

## Emergency Arbitration in India: A Growing Trend in Dispute Resolution

### Emergency Arbitration

In recent years, the global commercial landscape has witnessed a significant shift towards more flexible and expedited dispute resolution mechanisms. Among these, **Emergency Arbitration (EA)** has emerged as a crucial tool for parties seeking urgent interim relief before the constitution of a formal arbitral tribunal. As India continues to position itself as an arbitration-friendly jurisdiction, Emergency Arbitration is steadily gaining prominence in the country's dispute resolution framework. This article delves into the concept of Emergency Arbitration, its evolution in India, the legal framework governing it, challenges faced, and its potential future in the Indian arbitration ecosystem.

### What is Emergency Arbitration?

**Emergency Arbitration** is a process where a party to an [arbitration agreement](#) seeks urgent interim relief by approaching an emergency arbitrator before the constitution of the arbitral tribunal. The emergency arbitrator, usually appointed under the institutional rules chosen by the parties, provides interim measures to safeguard the rights of parties or prevent irreparable harm. This mechanism is particularly valuable in [commercial disputes](#) where time-sensitive issues may arise, such as asset preservation, injunctions, or maintaining the status quo, which, if left unaddressed, could frustrate the final relief granted by the arbitral tribunal.

### Global Acceptance of Emergency Arbitration

Emergency Arbitration is a relatively modern concept that gained global traction following its inclusion in institutional rules of leading arbitral institutions:

- The **International Chamber of Commerce (ICC)** introduced Emergency Arbitration in 2012.
- The **Singapore International Arbitration Centre (SIAC)** included it in its 2010 rules, with subsequent refinements.
- The **London Court of International Arbitration (LCIA)** and the **Hong Kong International Arbitration Centre (HKIAC)** also provide for Emergency Arbitration mechanisms.

The growing preference for institutional arbitration and the demand for expedited relief have contributed to the widespread adoption of EA globally.

### Evolution of Emergency Arbitration in India

While Emergency Arbitration is still at a nascent stage in India compared to global trends, its relevance has increased in the last decade due to India's burgeoning commercial and investment disputes. Indian parties are frequently engaged in cross-border contracts governed by [arbitration clauses](#) under institutional rules such as those of SIAC, ICC, or LCIA, which provide for Emergency Arbitration. However, when it comes to domestic arbitrations, the development has been comparatively slower. A landmark shift came when **the Mumbai Centre for International Arbitration (MCIA)** introduced

Emergency Arbitration provisions in its rules in 2016, marking one of the first formal recognitions of EA within India-based arbitration institutions.

### **Legal Framework Governing Emergency Arbitration in India**

The primary legislation governing arbitration in India is the [Arbitration and Conciliation Act, 1996](#) (the "Act"), modeled largely on the UNCITRAL Model Law. However, the Act does not expressly recognize Emergency Arbitration, leading to ambiguity regarding the enforceability of EA orders.

#### **Key Provisions of the Arbitration Act:**

- **Section 17** of the Act empowers arbitral tribunals to grant interim measures similar to those a court may issue.
- **Section 9** allows parties to approach Indian courts for interim measures before or during arbitration.

The absence of explicit mention of Emergency Arbitrators under **Section 17** has led to debates over whether EA orders can be enforced as "interim measures granted by an arbitral tribunal" within the meaning of the Act.

#### **The Amazon-Future Group Case: A Turning Point**

The **Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. & Ors.** case before the Supreme Court of India marked a significant development in Emergency Arbitration jurisprudence.

Amazon initiated an Emergency Arbitration under the SIAC rules against Future Group. The Emergency Arbitrator passed an interim award in Amazon's favor. However, Future Group challenged the enforceability of the EA order before Indian courts.

In **August 2021**, the Supreme Court held that:

1. The Emergency Arbitrator's award is enforceable under **Section 17(1)** of the Act.
2. Indian parties opting for institutional arbitration rules that provide for Emergency Arbitration are bound by such awards/orders.
3. The Emergency Arbitrator falls within the ambit of the term "arbitral tribunal" for the purpose of interim relief under the Act.

