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EMERGENCY ARBITRATION IN INDIA: ENFORCEABILITY, ACCESS, AND THE UNFINISHED STATUTORY FRAMEWORK

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Abstract

Emergency arbitration ("EA") allows parties to seek urgent interim relief before an arbitral tribunal is even constituted, filling a critical gap between the commencement of a dispute and the availability of a decision-maker. While EA has been a standard feature of major international institutional rules for over a decade, Indian arbitration law has never expressly recognised it. The Arbitration and Conciliation Act, 1996 ("the Act") contains no reference to an "emergency arbitrator," and Parliament chose not to act on the 246th Law Commission Report's recommendation to amend the definition of "arbitral tribunal" to include one. Into this legislative vacuum stepped the judiciary. In Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. (2021), the Supreme Court held that an emergency arbitrator's award, in an India-seated arbitration, qualifies as an order under Section 17(1) of the Act and is therefore enforceable as an order of a court under Section 17(2). This paper argues that while the Amazon ruling was a necessary and pro-arbitration intervention, it is an interpretive patch rather than a structural solution. It leaves unresolved the enforceability of EA orders in foreign-seated arbitrations, offers no relief to parties without access to institutional rules that provide for EA, and does nothing to correct the access-to-justice imbalance that allows only well-resourced corporate parties to meaningfully benefit from the mechanism. The paper concludes that a targeted legislative amendment—not further judicial improvisation—is necessary to place emergency arbitration in India on a stable and equitable footing.

1. Introduction

Arbitration is often chosen over litigation for its promise of speed and party control. Yet one persistent weakness undermines that promise: the period between the outbreak of a dispute and the constitution of an arbitral tribunal, during which a party may suffer irreparable harm with no decision-maker empowered to intervene. Emergency arbitration was designed to close this gap, allowing a sole emergency arbitrator to be appointed within days to grant urgent interim relief before the main tribunal is formed.

Indian law, however, has approached this mechanism largely by accident rather than design. The Arbitration and Conciliation Act, 1996, modelled on the UNCITRAL Model Law, was drafted at a time when emergency arbitration was not yet a feature of institutional practice, and successive amendments—including the significant 2015 Amendment—did not incorporate it. It was left to the Supreme Court, in the Amazon v. Future Retail dispute, to determine whether an emergency arbitrator's award could have any legal effect in India at all. This paper examines that judgment, situates it within the broader trajectory of Indian arbitration jurisprudence, and argues that the current position—judicially constructed rather than legislatively codified—leaves significant gaps that disproportionately disadvantage smaller and less-resourced parties.

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2. The Statutory Vacuum

Section 17 of the Act empowers an "arbitral tribunal" to grant interim measures once constituted, while Section 9 allows parties to approach a court for similar relief, including before the tribunal is formed. Neither provision contemplates an emergency arbitrator appointed under institutional rules before the tribunal proper comes into existence. The definition of "arbitral tribunal" under Section 2(1)(d) refers only to a sole arbitrator or a panel of arbitrators, without reference to an emergency arbitrator as a distinct category.

The 246th Report of the Law Commission of India (2014), which preceded the 2015 Amendment, recommended that the definition of "arbitral tribunal" be expanded to expressly include an emergency arbitrator, thereby placing EA orders squarely within the enforcement mechanism of Section 17. Parliament did not adopt this recommendation. The result was precisely the kind of interpretive uncertainty that came to a head in Ashwani Minda v. U-Shin Ltd. (Delhi High Court, 2020), where the court declined to enforce a foreign emergency arbitrator's order, holding that Indian law did not recognise the concept. This left India in the anomalous position of having a modern, UNCITRAL-based arbitration statute that offered no clarity on a mechanism increasingly standard in major institutional rules, including those of the ICC, SIAC, LCIA, and, since 2016, the Mumbai Centre for International Arbitration itself.

3. Amazon v. Future Retail: The Judicial Fix

3.1 Factual Background

Amazon invested approximately Rs. 1,431 crores in Future Coupons Private Limited ("FCPL"), securing contractual rights that restricted Future Retail Limited ("FRL"), a group entity, from transferring its retail assets to a list of "restricted persons" without Amazon's consent. In 2020, FRL entered into a Rs. 24,713 crore transaction with Reliance-affiliated entities. Amazon invoked the arbitration clause in the FCPL Shareholders' Agreement, which provided for SIAC-administered arbitration seated in New Delhi, and sought emergency interim relief. The SIAC-appointed emergency arbitrator issued an award in October 2020 restraining FRL from proceeding with the transaction.

3.2 Procedural History

Amazon sought to enforce the emergency award under Section 17(2) of the Act before the Delhi High Court. A Single Judge, in a detailed judgment, held that the emergency award was enforceable as an order under Section 17(1) read with Order XXXIX Rule 2-A of the Code of Civil Procedure, 1908, and additionally invoked the "group of companies" doctrine to bind FRL despite it not being a signatory to the arbitration agreement. A Division Bench of the Delhi High Court stayed this order, prompting Amazon to approach the Supreme Court.

3.3 The Supreme Court's Holding

The Supreme Court, in its judgment dated 6 August 2021, framed and answered two central questions: first, whether an emergency arbitrator's award qualifies as an order of an "arbitral tribunal" under Section 17(1); and second, whether an order enforcing such an award under Section 17(2) is appealable under Section 37.

