“EMERGENCY ARBITRATION IN INDIA: A NEED FOR LEGISLATION IMPLEMENTATION”

By

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ABSTRACT

In order to create a successful dispute resolution system that may increase contract enforcement and make conducting business easier, the Indian government and courts have continually supported arbitration throughout the years. One such procedure that might help in building an efficient settlement mechanism is "emergency arbitration." The practise of "emergency arbitration" has grown in popularity as a way for parties to get quick relief from an emergency arbitrator. It refers to an arbitral procedure that occurs before the main tribunal is established in order to provide immediate temporary relief for safeguarding the assets and evidence that cannot wait for the tribunal's establishment and may otherwise be lost or altered. The purpose of the research study is to examine the idea and use of "emergency arbitration" as well as the viability of its implementation in India.

The goal of this paper is to analyse the various "emergency arbitration" rules used by various international arbitral organisations. The study then makes a number of changes to the domestic institutional structure that might help India develop a strong "emergency arbitration" mechanism.

Keywords: Arbitration, ‘Emergency Arbitration,’ Indian Legislation

INTRODUCTION

There are two ways that disputes might be resolved: through litigation or amicably. In addition, there were a variety of issues of their own that required particular consideration. Trade disputes and construction conflicts, though both may be settled by arbitration, are of distinct types. However, arbitration continues to be one method for giving the disputants the best resolution.

The fundamental tenets of arbitration as an alternate conflict resolution mechanism are that it must be quick, reasonably affordable, private, effective, and efficient. The goal of an 'emergency arbitration' is not to settle disagreements as quickly as possible, but rather to prevent the item under dispute from being destroyed or damaged. These may occur if the disputed items are products that naturally deteriorate over time or if it is feared that one or more supporting documents may be destroyed by one of the disputing parties. Even after the tribunal was over, the objects may still be destroyed. This means that the use of 'emergency arbitration' must have a good justification. Interim awards or interim measures must be issued by the arbitrator(s) in an 'emergency arbitration.'

According to Peter Hillerstrom, the powers that an arbitrator has in compared to national courts are significantly limited because they only extend to the parties to the arbitration and are purely dependent on the parties' consent. National courts have the authority to issue temporary judgements on property that is held by a third party, such as a bank. In the meanwhile, the parties can only give the arbitrator authority when they do so.[1]

In the last 50 years, the use of international arbitration has greatly increased as business parties look to reduce the possible uncertainties of domestic litigation proceedings. Recently, arbitral institutions have been creating accelerated or emergency processes to help parties in situations when they require immediate interim relief before an arbitral tribunal has been established in an effort to improve the working and practical advantages of their rules. Prior to the creation of these proceedings, parties would often need to seek for urgent relief to national courts or wait for the tribunal to be established.

These days, many institutions have adopted clauses that enable some type of immediate remedy, whether via the appointment of an urgent arbitrator or through the quick creation of the tribunal. Currently, both expedited tribunal formation and 'emergency arbitration' are supported by the "Singapore International Arbitration Centre," the "Stockholm Chamber of Commerce," the "Swiss Chambers Arbitration Institution," the "Mexico City National Chamber of Commerce," and the "Netherlands Arbitration Institute." In contrast to 'emergency arbitration,' accelerated processes are allowed under the London Court of International Arbitration, Dubai International Financial Centre, Dubai International Arbitration Centre, and Hong Kong International Arbitration Centre. In contrast, the American Arbitration Association's International Centre for Dispute Resolution and the International Chamber of Commerce have chosen to only offer 'emergency arbitration.'

[1]Hillerstrom, Peter, "Emergency and Pre-Tribunal Arbitral Relief: Current Approach of the Key Arbitral Institutions" in Stockholm International Arbitration Review, vol.2, pp.39-47, (2008)

OBJECTIVE OF STUDY

The goal of the research on ‘emergency arbitration’ in India is to determine whether the 1996 Arbitration and Conciliation Act's provisions for ‘emergency arbitration’ should be put into law. The goal of the study is to assess the advantages of using ‘emergency arbitration’ as a quick and effective method for settling conflicts. In order to ensure that ‘emergency arbitration’ meets the needs of parties seeking quick and efficient dispute resolution in India, the study will also look at international best practises and experiences of other jurisdictions with ‘emergency arbitration’ provisions. It will also make recommendations for potential amendments to Indian legislation to accommodate ‘emergency arbitration.’

