

Bridging the Gap: The Evolution and Enforceability of Emergency Arbitration in India

1. Introduction

Arbitration is widely seen as a quicker and more flexible alternative to litigation. Yet at certain times in commercial disputes even arbitrations are not quick enough. A party may need urgent relief at the very start of a dispute to prevent assets from being moved, to secure evidence, or to preserve the subject matter of the contract. The process of constituting a full tribunal often takes weeks or even months. In that period, the harm caused to one side may become irreversible. To address this difficulty, arbitral institutions around the world developed the mechanism of emergency arbitration.

Emergency arbitration gives parties an immediate path to seek temporary measures from an independent decision maker even before the tribunal is formed. The idea first took shape in the rules of the International Centre for Dispute Resolution in 2006. It was soon adopted by other leading institutions such as the International Chamber of Commerce (“**ICC**”), the Singapore International Arbitration Centre (“**SIAC**”), the Stockholm Chamber of Commerce (“**SCC**”) and the Hong Kong International Arbitration Centre (“**HKIAC**”). The procedure allows for an emergency arbitrator to be appointed in a matter of days and for urgent applications to be decided within a short timeline, often between one and two weeks. For businesses engaged in high value cross border transactions this mechanism has become an important safeguard against delay and uncertainty.

In India the development has been more gradual. The Arbitration and Conciliation Act, 1996 (“**Act**”) does not mention emergency arbitration. Despite this, institutions such as the Mumbai Centre for International Arbitration (“**MCIA**”) and the Delhi International Arbitration Centre (“**DIAC**”) have already built it into their rules. The 246th Law Commission Report in 2014 and the Justice B. N. Srikrishna Committee in 2017 both recommended that the law should expressly recognise emergency arbitration. However, the absence of clear provisions in the statute left many parties uncertain about enforceability.

The courts have played a decisive role in shaping the position. The Delhi High Court in *Raffles v. Educomp* (“**Raffles Case**”)¹ held that emergency awards in foreign seated arbitrations could not be enforced directly. The matter reached clarity in *Amazon v. Future Retail*² (“**Amazon Case**”), where the Supreme Court held that an emergency arbitrator’s order in an India seated arbitration is valid under section 17(1) and enforceable under section 17(2). This ruling marked a turning point in India’s approach.

¹ *Raffles Design International India (P) Ltd. v. Educomp Professional Education Ltd.*, 2016 SCC OnLine Del 5521

² *Amazon.Com NV Investment Holdings LLC v. Future Retail Ltd.*, (2022) 1 SCC 209

Emergency arbitration today is one of the most discussed topics of modern arbitration in India. It represents both the promise of arbitration, which is speed, confidentiality and party autonomy, and the challenges of enforceability and statutory gaps. This article examines its history and recognition in Indian law, compares it with interim relief under domestic legislation, discusses enforceability issues, surveys the approach of arbitral institutions, and considers the statutory reforms that have been proposed. The purpose is to assess how far India has come and what further steps are needed to make it a jurisdiction that fully supports emergency arbitration.

2. Nature of Interim Relief under Indian Law and Emergency Arbitration

The purpose of interim relief in arbitration is to preserve the efficacy of the arbitral process and to ensure that the eventual award does not become illusory. Without interim measures, parties may dissipate assets, alter contractual relations, or obstruct evidence, leaving the successful claimant with a hollow victory. Indian law recognises this need through both judicial and arbitral channels, while emergency arbitration has evolved as an institutional mechanism to bridge the time gap before a tribunal is constituted.

Section 9: Court Granted Interim Relief

Section 9 of the Act allows parties to apply directly to courts for interim measures before, during, or after arbitral proceedings but prior to enforcement of the award. Relief may include orders to maintain status quo, secure the amount in dispute, preserve property, or issue injunctions restraining certain acts. Indian courts have historically exercised this jurisdiction liberally, reflecting the strong role of the judiciary in arbitration. However, this route often suffers from delays, public hearings, and the risk of overlapping supervision once a tribunal is formed.

