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## **Introduction**

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## Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

## Description

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# **THE EMERGENCY ARBITRATOR: ANALYZING THE SHIFT FROM "JUDICIAL MIRAGE" TO STATUTORY RECOGNITION OF EMERGENCY ARBITRATORS IN THE 2024/2025 REFORMS.**

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## **Abstract**

The availability of access to urgent interim relief prior to the constitution of an arbitral tribunal has now become an essential element in the procedural matrix of international commercial arbitration. The mechanism of emergency arbitration, as provided in the rules of leading arbitral institutions such as SIAC, ICC, and LCIA, was specifically designed to address this temporal vulnerability, but in the context of the Indian legal framework, this mechanism has existed in a state of uncertainty for much of its existence. The Arbitration & Conciliation Act, 1996, prior to recent legislative intervention, did not provide any express recognition of the role of emergency arbitrators, with parties being compelled to rely on the rather uncomfortable position under Section 9. The doctrinal confusion was dissipated with the Supreme Court's landmark decision in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. (2021)*, wherein the Supreme Court accorded meaningful legitimacy to emergency arbitrator orders by incorporating them into the scheme of Section 17. This decision has been hailed as transformative, although limited in scope. The amendments to the Arbitration and Conciliation Act, 2024/2025, mark the legislative apotheosis of this trend and effectively subsume emergency arbitration into the statutory framework of arbitration law in India. This paper critically assesses the extent to which these amendments effectively clarify the pre-existing doctrinal confusion or merely formalise pre-existing judicially created structures. Employing a doctrinal approach aided by comparative examination of the Singapore SIAC regime and the UNCITRAL Model Law, this paper critically assesses the scope, enforceability, and procedural rationality of the new regime. The examination suggests that, despite being an important landmark in the development of India as an arbitration-

facilitative jurisdiction, concerns regarding jurisdictional overlap with Section 9 and the effectiveness of enforcement mechanisms remain an area for continued research and reform.

**Keywords:** Emergency Arbitration, Interim Measures, Arbitration and Conciliation Act 1996 (Amendment 2024/2025), Section 17, *Amazon v. Future Retail*, Enforceability, SIAC, UNCITRAL Model Law, Jurisdictional Overlap.

## 1. INTRODUCTION

The purpose of emergency arbitration is to bridge the gap between the commencement of a dispute and the constitution of an arbitral tribunal, during which time one party's interests are particularly vulnerable. The mechanism achieves this by providing for the appointment of an arbitrator at the outset, thereby providing interim relief through institutional rather than national courts.<sup>1</sup> The need has long been recognised by the SIAC, ICC, and LCIA, all of whom introduced provisions on the emergency arbitrator long before local legislatures caught up by recognising this as a problem that needed to be addressed so that any award is not rendered hollow by delay.<sup>2</sup> India's situation was far more complex. The Arbitration and Conciliation Act of 1996 did not contain any specific provision that acknowledged the existence and efficacy of the emergency arbitrator.<sup>3</sup> Emergency awards were susceptible to being challenged based on their failure to satisfy the condition of being an "arbitral tribunal" as defined under Section 2(1)(d), and their enforcement was uncertain. The decisions of the courts were inconsistent, and so were the views of legal scholars, who referred to it as an "unsettled juridical question" that was implicit in institutional practice but lacked the requisite statutory support.<sup>4</sup>

The watershed moment came in the Supreme Court decision in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*,<sup>5</sup> in which it was held that emergency arbitrator awards in institutional arbitrations initiated in India are enforceable under Section 17(2) on the basis of party

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<sup>1</sup> Gary Born, *International Commercial Arbitration* 2464–2470 (3d ed. 2021).

<sup>2</sup> SIAC Rules, r. 30 & Sched. 1 (2016); ICC Rules of Arbitration, art. 29 & App. V (2021); LCIA Arbitration Rules, art. 9B (2020).

<sup>3</sup> Arbitration and Conciliation Act, No. 26 of 1996, § 2(1)(d) (India).

<sup>4</sup> Promod Nair, *Emergency Arbitration in India: A Juridical Grey Area*, 8 Indian J. Arb. L. 45, 48–52 (2019).