RESEARCH PROBLEM

The lack of express provisions in the Arbitration and Conciliation Act, 1996, to regulate and accommodate ‘emergency arbitration’, as a necessity for law implementation, may be the main obstacle to ‘emergency arbitration’ research in India. For parties seeking an immediate and accelerated settlement of disputes, the lack of a defined legislative structure and procedural norms for ‘emergency arbitration’ in India may provide difficulties. In order to effectively implement ‘emergency arbitration’ as a practical dispute resolution mechanism in India, it may be necessary to examine potential problems and barriers parties may encounter when using ‘emergency arbitration’ there, analyse the current legal environment, identify any gaps in the law, and propose changes or reforms.

RESEARCH QUESTIONS

1. What is ‘emergency arbitration’? What are its advantages and challenges?
2. What is the current legal status of ‘emergency arbitration’ in India?
3. What are the current rules and regulations provided by different arbitration institution that regulates ‘emergency arbitration’?
4. What amendments can be made in current legislation of India which will help in implementation of ‘emergency arbitration’ in India?

RESEARCH METHODOLOGY

An extensive and methodical approach would likely be used in the research technique to examine the demand for ‘emergency arbitration’ law in India. First, an assessment of India's current legal system, in particular the 1996 Arbitration and Conciliation Act, would be done to find any loopholes or restrictions that prevent the effective use of ‘emergency arbitration’. This would be followed by a thorough examination of global best practises, experiences with ‘emergency arbitration’ in other countries, and pertinent laws, regulations, and processes. In order to support the adoption of ‘emergency arbitration’ law in India, the research's conclusions and suggestions would be synthesised and presented in a cogent and fact-based way.

LITERATURE REVIEW

1. **"Emergency arbitration: An Approach Towards the Advancement by Ms. Shivangi Sinha and Dr. Jyothi Dharam"**[2] - The article offers a thorough analysis of the literature on the idea of 'emergency arbitration,' which is a relatively recent type of ADR. The legal foundation, formal procedures, and useful uses of 'emergency arbitration' are all covered by the writers. The authors of the essay explain how 'emergency arbitration' has changed as a strategy for developing the field of arbitration and how it has become more important as a way to settle urgent issues in international commercial arbitration. The literature review offers important insights into the state of knowledge and trends in the area of 'emergency arbitration' through a well-researched and fair overview of the major scholarly publications on this subject.
2. **"Emergency arbitration Procedure: A Comparative Analysis by Raja Bose and Ian Meredith"**[3] - presents a thorough and insightful analysis of how 'emergency arbitration' practises have changed in international arbitration. The 'emergency arbitration' clauses of important institutional arbitration rules, such as those of the ICC, ICDR, and SIAC, among others, are compared and contrasted by the writers. The writers explore aspects such the breadth of applicability, timeliness, and enforceability of 'emergency arbitration' rulings while also highlighting the similarities and contrasts across these processes via their study. The article adds to the growing body of literature on this significant and quickly developing area of international arbitration practise by illuminating the subtleties and practical implications of 'emergency arbitration' provisions in various institutional rules.
3. **"Emergency arbitration in India: A Critical Appraisal of the Institutional Framework by Abhinav Gupta and Sriroopa Neogi"**[4] - The essay offers a thorough analysis of the literature on the idea of urgent arbitration within the Indian institutional system. In order to provide light on the difficulties and opportunities that may develop in practise, the authors critically analyse the existing legislative requirements, case laws, and institutional procedures pertaining to 'emergency arbitration' in India. The paper emphasises the value of 'emergency arbitration' as a quick-response conflict resolution method and stresses the necessity for a strong institutional structure to facilitate 'emergency arbitration's' successful adoption in India. The authors provide insightful analyses into the current state of 'emergency arbitration' in India and point out areas for additional study and institutional framework improvement to support effective dispute resolution in urgent situations. They do this by thoroughly examining pertinent literature and legal sources.

