ensuring that Indian arbitration law remains responsive to contemporary commercial needs. Through a series of decisions including the Amazon judgment Indian courts have significantly enhanced the legitimacy and effectiveness of emergency arbitration, in India.

Challenges And Reforms

Despite the growing acceptance of emergency arbitration across the world and the positive judicial developments witnessed in India, several legal and practical challenges continue to affect its effectiveness. While the decision of the Supreme Court in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.* significantly strengthened the position of emergency arbitration, the existing framework still suffers from certain structural limitations that require legislative and institutional attention. These challenges create uncertainty for commercial parties and may hinder India's ambition of becoming a leading international arbitration hub.

One of the most significant challenges arises from the absence of express statutory recognition of Emergency Arbitrators under the Arbitration and Conciliation Act, 1996. Although Indian courts have attempted to bridge this gap through judicial interpretation, reliance upon judicial creativity alone cannot provide complete certainty. The Act does not contain a specific definition of an Emergency Arbitrator, nor does it expressly prescribe the powers, jurisdiction, appointment process, or enforceability of emergency awards. As a result, the legal status of emergency arbitration remains dependent upon judicial interpretation rather than legislative clarity. This situation may create unpredictability, particularly when future disputes involve factual circumstances different from those considered by existing judicial precedents.

Another challenge concerns the enforcement of foreign emergency awards. While the Supreme Court's decision in the Amazon case addressed emergency arbitration conducted under institutional rules chosen by the parties, questions continue to arise regarding emergency awards rendered in foreign-seated arbitrations. The New York Convention and the Arbitration and Conciliation Act primarily contemplate the enforcement of final arbitral awards. Emergency awards, by their very nature, are interim and temporary. Consequently, uncertainty remains regarding the precise mechanism through which foreign emergency awards may be enforced in India. Such ambiguity may discourage foreign investors and commercial entities seeking immediate protection of their rights.

The coexistence of emergency arbitration and court-ordered interim relief also creates jurisdictional complexities. Parties frequently possess parallel remedies through Emergency Arbitrators and domestic courts. While this flexibility may appear beneficial, it can result in overlapping proceedings, conflicting orders, and increased litigation costs. There remains a possibility that a party dissatisfied with an emergency award may attempt to obtain a different outcome by approaching a court. Such situations undermine procedural efficiency and may dilute the advantages associated with arbitration.

Practical challenges relating to awareness and accessibility also deserve attention. Although emergency arbitration is well established in leading international arbitration centres, its usage in India remains relatively limited. Many commercial parties, legal practitioners, and businesses continue to rely primarily upon judicial remedies for urgent interim relief. The lack of widespread awareness regarding institutional arbitration mechanisms restricts the growth of emergency arbitration. Furthermore, smaller businesses may perceive institutional arbitration as expensive when compared to traditional litigation, particularly in disputes involving moderate financial stakes.

The issue of costs represents another important concern. Emergency arbitration requires expedited procedures, rapid appointment of arbitrators, and immediate administrative support from arbitral institutions. These factors often increase the overall cost of proceedings. While large corporations may not consider such costs prohibitive, smaller enterprises and individual commercial actors may find emergency arbitration financially burdensome. Excessive costs may therefore limit access to this mechanism and reduce its practical utility.

Questions relating to due process and procedural fairness have also been raised by critics of emergency arbitration. Emergency proceedings are designed to be swift and efficient, often requiring decisions within a matter of days. While speed is essential for effective interim protection, it may also create concerns regarding adequate opportunity to present evidence and arguments. Critics argue that the compressed nature of emergency proceedings may occasionally affect procedural fairness, particularly in highly complex disputes involving extensive documentation and multiple parties.

Another challenge relates to the absence of uniformity among institutional arbitration rules. Different arbitral institutions adopt different approaches regarding appointment procedures, timelines, powers of Emergency Arbitrators, and enforceability of emergency orders. Although diversity allows institutions to tailor procedures according to their preferences, it may also create confusion for parties unfamiliar with institutional arbitration. Greater harmonization of emergency arbitration practices could enhance predictability and facilitate broader acceptance of the mechanism.

In order to address these challenges, several reforms may be considered. The most important reform would be the incorporation of explicit provisions relating to Emergency Arbitrators within the Arbitration and Conciliation Act, 1996. Legislative recognition would eliminate ambiguity regarding the legal status of Emergency Arbitrators and provide a clear statutory foundation for emergency arbitration. Such reform would also reduce dependence upon judicial interpretation and enhance legal certainty for domestic and international parties.