<sup>5</sup> *Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd. & Ors.*, (2021) 9 SCC 624 (India).

autonomy, as reflected in the institutional rules adopted by the parties, which are part of the arbitral legal system. While the decision was widely praised, it was also analysed for its limitations, such as being judicially created, depending on the facts, and being applicable only in India-seated arbitrations. The question of legitimacy of the statute remained unanswered. The Arbitration and Conciliation (Amendment) Bill, 2024, is a direct outcome of this undecided scenario. In the Draft Bill, there is a proposal for a new Section 9A that allows arbitral institutions to appoint emergency arbitrators prior to the constitution of the tribunal, with such orders being on an equal footing with Section 17(2) orders.<sup>6</sup> Additionally, there is a proposal for a definition of "emergency arbitrator" in Section 2(1)(ea), which is the first recognition of the emergency procedure in the Act's history.

The question that this paper seeks to answer is whether this set of reforms is actually effective in remedying the doctrinal problems that existed prior to them, or whether it is simply codification of the *Amazon v. Future Retail* position, taking existing judicial practice and codifying it without really expanding it in any meaningful way. The question that this paper seeks to answer is whether legislative intervention, without clear guidance on jurisdictional overlap, enforcement efficacy, and foreign-seated emergency awards, is really effective in improving India's regime on emergency arbitration or simply rehashing the ambiguities that already existed under that regime. The paper is largely doctrinal in nature, with comparison to Singapore's SIAC regime and the UNCITRAL Model Law, which does not include any specific provision on emergency arbitrators.<sup>7</sup> The research that is advanced is that the 2024 reforms are important and long overdue, but that there are structural issues that require attention, in particular in respect of Section 9 residual issues, the enforcement of foreign-seated emergency awards, and judicial readiness.

## 2. Research Questions

1. To what extent has the statutory recognition of Emergency Arbitrators in the 2024/2025 reforms addressed the legal ambiguity in India?

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<sup>6</sup> Arbitration and Conciliation (Amendment) Bill, 2024, §§ 2(1)(ea), 9-A (India) (Draft Bill released by the Department of Legal Affairs, Government of India, October 18, 2024).

<sup>7</sup> UNCITRAL Model Law on International Commercial Arbitration, arts. 17–17J (2006).

2. To what extent does the incorporation of Emergency Arbitrators in the framework of the Arbitration and Conciliation Act create consistency in the doctrine, or does it create jurisdictional conflicts in the grant of court-ordered relief under Section 9?
3. What is the Indian approach to Emergency Arbitration in comparison to the approach in the leading arbitration centers of Singapore and the UK?
4. Does the incorporation of the concept of Emergency Arbitrators strengthen the position of India as an arbitration-friendly jurisdiction, or does the problem persist in reality?

### 3. RESEARCH METHODOLOGY

The nature of this research is primarily doctrinal in nature and is carried out through a critical analysis of the legal sources that govern and have governed emergency arbitration in India. The doctrinal method is most appropriate in this context because the underlying research question of whether the 2024/2025 amendments are truly addressing the previous legal ambiguity or are merely codifying previous judicial interpretations is, at heart, a question of the internal consistency and effectiveness of a legal system. In that regard, the paper is based on an analysis of the text of the Arbitration and Conciliation Act, 1996, and the proposed amendments contained in the Arbitration and Conciliation Amendment Bill, 2024. Similarly, the role of judicial decisions is also highlighted in this context, with special emphasis being laid on the rationale employed by the Supreme Court in the case of *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, as well as the evolution of the High Court decisions that predated or postdated this judgment. The institutional rules of the major arbitral institutions such as the SIAC, ICC, and LCIA are also considered as the constitutive sources of the law of emergency arbitration, as the rules are applicable to India or Indian parties.

This doctrinal exercise is complemented by a comparative exercise, which engages with the arbitration regimes in Singapore and the United Kingdom. This comparative aspect, however, is not merely decorative, as it has an analytical purpose. While the Singapore regime, through the SIAC system and the enabling role of the Singapore International Commercial Court, embodies a mature and widely accepted emergency arbitration system, the United Kingdom, with its developed common law system for interim relief in arbitration, provides a useful counterpoint for

comparison. This enables an assessment of whether the legislative intervention in India aligns with, departs from, or potentially improves upon accepted international norms.