[2]Ms. Shivangi Sinha and Dr. Jyothi Dharam, 'Emergency Arbitration': An Approach Towards the Advancement, Journal of Xi'an University of Architecture & Technology, Volume XIV, Issue 8, Page No: 556, (2022)

[3]"Raja Bose and Ian Meredith, 'Emergency Arbitration' Procedure: A Comparative Analysis, International Arbitration Law Review, [2012] Int.A.L.R., Issue 5, (2012)"

[4]Abhinav Gupta and Sriroopa Neogi, 'Emergency Arbitration' in India: A Critical Appraisal of the Institutional Framework, NUJS Law Review, 14 NUJS L. Rev. 4 (2021)

‘EMERGENCY ARBITRATION’

For individuals who desire to preserve their assets and evidence before they may be altered or destroyed, ‘emergency arbitration’ might be seen as one of the guises in an emergency relief. Rather than a previous protection, ‘emergency arbitration’ is sometimes regarded as a protection. In both domestic and international arbitrations, such arbitration is often established by the parties themselves with their mutual consent and as stated in their arbitration agreement.

The ad-interim injunction described in Section 37 of the Specific Relief Act of 1963 is similar to the idea of ‘emergency arbitration’[5] & governed by the Code of Civil Procedure, 1908, where the main measure in both circumstances is the maintenance of the status quo until the merits of the dispute are heard. The Indian courts frequently employ the ad interim injunction power to confine one party in civil disputes and intellectual property proceedings. It is important to note that an emergency arbitrator is chosen and arranged by the parties without the need for a tribunal in the first instance. As a result, it is advised to choose institutional arbitration over ad hoc arbitration because the latter is more likely to occur if the parties are unable to agree on the appointment of an arbitrator or if any of the preceding circumstances arises.

The main reason for holding an ‘emergency arbitration’ is to provide pro bono services to parties that cannot wait for the creation of an arbitral tribunal in order to meet their needs. The primary function of ‘emergency arbitration’ is based on two factors: the first is the probability that the parties will prevail on the merits of the case; the second is the possibility that, in the event that relief is not granted, the parties may suffer severe losses that may not be made up even through monetary compensation. The effectiveness of "‘emergency arbitration’" comes into play when there are circumstances in which no arbitral tribunal can be established and instead requires extra time to set itself up. Other factors, such as inflated litigation costs and the possibility of secret information leakage, may also be present. However, requesting an ‘emergency arbitration’ cannot simply be viewed as a calm procedure; it also necessitates the submission of proof of the necessary ‘emergency arbitration’s’ evidences, including the fee structure that has been decided upon based on the location of the arbitration; further, it will be limited to the signatures of the parties or their successors in accordance with the arbitration agreement.

[5] “Special Relief Act, 1963, S. 37”

EVOLUTION OF 'EMERGENCY ARBITRATION'

The early 1990s actions made can be linked to the development of the present 'emergency arbitration' system. The International Chamber of Commerce (ICC), which opened pre-arbitral emergency procedures in 1990, was the first institution of arbitration to allow parties to file issues for items like an 'emergency arbitration' order.[6] The ICC understood that concerns may occur throughout the course of numerous contracts, especially long-term contracts, that would need immediate answers.[7] It is usually impossible for a tribunal or court to reach a binding ruling in such a short amount of time. In order to give a short-term resolution to the dispute and build the groundwork for a long-term resolution, the ICC adopted a pre-arbitral referee procedure. Such clauses were optional, and the parties had to 'opt-in' to be bound by them.[8]

Notably, the World Intellectual Property Organisation (or "WIPO") suggested a modification to its arbitration rules in the middle of the 1990s and included the emergency relief provision.[9] However, nothing similar happened until 2014.[10] As part of its commercial arbitration rules, the American Arbitration Association also developed optional provisions for emergency measures of protection in 1999.