The 2015 amendment introduced Section 9(3), which restricts the courts from entertaining applications once the tribunal is constituted, unless the court finds that the remedy under Section 17 is inefficacious. This provision marked a conscious shift towards empowering arbitral tribunals rather than courts to decide interim applications.

Section 17: Tribunal Granted Interim Relief

Section 17 empowers the arbitral tribunal to order the same range of interim measures as a court. Prior to 2015, however, tribunal-ordered measures lacked teeth because enforcement required separate proceedings in court. The 2015 amendment inserted Section 17(2), which provides that tribunal-ordered interim measures are enforceable in the same manner as orders of a court. This brought Indian law in line with Article 17H of the UNCITRAL Model Law and gave tribunals effective authority to protect the arbitral process.

Emergency Arbitration: Bridging the Gap

Emergency arbitration fills the vacuum that exists between the filing of a request for arbitration and the constitution of the tribunal. Under most institutional rules, an emergency arbitrator is appointed within one or two days of the application. The arbitrator typically issues an order within 7 to 14 days. Institutions like SIAC require appointment within one business day, with a decision within 14 days. The SCC requires appointment within 24 hours and decision within five days. Indian institutions such as MCIAC provide for appointment within one day and decision within 14 days, while DIAC stipulates a two-day appointment and a fourteen-day decision period.

The tests applied are similar to those used by Indian courts under Section 9: (a) a strong prima facie case (*fumus boni iuris*), (b) imminent or irreparable harm (*periculum in mora*), and (c) balance of convenience in favour of the applicant. Reliefs may include freezing injunctions, anti-suit injunctions, orders for deposit of money, or preservation of evidence.

Judicial Treatment of Emergency Relief

Indian courts have played an important role in shaping the enforceability of emergency arbitration. In *Raffles Case*.³, however, the Delhi High Court held that foreign-seated emergency awards were not directly enforceable in India under Part II of the Act.

A further refinement came in *Ashwani Minda v. U-Shin Ltd*.⁴, where the Delhi High Court refused a second application under Section 9 after the applicant had failed to secure relief before an emergency arbitrator under SIAC rules. The court emphasised that a party cannot take a “second bite at the cherry,” thereby recognising the binding nature of an emergency arbitrator’s refusal.

The turning point was the Supreme Court’s decision in *Amazon Case*⁵, where it was held that orders passed by emergency arbitrators in an India-seated arbitration fall within Section 17(1) and are enforceable under Section 17(2). The Court reasoned that the definition of “arbitral tribunal” under Section 2(1)(d) is wide enough to include an emergency arbitrator when the parties have agreed to institutional rules providing for such appointment. This decision placed emergency arbitration on firm legal footing in India for domestic seats.

Similarities and Differences

The objectives of Section 9, Section 17, and emergency arbitration are aligned: to preserve the efficacy of the arbitral process. The types of relief granted are similar, as are the tests applied. Yet there are important differences. Court relief under Section 9 has statutory force, and tribunal relief under Section 17 enjoys equal enforceability after the 2015 amendment.

³ Supra 1

⁴ *Ashwani Minda v. U-Shin Ltd.*, 2020 SCC OnLine Del 721

⁵ Supra 2

Emergency arbitration, however, is dependent on institutional rules and is confined to parties who have opted for such institutions. It is confidential and faster, but its enforceability in foreign-seated cases remains uncertain.

Emergency arbitration complements Sections 9 and 17 by offering an expedited path to urgent relief. Its success in India will depend on legislative codification and clarity regarding foreign-seated awards. Until then, while parties to India-seated arbitrations can rely on Section 17(2), those involved in cross-border disputes must continue to seek mirror relief from Indian courts under Section 9.

Together, these cases reveal a cautious but evolving approach: Indian courts do not directly enforce foreign-seated emergency awards but may either grant mirror relief under section 9 or decline relief to respect the emergency arbitrator's decision.

Conceptual Challenges

At the core of the debate is how emergency orders should be classified. An “award” under the Act generally refers to a final determination of rights. Emergency orders are temporary, subject to review by the main tribunal, and meant to preserve the status quo. They therefore sit uneasily with the statutory concept of an award.