This ruling provided much-needed clarity and effectively elevated the enforceability of Emergency Arbitration in India, at least in the context of foreign-seated arbitrations governed by institutional rules.

#### **Challenges Facing Emergency Arbitration in India**

Despite judicial support, several challenges hinder the wider adoption of Emergency Arbitration within India:

##### **1. Lack of Statutory Recognition**

The Arbitration and Conciliation Act, 1996 does not explicitly recognize Emergency Arbitrators or their orders. While the Supreme Court’s ruling is progressive, legislative clarity would bolster confidence among parties.

## 2. Inconsistent Domestic Practice

Emergency Arbitration is more common in international disputes involving Indian parties but remains underutilized in purely domestic arbitration. Many Indian institutional rules provide for EA, yet parties still prefer seeking interim relief under [Section 9](#) from Indian courts.

## 3. Enforcement and Compliance Issues

While the Amazon ruling reinforces the enforceability of EA orders, practical enforcement often requires court intervention, especially if the opposing party resists compliance. This dilutes the swiftness that Emergency Arbitration aims to offer.

## 4. Judicial Intervention

Emergency Arbitration is intended to reduce court involvement. However, courts continue to play a key role in enforcement under **Section 9** and **Section 17(2)**, limiting the fully autonomous nature of EA.

### Advantages of Emergency Arbitration

Despite the challenges, Emergency Arbitration offers numerous advantages:

- **Speed and Efficiency:** EA provides expedited relief within days, unlike court proceedings which may take weeks or months.
- **Flexibility:** Parties can obtain urgent relief without waiting for the full tribunal to be constituted.
- **Confidentiality:** EA proceedings are private, aligning with the general confidentiality of arbitration.
- **Minimized Court Involvement:** EA reduces reliance on national courts, particularly in cross-border disputes.

### Emergency Arbitration under Indian Institutional Rules

Leading Indian arbitration institutions now provide for Emergency Arbitration:

#### Mumbai Centre for International Arbitration (MCIA)

The **MCIA Rules (2016)** include detailed provisions for Emergency Arbitration (Schedule 1), allowing parties to seek urgent relief even before the tribunal is formed.

#### Indian Council of Arbitration (ICA)

The **ICA Rules (2021)** incorporated provisions on Emergency Arbitration, signaling the growing acceptance of this mechanism in domestic practice.

## **Delhi International Arbitration Centre (DIAC)**

Although DIAC rules do not currently provide for EA, there is growing discussion on updating institutional rules to reflect global best practices.

## **The Way Forward: Strengthening Emergency Arbitration in India**

To further integrate Emergency Arbitration into India's arbitration regime, several steps are advisable:

### **1. Statutory Amendments**

Amending the Arbitration and Conciliation Act, 1996 to formally recognize Emergency Arbitration and Emergency Arbitrators would enhance legal certainty.

### **2. Promoting Domestic Institutional Arbitration**

Encouraging parties to opt for Indian arbitration institutions like MCIA or ICA, which provide EA mechanisms, will foster greater use of this process domestically.

### **3. Judicial Consistency**

Following the Supreme Court's lead in the Amazon case, lower courts should consistently uphold EA awards/orders to reinforce their legitimacy and effectiveness.

### **4. Awareness and Capacity Building**

Organizing seminars, workshops, and publications on the benefits of EA can increase awareness among Indian businesses and legal practitioners.

### **5. Harmonization with International Standards**

Aligning Indian arbitration practices with international norms will promote India as a preferred seat for arbitration in Asia.

## **Conclusion**

Emergency Arbitration is a dynamic and effective tool that serves the growing needs of commercial entities engaged in high-stakes disputes requiring immediate interim relief. While India has taken significant strides in recognizing and enforcing EA orders, particularly in the wake of the Amazon-Future Group decision, legislative clarity and institutional adoption are crucial for its full integration. As India aspires to become a global arbitration hub, strengthening Emergency Arbitration mechanisms will be essential in providing businesses with swift, efficient, and reliable dispute resolution alternatives.