The availability of 'emergency arbitration' became the standard throughout the course of the following two decades as a consequence of various arbitral institutions including rules for 'emergency arbitration' after appreciating the significance and necessity of emergency methods. The regulations were approved by SIAC and the Stockholm Chamber of Commerce (or "SCC") in 2010. The Swiss Arbitration Centre ('SAC') then introduced the 'emergency arbitration' guidelines in 2012, and the ICC then updated its rules. Following suit in 2013, 2014, and 2015, respectively, were the London Court of International Arbitration (LCIA), the China International Economic and Trade Arbitration Commission (CIETAC), and the Hong Kong International Arbitration Centre (HKIAC).

[6]"Rules for a Pre-Arbitral Referee Procedure, https://iccwbo.org/publication/rules-pre-arbitral-referee-procedure/, (Last visited Apr. 2, 2023)."
[7]"Pre-Arbitral Referee Rules,https://iccwbo.org/disputeresolution-services/pre-arbitral-referee/rules/,(Last visited Apr. 2, 2023)."
[8] "Pre-Arbitral Referee Procedure, 1999, Art. 3.1."
[9] "Richard Allan Horning, Interim Measures of Protection: Security for Claims and Costs and Commentary on the WIPO Emergency Relief Rules, Vol.9, AM. REV. INT'L ARB., 170 (1998)."
[10] "WIPO Arbitration Rules, 2014, Art. 49(a)."

‘EMERGENCY ARBITRATION’ IN INTERNATIONAL ARBITRAL INSTUITUTIONS

At the moment, the “Singapore International Arbitration Centre,” the “Stockholm Chamber of Commerce,” the “Swiss Chambers Arbitration Institution,” the “Mexico City National Chamber of Commerce,” and the “Netherlands Arbitration Institute” all offer both the ‘emergency arbitration’ and the expedited formation of the arbitral tribunal. While the “International Centre for Dispute Resolution of the American Arbitration Association,” the “International Chamber of Commerce,” and the “London Court of International Arbitration” have chosen to only offer ‘emergency arbitration,’ as have the “Hong Kong International Arbitration Centre and the International Centre” for Dispute Resolution.

The International Arbitration Institution has adopted the following examples of legislative rules addressing ‘emergency arbitration’: -

Singapore International Arbitration Centre

‘Emergency arbitration,’ which can be called upon to address urgent situations before the arbitral tribunal has been established, is the main component of SIAC's approach to emergency processes. The parties do not need to "opt-in" to the existence of these processes; rather, they are applicable by default to the applicable arbitration agreements, it should be stated at the beginning. As will be shown, a significant new characteristic of ‘emergency arbitration’ processes across the variety of institutions described in this article is the default operation of ‘emergency arbitration’ rules or the obligation to expressly opt out of its provisions. The practical result of these clauses operating by default is that contending parties will now have easier access to ‘emergency arbitration’ processes, and the number of requests for ‘emergency arbitration’ interim relief will probably continue to rise.

A party in need of relief may apply for emergency interim relief before the arbitral tribunal is established under Rule 26.2 and Schedule 1 of the SIAC Arbitration Rules (4th edition), which took effect on July 1, 2010, so long as the application is made concurrently with or after the filing of a Notice of Arbitration.[11]

Although SIAC regulations provide the emergency arbitrator wide latitude to grant whatever temporary relief considered appropriate,[12] if the tribunal is not created after 90 days, any remedy given by the ‘emergency arbitration’ expires and the ‘emergency arbitration’ loses its authority to operate.[13] The tribunal that is later established is given additional jurisdictional protection since it is not bound by any decisions reached by the ‘emergency arbitration’. Any temporary award or other remedy provided by the ‘emergency arbitration’ may be reviewed, modified, or revoked by the tribunal[14]. Additionally, the tribunal, after it has been established, has the authority to provide injunctions and other temporary remedy as necessary, at the request

[11] “SIAC Rules (2010) Sch.1(1).”
[12] “SIAC Rules (2010) Sch.1(6).”
[13] “SIAC Rules (2010) Sch.1(7).”
[14] “SIAC Rules (2010) Sch.1(7).”

of a party to the dispute[15]. However, a party may only in unusual cases ask the courts for temporary relief following the creation of the tribunal.