If characterised as awards, they could be enforced under the New York Convention through Part II of the Act. But most jurisdictions, including India, treat them as interim measures. This classification explains why foreign-seated emergency awards cannot be enforced under Part II, which is designed for final awards. The distinction also explains why the Supreme Court in *Amazon Case*⁶ located emergency arbitrator orders within section 17 rather than treating them as final awards.

The enforceability of emergency arbitration in India therefore depends on the seat of arbitration. For India-seated arbitrations, the *Amazon Case* ruling has given full effect to emergency arbitrator orders under section 17(2). For foreign-seated arbitrations, enforcement is not available directly, and parties must seek mirror relief under section 9, with courts often guided but not bound by the emergency award. In some cases, such as *Ashwani Minda*,⁷ courts have even denied relief to uphold the authority of the emergency arbitrator. This uneven framework creates uncertainty for international parties. The proposed Arbitration and Conciliation (Amendment) Bill, 2024 seeks to address this by introducing section 9A, which formally recognises emergency arbitration and extends enforceability to foreign-seated emergency awards. If enacted, the reform would bring India closer to leading arbitration jurisdictions and signal its commitment to providing effective interim protection across borders.

⁶ *Supra* 2

⁷ *Ibid*

3. Enforceability of Relief Awarded under Emergency Arbitration

The central concern with emergency arbitration is whether the relief granted by an emergency arbitrator can be enforced with the same authority as an order of a court or a duly constituted tribunal. Without enforceability, emergency arbitration would risk being no more than an academic exercise. Indian law has moved significantly on this issue in recent years, but important gaps remain, especially in relation to foreign-seated arbitrations and the introduction of new innovations such as pre-filing applications and Protective Preliminary Orders (PPOs).

Enforceability in India-Seated Arbitrations

The Supreme Court's ruling in the Amazon case⁸ settled much of the earlier uncertainty. The Court confirmed that the definition of arbitral tribunal in section 2(1)(d) is wide enough to include an emergency arbitrator when the parties have agreed to institutional rules. It also held that emergency orders fall within section 17(1) and are enforceable under section 17(2) like orders of a court, and that no appeal lies under section 37 against their enforcement. In practical terms this recognised emergency arbitration for India seated matters and reinforced party autonomy by allowing institutional rules chosen by the parties to fill procedural gaps in the statute.

Building on that foundation, the Delhi High Court in a recent pronouncement *Municipal Corporation of Delhi v. Himalayan Flora and Aromas Pvt. Ltd.*⁹, clarified the scope of Rule 14 of the DIAC Rules 2023. The Court held that the terms emergency arbitrator and arbitral tribunal cannot be used interchangeably for the purposes of Rule 14. Rule 14.11 bars an emergency arbitrator from being part of the arbitral tribunal unless the parties agree, and there was no such agreement in that case. Therefore, the emergency arbitrator cannot be deemed to be the arbitral tribunal so as to exercise the power vested in the latter under Rule 14.13. Only a duly constituted tribunal may extend, modify, substitute, or vacate an emergency order, and reading those powers into the hands of the emergency arbitrator would defeat the scheme and object of emergency arbitration under the Act.

Applying these principles, the Court noted that although a petition for appointment of the tribunal had been allowed, arbitral proceedings had not yet commenced, and the tribunal had not modified, substituted, or vacated the emergency order. Since an emergency arbitrator's order operates only for 90 days as per section 9(2) of the Act from the date of its passing, the order had already lived its life and ceased to remain in force after the 90 day period. The Court therefore set aside the emergency order, while observing that the respondent is entitled to move an application under section 9 or section 17, and that any such application should be considered in accordance with law.

⁸ Supra 2

⁹ ARB. A. (COMM.) 54/2025

The combined effect is that emergency orders remain fully enforceable after Amazon, but their life is tied to the institutional rules in force. Parties should act quickly to constitute the tribunal, seek continuation or variation before that tribunal, use the court where appropriate, and carefully diarise the 90 day window to avoid any lapse in protection.