On the first question, the Court held that the definition of "arbitral tribunal" was wide enough, on a purposive reading, to include an emergency arbitrator appointed under institutional rules that the parties had voluntarily adopted. The Court relied heavily on party autonomy: having agreed to be governed by SIAC Rules, which expressly provide for emergency arbitration, the parties could not later disown the consequences of that choice. The Court also invoked its earlier reasoning in Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd. to hold that Parliament's failure to adopt the Law Commission's recommendation did not, by itself, mean that emergency arbitrators were excluded from the statutory scheme—the recommendation could still inform a purposive interpretation of the existing text.

On the second question, the Court held that no appeal lies under Section 37 against an order enforcing an emergency award under Section 17(2), reasoning that permitting such an appeal would defeat the very purpose of emergency relief by re-opening avenues for delay.

4. Critical Analysis

4.1 A Necessary but Structurally Limited Fix

The Amazon judgment is rightly celebrated as a pro-arbitration, pro-enforcement decision that brought India's practice closer to international norms. However, its foundation is interpretive rather than statutory. The Court did not hold that emergency arbitrators are recognised under the Act as a matter of general principle; it held that where parties have chosen institutional rules that provide for EA, they are bound by the consequences of that choice, and such an award can then be routed through the existing language of Section 17. This is a party-autonomy-based workaround, not a codified right. Any future bench presented with a materially different institutional framework, or an ad hoc arbitration with no institutional rules at all, would have to reconstruct the same reasoning from scratch, since there is still no statutory anchor for emergency arbitration as a concept independent of a particular institution's rules.

4.2 The Foreign-Seated Gap

The judgment's reasoning is explicitly confined to India-seated arbitrations, since Section 17 falls within Part I of the Act, which governs only Indian-seated proceedings. Emergency arbitrator orders issued in foreign-seated arbitrations remain unenforceable through this route. Parties in such arbitrations must fall back on Section 9 applications before Indian courts, which do not carry the same speed or finality as direct enforcement of an EA award, and result in a duplication of adjudication—the Indian court must, in substance, re-examine the same urgency and merits already considered by the emergency arbitrator. This is a significant limitation for the very category of disputes—cross-border commercial transactions—that are most likely to involve emergency arbitration in the first place, and it undercuts India's aspiration to be seen as a jurisdiction friendly to international commercial arbitration.

4.3 The Access-to-Justice Problem

A less-discussed but equally serious limitation is that emergency arbitration, even where enforceable, remains functionally available only to well-resourced corporate parties. Amazon could invoke SIAC's emergency arbitrator mechanism because the underlying agreement was drafted with SIAC administration and the institutional fees that come with it. Domestic institutions such as the Mumbai Centre for International Arbitration have historically lacked an equally developed or affordable emergency arbitration mechanism, meaning that small and medium enterprises entering into domestic Indian-seated arbitration agreements are unlikely to have access to EA at all, and must rely on slower Section 9 court applications instead. The Amazon judgment, by validating EA only where institutional rules already provide for it, does nothing to correct this structural imbalance—if anything, it entrenches a two-tier system in which only large corporates negotiating institutional arbitration clauses can access rapid interim relief, while smaller parties remain dependent on India's backlogged civil courts.

4.4 Post-Judgment Developments and the Limits of Judicial Endorsement

The broader Amazon-Future-Reliance dispute itself illustrates the limits of even a favourable emergency arbitration ruling. Despite the Supreme Court's enforcement of the EA award, Reliance-affiliated entities proceeded to take control of Future Retail stores in early 2022 amid FRL's subsequent insolvency proceedings, culminating in FRL's liquidation in 2024. The episode is a reminder that emergency arbitration, however doctrinally sound, cannot by itself prevent a stronger commercial party from prevailing through parallel legal and commercial processes—the mechanism secures a procedural victory, not necessarily a substantive or lasting one.

5. Comparative Note

Jurisdictions such as Singapore and Hong Kong have addressed this uncertainty legislatively rather than judicially. Singapore's International Arbitration Act expressly defines "arbitral tribunal" to include an emergency arbitrator, removing any need for courts to construct the position through interpretation. Hong Kong's Arbitration Ordinance contains similarly explicit provisions. India's continued reliance on judicial interpretation, five years after the Law Commission first recommended a legislative fix, leaves it a comparative outlier among arbitration-friendly jurisdictions it otherwise seeks to emulate.

6. Conclusion and Recommendations

Amazon v. Future Retail was the right outcome delivered through the wrong branch of government. It rescued Indian arbitration law from an embarrassing gap by reading emergency arbitration into the existing text of Section 17, but this judicial patch cannot substitute for the legislative clarity that Singapore, Hong Kong, and other competing arbitration seats already provide. Three specific gaps remain: the unresolved position of foreign-seated EA orders, the absence of any EA infrastructure accessible to smaller domestic parties, and the risk of future benches reaching inconsistent conclusions in fact patterns that do not map neatly onto Amazon's institutional-rules-based reasoning.

This paper recommends that Parliament amend Section 2(1)(d) of the Act to expressly include emergency arbitrators within the definition of "arbitral tribunal," resolving the ambiguity at its source rather than leaving it to case-by-case judicial construction. It further recommends that Indian arbitral institutions, including the Mumbai Centre for International Arbitration, be encouraged—through fee subsidies or model clauses—to develop affordable emergency arbitration mechanisms accessible to small and medium enterprises, so that the benefits of Amazon are not confined to disputes between well-resourced multinational corporations. Until such steps are taken, emergency arbitration in India will remain a mechanism available in principle but unevenly accessible in practice.

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