The International Arbitration Act (IAA) was amended on April 9, 2012, by the Singapore Parliament in response to concerns over the enforceability of orders and judgements granted via 'emergency arbitration'. The changes make it quite apparent that decisions reached through 'emergency arbitration' are enforceable in Singapore.

Stockholm Chamber of Commerce

The SCC introduced a strong 'emergency arbitration' system in amendments that became effective on January 1, 2010, which allows for the appointment of an 'emergency arbitration' within 24 hours and gives the 'emergency arbitration' considerable discretionary powers to conduct the proceedings as they see suitable. However, in line with Article 4(2) of the SCC Rules, the SCC board is in charge of deciding jurisdiction over the dispute prior to the appointment of the 'emergency arbitration'.

The SCC Rules on an 'emergency arbitration,' like the SIAC and ICC Rules, are intended as an opt-out option and, as such, apply to all SCC arbitrations unless the parties specifically agree otherwise. Similar to how the regulations are not meant to be used ex parte, notice of the opposing party is necessary. The SCC Rules take it a step further by retrospectively implementing the opt-out mechanism with regard to the 'emergency arbitration' rules. Due to the fact that the new processes began on January 1, 2010, parties arbitrating under the SCC Rules are now authorised to employ the 'emergency arbitration' proceedings even though their arbitration agreement was signed before that date. The retroactivity of the new Rules has generated a lot of discussion and commentary among the arbitration community.

London Court of International Arbitration

There are no emergency protocols under the LCIA Rules. But in 1998, a mechanism for the "expedited formation" of a tribunal was added to the LCIA Rules. Article 9 calls for the tribunal to be established quickly.

The LCIA is completely free to reduce any deadline for creating the tribunal, but they would need to be convinced of its "exceptional urgency" in order to do so. However, once the tribunal is established, the parties must depend on its authority to issue interim judgements.

Despite the "expedited formation" rules, there is still a chance for significant delay because the LCIA is not permitted to override the parties' ability to choose the arbitrators they want, a decision that may cause some discussion and delay in itself. The LCIA often takes the position of limiting the amount of time the respondent has to respond to the arbitration demand.

The New York Convention does not recognise an interim order; it only recognises a final judgement that may be enforced. According to the aforementioned convention, the order is evaluated using the standard of finality. Regarding the urgent arbitration ruling in a 2013

[15] 'SIAC Rules (2010) R. 26.1'

lawsuit before the District Court of New York ***Yahoo! Inc. v. Microsoft Corporation case***[16], The 'emergency arbitration' award that Yahoo requested to be vacated was denied. The remedy granted by the Emergency Arbitrator was determined to be "in essence final" by the Court, who also affirmed it for reasons of recognition and enforcement. Despite the fact that an arbitration tribunal's final decision has not yet been made, the court reasoned that the emergency arbitrator is not prohibited from making final remedy awards to maintain the status quo in the case.

However, the Southern District Court of California reached the opposite judgement in 2011 and issued ***Chinmax Medical Systems v. Alere San Diego***[17]. In this case, the Court dealt with a request to overturn an emergency arbitrator's ruling. The Court claimed that it lacked jurisdiction on the grounds that the ruling was not conclusive and binding under the New York Convention.

[16] 'Yahoo! Inc. v. Microsoft Corporation, 13 CV 7237, October 21, 2013.'
[17] "Chinmax Medical Systems Inc., v. Alere San Diego, Inc., Case No. 10cv2467 WQH (NLS), May 27, 2011."

‘EMERGENCY ARBITRATION’ IN INDIA

There are no provisions for an emergency arbitrator or for emergency orders or awards in the Indian Arbitration and Conciliation Act, 1996. An effort was made to formally recognise ‘emergency arbitration’ in India in the 2014 246th Law Commission Report on changes to the 1996 Arbitration and Conciliation Act. The following changes to Section 2(1)(d) of the Act were suggested in the report.[18] These modifications were anticipated to be eliminated by the 2015 revision[19], however, the 2015 change that was adopted did not take these suggestions into account.