Foreign-Seated Arbitrations

The situation is markedly different for foreign-seated arbitrations. The Delhi High Court in *Raffles Case*¹⁰. took a narrower approach, holding that emergency awards in foreign-seated arbitrations cannot be enforced under Part II of the Act because the New York Convention recognises only final awards. While parties may approach Indian courts for interim protection under section 9, the emergency order itself is not independently enforceable.

Further complexity arose in *Ashwani Minda v. U-Shin Ltd*¹¹., where a party sought section 9 relief in India after being denied relief by a foreign-seated emergency arbitrator. The Delhi High Court refused, reasoning that allowing such a “second bite” would undermine the authority of the emergency arbitrator. This case illustrates how Indian courts, while not directly enforcing foreign emergency awards, give weight to their existence in deciding whether to grant relief under section 9.

Emerging Challenges with New Institutional Rules

Recent changes in institutional rules, particularly the SIAC Rules 2025, have introduced additional complications for Indian enforcement. The new rules allow applications for emergency relief even before a notice of arbitration is filed, provided that the notice is submitted within seven days thereafter. They also introduce the concept of PPOs, which may be granted ex parte and require the respondent not to frustrate the purpose of the emergency relief. The emergency arbitrator must decide on such PPOs within twenty-four hours, and the order must be served within twelve hours.

These provisions significantly expand the scope of emergency protection but also create tension with Indian law. The Act treats service of a notice of arbitration as the trigger for the tribunal’s jurisdiction, raising doubts about whether pre-filing orders are compatible with the Act’s structure. Likewise, ex parte PPOs may run afoul of section 18 of the Act and Articles 14 and 21 of the Constitution, which safeguard equal treatment and the right to be heard. Indian courts have in the past invalidated interim measures granted without notice, suggesting that PPOs could face enforceability hurdles.

¹⁰ Supra 1

¹¹ Supra 4

The enforceability of emergency arbitration in India therefore depends on the seat of arbitration and the nature of the relief sought. For India-seated arbitrations, Amazon Case¹² ensures full enforceability of emergency orders under section 17(2). For foreign-seated arbitrations, emergency orders cannot be enforced directly, though section 9 petitions may offer mirror relief, and courts have sometimes declined a relief to respect an emergency arbitrator's decision.

The introduction of pre-filing applications and PPOs in rules such as SIAC 2025 adds a new layer of complexity. While these innovations strengthen the protective powers of emergency arbitrators, their enforceability in India remains uncertain. Unless legislative or judicial clarification addresses these issues, parties may hedge by seeking parallel relief in Indian courts. The proposed Arbitration and Conciliation (Amendment) Bill, 2024, with its draft section 9A formally recognising emergency arbitration and extending enforceability to foreign-seated awards, may provide the clarity required. Until then, the enforceability of innovative emergency measures in India will remain a contested and evolving field.

4. Recognition of Emergency Arbitration by Arbitration Centres and Institutions

The recognition of emergency arbitration is primarily the result of institutional innovation rather than legislative reform. Institutions have filled a gap in the statutory framework by providing parties with procedures to obtain urgent interim relief. The extent to which leading arbitral centres have adopted these provisions has determined whether emergency arbitration functions effectively in practice. Today, almost every major international institution incorporates emergency arbitration in its rules, and Indian institutions have followed the same path.

International Institutions

The Singapore International Arbitration Centre (SIAC) is regarded as a pioneer. Rule 30 and Schedule 1 of the SIAC Arbitration Rules 2016 required the appointment of an emergency arbitrator within one business day of an application and a decision within fourteen days of appointment. The recently introduced SIAC Rules 2025 make two significant changes. They allow an application for emergency relief even before a notice of arbitration is filed, provided that the notice is filed within seven days thereafter. They also introduce PPOs, which are ex parte orders requiring the respondent not to frustrate the purpose of the emergency relief. The emergency arbitrator must decide on such requests within twenty-four hours, and the order must be served within twelve hours. These innovations strengthen interim protection, although their enforceability in jurisdictions like India may present challenges.