The Act should also provide a specific mechanism for the enforcement of foreign emergency awards. Clear statutory provisions addressing recognition and enforcement would align Indian law with international commercial expectations and strengthen investor confidence. Given the increasing importance of cross-border transactions, a comprehensive framework governing foreign emergency awards has become essential.

Institutional arbitration in India should also be strengthened through greater governmental and judicial support. Institutions such as the Mumbai Centre for International Arbitration (MCIA) and the Delhi International Arbitration Centre (DIAC) have already contributed significantly towards the development of arbitration in India. Continued investment in institutional infrastructure, technological capabilities, and professional training can further enhance their effectiveness.

Awareness initiatives are equally important. Universities, professional bodies, arbitral institutions, and bar associations should actively promote education and training relating to emergency arbitration. Increased awareness among businesses and legal practitioners would encourage greater utilization of institutional arbitration mechanisms and reduce excessive dependence on courts.

The use of technology may also contribute significantly to improving emergency arbitration procedures. Virtual hearings, electronic filing systems, digital evidence management, and online dispute resolution platforms can increase efficiency while reducing costs. The successful adoption of technology during recent years demonstrates its potential to transform dispute resolution processes and improve access to emergency arbitration.

Ultimately, the future success of emergency arbitration in India depends upon the creation of a coherent legal and institutional framework capable of balancing efficiency, fairness, and enforceability. While substantial progress has already been achieved through judicial innovation, legislative reform remains necessary to ensure long-term certainty and stability. By addressing existing challenges and embracing appropriate reforms, India can further strengthen its position as an arbitration-friendly jurisdiction and establish itself as a preferred destination for international commercial dispute resolution.

CONCLUSION

Emergency Arbitration is a deal in international commercial arbitration these days. Because of globalization people are doing business over the world and that means there are more disputes. The problem is that traditional arbitration can take a time to get started and that can cause big problems for companies. They might lose money or important information might get out. That

is where Emergency Arbitration comes in. It helps companies get relief while they are waiting for the arbitration to start.

Some big arbitration institutions like the Singapore International Arbitration Centre, the International Chamber of Commerce and the London Court of International Arbitration have made rules for Emergency Arbitration. These rules help companies get the relief they need quickly while still following the principles of arbitration.

In India things have changed a lot over the ten years when it comes to Emergency Arbitration. At first there were a lot of questions about whether it was legal because it was not clearly stated in the law.. The courts have helped to clarify things. In some cases like Raffles Design International India Pvt. Ltd. V. Educomp Professional Education Ltd. And Ashwani Minda v. U-Shin Ltd. the courts said that Emergency Arbitration was important. They did not make it completely clear how it would work.

Then in a case called Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. the Supreme Court said that Emergency Arbitration orders are enforceable in India. This was a deal because it made it clear that India is supportive of modern arbitration practices. It also helped to make India an attractive place for international business.

When we compare India to countries we can see that some places like Singapore, Hong Kong and the United Kingdom have more comprehensive rules for Emergency Arbitration. They have laws that make it clear how Emergency Arbitration will work. That helps to make it more effective. India has made some progress. It still needs to do more to catch up with these other countries.

There are still some challenges with Emergency Arbitration in India. For example there is no law that says how it will work and that can make it hard for companies to know what to expect. There are also some questions about how Emergency Arbitration will work with the courts and how it will work for companies. To fix these problems India needs to make some changes to its laws. It needs to make it clear how Emergency Arbitration will work. It needs to support the arbitration institutions.

In the end Emergency Arbitration is a tool for international business. It helps companies to get relief when they need it and that can help to prevent big problems. India has made some progress in supporting Emergency Arbitration. It still needs to do more. With the laws and support Emergency Arbitration can become a big part of Indias arbitration system and that can help to make India a leading centre for international commercial arbitration.

Emergency Arbitration is a thing for companies because it helps them to get the relief they need quickly. Emergency Arbitration is also good for India because it can help to make India

an attractive place for international business. So India should keep working to support Emergency Arbitration and to make it a key part of its arbitration system. That way Emergency Arbitration can help to support the growth of business in India and that can be good for everyone.

The Indian government should make some changes to the law to support Emergency Arbitration. For example it should make it clear how Emergency Arbitration will work. It should support the arbitration institutions. The Indian government should also make sure that the courts are supportive of Emergency Arbitration and that they understand how it works. That way Emergency Arbitration can become an effective tool for companies in India and that can help to support the growth of international business.

Emergency Arbitration is the future of arbitration because it is fast and effective. Emergency Arbitration can help to prevent problems and it can help to support the growth of international business. So India should keep working to support Emergency Arbitration and to make it a key part of its arbitration system. That way India can become a leading centre for commercial arbitration and that can be good, for everyone.