After that, in 2016, the Government of India established a High-Level Committee to Review Institutionalisation of Arbitration Mechanism in India (the "Committee") to pinpoint obstacles to the growth of institutional arbitration and look into specific problems affecting the Indian arbitration landscape. The task of creating a plan for turning India into "a robust centre for international and domestic arbitration" was delegated to the Committee.[20] The Committee saw that the acknowledgment and enforceability of awards made by Emergency Arbitrators are dependent upon significant uncertainty under Indian regulation. The Committee proposed that India acknowledge the Law Commission's proposals for administrative acknowledgment of emergency arbitrators under the Arbitration Act, noticing that India expected to permit authorization of emergency awards in every arbitral cycle.[21] The Arbitration and Conciliation (Amendment) Act, 2019, did not include any provisions for emergency arbitrators, as the Government of India once again opted to disregard the Committee's proposal.

As a result, despite the Law Commission's recommendations and the Committee's support, neither Emergency Arbitrators nor the awards or orders they issued have received any legislative recognition. Accordingly, there was still some uncertainty with regards to whether the choices gave by the Emergency Arbitrators would be enforceable in India, especially considering the Law Commission's and the Committee's dismissed suggestions.

INDIAN ARBITRAL INSTITUTIONS

In a recent development, arbitration institutions are attempting to include the term "‘emergency arbitration’" into their rules and are creating concurrent processes thereof. Even though the Indian arbitral institutions are not legally strong enough, they have drafted rules that are largely equivalent to the most important institutional norms used in international arbitration. Several illustrious organisations and their corresponding laws include:

a. The **Delhi International Arbitration Centre,** "‘emergency arbitration’" is a provision in Part III of the Arbitration Rules of the Delhi High Court. A comprehensive

[18] ‘246th Report of the Law Commission of India, Amendments to the Arbitration and Conciliation Act 1996, 37 (2014)’
[19] “Arbitration and Conciliation (Amendment), Act, 2015. (No. 3 of 2016)”
[20] “Press Information Bureau Press Release, Ministry of Law and Justice, Government of India ‘Constitution of High-Level Committee to Review Institutionalization of Arbitration Mechanism in India,’ (December, 2016)”
[21] “Report of the High-Level Committee to Review the Institutionalisation of Arbitration Mechanism in India, (July, 2017, 76)”

explanation of the appointment, process, duration, and powers of an Emergency Arbitrator is provided in Section 18A, which also lists "Emergency Arbitrator."

b. The **International Chambers of Commerce's Court of Arbitration in India** lists the provisions for 'emergency arbitration' and the Emergency Arbitrator in Article 29 of the "Arbitration and ADR Rules" (r/w Appendix V).
c. **International Commercial Arbitration** lists the provisions for 'emergency arbitration' and an emergency arbitrator under Section 33 r/w Section 36(3) as of January 1, 2014.
d. Schedule A and Schedule D of the **Madras High Court Arbitration Centre Rules, 2014's** Part IV, Section 20 r/w, specify the provisions for 'emergency arbitration' and the Emergency Arbitrator.
e. The provisions for 'emergency arbitration' and the Emergency Arbitrator are listed in Section 3 of the **Mumbai Centre for International Arbitration (Rules) 2016** with effect from that date.

INDIAN COURTS

In the event that ***Raffles Design International India Pvt. Ltd. v. Educomp Professional Education Ltd***.[22], Raffles, the petitioner, looked for the giving of brief reliefs under Section 9 of the Delhi High Court subsequent to getting break choices from the Emergency Arbitrator named under the SIAC Rules in a foreign situated arbitration[23] section of the Arbitration Act. The interim award made by the Emergency Arbitrator (in a foreign-seated arbitration) could not be enforced under the Arbitration Act, according to the Delhi High Court, which held that the Act does not contain any provisions for the enforcement of interim orders granted by an arbitral tribunal outside of India. The Delhi High added, however, that an Indian Court might independently apply its mind and provide temporary reliefs under Section 9 of the Act based on the identical cause of action found by the Emergency Arbitrator, even if such interim awards/orders could not be enforced in India.