The SCC was one of the earliest to recognise emergency arbitration in 2010. Appendix II of the SCC Arbitration Rules 2017 requires the appointment of an emergency arbitrator within

¹² Supra 2

twenty-four hours of an application, and a decision must be issued within five days. This strict timeline is designed to address situations where any delay would defeat the purpose of interim relief.

The ICC incorporated emergency arbitration into Article 29 and Appendix V of its Arbitration Rules 2021. The ICC procedure allows emergency arbitration only before the file has been transmitted to the arbitral tribunal and ensures that any emergency order remains binding until the full tribunal is constituted. This prevents misuse of emergency arbitration at later stages of the proceedings.

Other international centres, including the London Court of International Arbitration, the Hong Kong International Arbitration Centre, and the International Centre for Dispute Resolution of the American Arbitration Association, have all adopted emergency arbitration. Each of them has tailored procedures and timelines, but they share the recognition that arbitration cannot be considered complete without a mechanism for urgent interim measures.

Indian Institutions

Indian arbitral centres have also incorporated emergency arbitration in their rules. The MCIA, through Rule 19 of its 2025 Rules, provides for appointment of an emergency arbitrator within one business day and requires a decision within fourteen days. The DIAC under Rule 14 of its 2023 Rules, allows appointment within two days and requires a decision within fourteen days. Other centres such as the Nani Palkhivala Arbitration Centre have followed similar models.

These rules ensure that parties who choose Indian institutions have access to the same procedural protections available in Singapore, Stockholm, or Paris. However, the actual utilisation of these provisions remains limited. Commercial parties continue to prefer institutions such as SIAC or ICC, largely because they have demonstrated efficiency and reliability over many years. For Indian institutions, credibility will come not merely from having emergency arbitration rules on paper but from successfully administering them in practice.

Judicial Recognition

Judicial support has reinforced institutional recognition in India. In Amazon Case¹³, the Supreme Court confirmed that when parties choose institutional rules that provide for emergency arbitration, those rules are binding. The Court held that emergency orders fall within section 17(1) of the Act and are enforceable under section 17(2). By giving effect to party autonomy, the Court transformed what might otherwise be viewed as a contractual innovation into a legally enforceable mechanism.

¹³ Supra 2

Practical Significance

Institutional recognition of emergency arbitration has profound practical implications. The timelines, ranging from five days in SCC to fourteen days in SIAC, MCIA, and DIAC, give parties certainty that they can obtain urgent relief without resorting to court. Institutions also provide confidentiality, speed, and flexibility that national courts are often unable to offer. At the same time, new provisions such as pre-filing applications and ex-parte PPOs, introduced by SIAC 2025, raise important questions about enforceability in jurisdictions like India where statutory provisions and constitutional safeguards emphasise notice and the right to be heard.

In this sense, institutions have moved ahead of national legislation, and Indian law will need to adapt. While the judiciary has taken a supportive stance, legislative clarity would help align statutory provisions with institutional innovations. Until then, parties may continue to rely heavily on foreign centres while Indian institutions gradually build the credibility and track record required to compete on equal terms.

5. Proposed Changes and Statutory Introduction of Emergency Arbitration in the Proposed Arbitration Bill

Background to the Reform

Until recently, emergency arbitration in India derived its force only from institutional rules and judicial interpretation. The Act does not expressly mention emergency arbitrators. The Supreme Court in Amazon Case¹⁴ confirmed that party autonomy allows parties to opt for institutional rules providing for emergency arbitration and that such orders are enforceable under section 17(2). While this was a milestone, it remained a product of judicial creativity rather than statutory language.

Both the 246th Report of the Law Commission of India (2014) and the Report of the High-Level Committee to Review the Institutionalisation of Arbitration Mechanism in India, chaired by Justice B.N. Srikrishna (2017) recommended that the Act be amended to expressly recognise emergency arbitrators. The Law Commission suggested amending the definition of “arbitral tribunal” under section 2(1)(d) to include an emergency arbitrator appointed under institutional rules, noting that failure to do so created uncertainty and discouraged parties from relying on Indian institutions. The Srikrishna Committee reiterated this point, observing that recognition of emergency arbitration would enhance the effectiveness of institutional arbitration in India and bring the country in line with leading arbitral jurisdictions.