Another example is ***Ashwani Minda v. U-Shin Ltd***.[24], The Japan Commercial Arbitration Association Rules ("JCAA Rules") emergency arbitrator had rejected to give temporary reliefs by issuing a detailed order in a foreign-seated arbitration regulated by those rules. Following the Emergency Arbitrator's ruling, the Applicant filed a petition with the Delhi High Court according to Section 9 of the Act. The Delhi High Court ruled that the Applicant cannot request the same temporary remedy from a Court after trying in vain to secure relief through an 'emergency arbitration.' The Delhi High Court continued by ruling that it could not act as an appeals court to review the emergency arbitrator's decision in a case filed under Section 9 of the Act. As a result, the Hon'ble Court impliedly upheld an emergency arbitrator's ability to award temporary relief as an alternative forum to court proceedings under section 9 of the Arbitration Act.

[22]'Raffles Design International India Pvt. Ltd. v. Educomp Professional Education Ltd., (2016) 234 DLT 349'
[23]"S. 9 of the Arbitration Act deals with the Court's ability to issue temporary safeguards to a party prior to, during, or after arbitration procedures, as well as at any point following the issuing of the arbitral decision but prior to its enforcement."
[24]"Ashwani Minda v. U-Shin Ltd., AIR 2020 (NOC 953) 314"

These decisions unquestionably demonstrate the persuasive power of verdicts made by emergency arbitrators when parties seek temporary relief from the courts. Direct implementation of emergency awards and directives, however, is still a problem.

In the well-known case, the Supreme Court provided a highly creative interpretation of the Act that appropriately satisfies the requirements of the New York Convention, ***Amazon.com NV Investment Holdings LLC v. Future Retail Ltd***.[25], stating that Section 17(1) of the Act recognises the interim award made by an emergency arbitrator appointed in accordance with the Arbitration Rules of the Singapore International Arbitration Centre[26], and is thus upheld under Section 17(2) of the Act. The Court was careful to point out that nothing in the Act forbade contracting parties from appointing a clause that provided for an emergency arbitrator's decision. Contrarily, it was noted that reading Sections 2(6) and (8) of the Act together provides[27]. If given a fair interpretation, the Act would permit the contracting parties to include institutional rules in their arbitration agreement, and such incorporation should be given top priority so that, in the event the institutional rule calls for emergency arbitrator orders, the same would be covered by the Act. In particular, the Supreme Court believed that the idea of 'emergency arbitration' would become moot if the orders of an emergency arbitrator were not followed.

[25] 'Amazon.com NV Investment Holdings LLC v. Future Retail Ltd, (2022) 1 SCC 209'
[26] 'Arbitration and Conciliation Act, 1996, S. 17(1)'
[27] 'Arbitration and Conciliation Act, 1996, S. 2(6) and (8)'

AMENDMENTS IN ARBITRATION AND CONCILLIATION ACT, 1996

The Arbitration and Conciliation Act, 1996, in particular, may need to be changed in a number of ways to allow for and govern 'emergency arbitration' in Indian law. The following significant changes can be taken into consideration for 'emergency arbitration' in India:

It is possible to alter the Arbitration and Conciliation Act, 1996 to incorporate provisions particularly for 'emergency arbitration'. These clauses may specify the steps to take, the prerequisites to be met, and the rules for holding and enforcing 'emergency arbitration' proceedings.

1. **Definition of 'emergency arbitration'**: Section 2 of the 1996 Arbitration and Conciliation Act provides a clear definition of 'emergency arbitration' that outlines its scope, purpose, and characteristics, as well as the time-sensitive nature of the disputes that qualify for 'emergency arbitration'. The Act can be amended to reflect this definition[28].
2. The Act may be modified by the addition of a new chapter containing provisions for 'emergency arbitration' with relation to the following matters:
    - **Timelines for 'emergency arbitration'**: The Act may specify deadlines for holding 'emergency arbitration' hearings, such as dates for starting the hearings, choosing emergency arbitrators, and making awards. This can guarantee that urgent arbitration is handled quickly to fulfil the parties' pressing demands.
    - **Appointment of Emergency Arbitrators**: The Act may contain provisions for the appointment of emergency arbitrators, including those regarding their qualifications, impartiality standards, and appointment procedures. This can assist guarantee that arbitrators selected to handle urgent arbitration matters are qualified and unbiased.
    - The Act may specify the **duties and powers of emergency arbitrators**, including their ability to give temporary remedy or injunctive relief to preserve the parties' rights while the 'emergency arbitration' action is ongoing.
    - **Confidentiality of 'emergency arbitration' procedures**: The Act may contain measures governing the secrecy of 'emergency arbitration' procedures, ensuring that the parties' privacy and confidentiality are safeguarded throughout the accelerated procedure.
    - **Enforcement of 'emergency arbitration' rulings**: In accordance with the New York Convention and other relevant treaties, the Act may clarify the processes for the domestic and international recognition and enforcement of 'emergency arbitration' rulings.
    - **Relationship with Court processes**: The Act can address how 'emergency arbitration' and court processes interact, and it can do so by incorporating clauses that deal with anti-suit injunctions, court proceedings being suspended, and the legal enforcement of 'emergency arbitration' verdicts.

[28] Section 2 of the Arbitration and Conciliation Act, 1996 provides all the definitions relating to the said Act.

- **Rules and processes**: The Act can provide parties the freedom to adopt individual 'emergency arbitration' rules and processes or to refer to the rules of recognised arbitral institutions that contain 'emergency arbitration'-specific features.
- **Public Policy and Judicial Review**: The Act has the authority to define the parameters of judicial review of 'emergency arbitration' decisions made on the basis of public policy, ensuring that the decisions are given due consideration while maintaining the rapid character of 'emergency arbitration.'

These are a few possible revisions that might be considered when 'emergency arbitration' is introduced in India. In order to make sure that the legal framework for 'emergency arbitration' is strong, effective, and in line with the needs of parties seeking expedited dispute resolution in India, the specific amendments may need to be carefully considered, consultation with stakeholders, and alignment with international best practises.

CONCLUSION

In India, the idea of ‘emergency arbitration’ is becoming more popular as a workable alternative conflict settlement method. In critical situations, it enables parties to seek prompt redress, ensuring that justice is administered without delay. ‘Emergency arbitration’ is not specifically governed by law in India, which has led to ambiguities and difficulties in its use.

A framework that specifies the process, scope, and enforcement of emergency awards must be provided by clear, thorough law that particularly handles ‘emergency arbitration.’ Such laws should follow global best practises and consider the particular needs, issues, and concerns of Indian enterprises and the legal system.

The adoption of ‘emergency arbitration’ law in India would not only provide parties engaged in ‘emergency arbitration’ the much-needed certainty they want, but it would also improve India's reputation as a pro-arbitration jurisdiction, draw foreign investment, and advance ease of doing business. It will also help lighten the load on the courts and advance India's conflict settlement procedures' effectiveness.

The moment has come for India to proactively enact ‘emergency arbitration’ laws in order to guarantee its efficient application as a dispute settlement method. This will promote India as a pro-arbitration jurisdiction, increase the efficacy and legitimacy of ‘emergency arbitration,’ and aid in the expansion of global commerce and investment.

BIBLIOGRAPHY

1. http://nujslawreview.org/wp-content/uploads/2022/02/14.4-Gupta-Neogi.pdf
2. https://www.scconline.com/blog/post/2022/03/26/emergency-arbitration/
3. https://www.researchgate.net/publication/362945919_Emergency_Arbitration_An_Approach_Towards_the_Advancement
4. https://www.researchgate.net/publication/345846712_Emergency_Arbitration_Comparative_Analysis
5. https://files.klgates.com/files/publication/33e561cb-b459-47f5-bab1-856c51d8459b/presentation/publicationattachment/f5e1a648-049e-4f63-afcf-f8d4dc91bae2/emergency-arbitration-procedures_a-comparative-analysis.pdf
6. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3789506
7. https://academic.oup.com/arbitration/article-abstract/35/4/441/5690304
8. https://www.mondaq.com/advicecentre/content/3958/Emergency-Arbitration-In-India-Concept-And-Beginning
9. https://www.indianarbitrationlawreview.com/copy-of-changing-contours-of-host-s
10. https://arbitrationblog.kluwerarbitration.com/category/emergency-arbitration/