¹⁴ Supra 2

Despite these recommendations, the 2015 and 2019 amendments to the Act did not incorporate emergency arbitration. As a result, until 2021, parties remained dependent on judicial interpretation to validate emergency orders.

Draft Section 9A

The Arbitration and Conciliation (Amendment) Bill, 2024 addresses this gap. It introduces section 9A, which provides that where parties have agreed to institutional arbitration, they may apply for emergency relief in accordance with the rules of that institution. An emergency arbitrator appointed under those rules will be recognised as an arbitral tribunal for the limited purpose of granting interim relief. Orders issued by an emergency arbitrator will be enforceable in the same manner as orders of a tribunal under section 17.

The draft provision also extends to foreign-seated arbitrations. This is particularly important because Indian courts have previously refused to enforce foreign emergency awards, as seen in *Raffles Case*¹⁵. by allowing enforcement of foreign-seated emergency awards, section 9A seeks to put such orders on par with interim measures issued by foreign tribunals.

Alignment with International Best Practices

The statutory introduction of emergency arbitration would bring India in line with arbitration-friendly jurisdictions such as Singapore and Hong Kong. Singapore amended its International Arbitration Act to recognise emergency arbitrator orders through section 12(1)(i) and section 12(6). Hong Kong enacted section 22B of its Arbitration Ordinance with similar effect. The 246th Law Commission Report explicitly cited these jurisdictions as models that India should follow. The Srikrishna Committee echoed this, recommending express recognition of emergency arbitrators to attract high-value arbitrations to India.

Potential Overlaps and Concerns

The enactment of section 9A will raise certain interpretive and procedural questions. Section 9 already allows parties to approach courts for interim relief, and section 9A will create a parallel route through emergency arbitrators. It remains to be seen whether courts will require parties to exhaust section 9A before approaching them under section 9, or whether both routes will operate in parallel. The possibility of conflicting relief and forum shopping cannot be ruled out.

Another concern is the compatibility of innovations such as PPOs, recently introduced under the SIAC 2025 Rules, with Indian law. PPOs may be issued ex parte and within hours, but Indian law, particularly section 18 of the Arbitration Act and Articles 14 and 21 of the Constitution, insists on equal treatment and a right to be heard. Indian courts have invalidated interim measures granted without notice in the past. Unless section 9A or its accompanying

¹⁵ *Supra* 1

rules clarify the standard of review for such orders, their enforceability in India may be contested.

Finally, the Bill does not directly address appeals. Section 37 excludes appeals from orders enforcing tribunal interim measures, and it is expected that emergency arbitrator orders under section 9A will be treated in the same way. Nevertheless, clarity on this point would be helpful to prevent unnecessary litigation.

Conclusion

The trajectory of emergency arbitration in India reflects the gradual maturation of the country's arbitration framework. From being an institutional innovation with no statutory foundation, it has evolved through judicial recognition in Amazon Case¹⁶ and is now on the threshold of formal codification through the proposed section 9A. This development signifies a decisive step towards aligning India with global best practices and responding to long-standing recommendations of the Law Commission and the Justice B.N. Srikrishna Committee.

At the same time, it would be unrealistic to assume that statutory recognition alone will resolve all challenges. The efficacy of emergency arbitration will ultimately depend on how Indian courts approach issues of procedural fairness, particularly in relation to *ex parte* protective orders, and on whether institutions within India can demonstrate the same efficiency and reliability as their international counterparts. Unless these practical concerns are addressed, parties may continue to prefer established foreign centres for urgent relief, thereby limiting the impact of legislative reform.

The statutory introduction of emergency arbitration should therefore be viewed as both an opportunity and a responsibility. It is an opportunity for India to strengthen its claim as a credible arbitration hub, but it also places responsibility on courts and institutions to administer this mechanism with consistency and integrity. If these conditions are met, emergency arbitration can move from the margins to the mainstream of Indian arbitral practice and serve as a critical tool in ensuring the effectiveness of arbitration as a dispute resolution process.

¹⁶ Supra 2