Underpinning both the doctrinal and comparative approaches is a critical analytical methodology. Rather than taking the 2024/2025 reform measures as a given in terms of their progressive nature, this paper seeks to engage with the actual normative and procedural implications of the reform, including areas of possible conflict, gaps in enforcement, and any uncertainty in drafting that could perpetuate rather than address existing problems. In this sense, the methodology adopted is not one of reform as a given, but as a contested space.

Secondary sources play an important role as a supplementary layer in the research. This includes secondary literature on arbitration written by various learned scholars such as Gary Born, reports of the Law Commission of India, especially the 246th Law Commission Report, arbitration law journals, and articles published in various legal periodicals. The scope of the present paper is specifically restricted to the mechanism of emergency arbitration and its connection with interim relief in Indian arbitration law. It does not pretend to cover all aspects of arbitration proceedings in general.

Certain limitations need to be discussed in the present research. Firstly, it is clear that the research has been conducted on secondary data, and legislative materials are available in the public domain. Secondly, it must be recognized that judicial interpretations in the post-reform scenario are scanty, and the true nature of the Bill will only become clear as it is put into practice by the courts. These are not limitations in the sense of being defects in the research but rather limitations in the nature of the research itself, which are openly acknowledged.

#### **4. SCOPE AND OBJECTIVES**

##### **Scope of the Study**

The current study is limited to the analysis of the concept of emergency arbitration as a self-contained concept within the larger framework of interim measures in the law of Indian arbitration. It attempts to chart the evolution of the concept from its pre-statutory existence as one

characterised by the institutional support of the rules of the SIAC and ICC but its absence from the Arbitration and Conciliation Act, 1996, to its evolution as a concept that received legitimacy from the courts and ultimately its inclusion in the legislative reforms of 2024/2025. The temporal framework of the paper is contemporary in nature as the necessary historical background is provided to set the context for the analysis that is centered on the evolution of the concept from the Supreme Court judgment in the case of *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. (2021)* to the amendments proposed in the Arbitration and Conciliation (Amendment) Bill, 2024.

The comparative aspect of this study is also limited in that it is informed by the arbitration laws applicable in Singapore and the United Kingdom, as models for assessing the sufficiency of the reformed system in India, both on account of their advanced legal frameworks and because they are more closely applicable to disputes involving Indian business entities. The paper does not set out to provide a general review of emergency arbitration as it applies in all significant global legal systems, nor does it cover investment arbitration, investor-state dispute resolution mechanisms, or other alternative dispute resolution techniques such as mediation or conciliation. The procedures applicable to arbitration beyond the emergency arbitration procedure, such as the selection processes applicable to full arbitral tribunals, challenges, or enforcement of arbitral awards, are not within the scope of this study unless they are directly relevant to the research question under investigation.

### **Objectives of the Study**

The present paper pursues several interrelated objectives of analysis, the first of which is the attempt to critically examine the legal position of emergency arbitrators in India before the advent of statutory recognition, with particular emphasis on the conceptual uncertainties created by the lack of express provisions in the 1996 Act and the resultant judicial creativity. The second objective is the analysis of the content and normative implications of the 2024/2025 reforms, not just in terms of what they provide but also in terms of what they fail to provide. The third objective of the present paper is the evaluation of whether the statutory recognition, as it exists today, effectively addresses the conceptual problems that arose before it or whether it simply codifies judicial creativity in legislative form without adding much conceptual clarity to the existing body of law. The final objective of the present paper is the comparative evaluation of the Indian reformed

model vis-à-vis the more established models in Singapore and the UK, in terms of both the similarities and the structural deficiencies that exist in the Indian model. Finally, the study hopes to identify the gaps left by the new framework and provide informed observations regarding the legislative and institutional changes that can make the Indian system of emergency arbitration more consistent, effective, and competitive at the international level.

## 5. HYPOTHESIS

The initial hypothesis that the present paper sets out to test is that the legislative recognition of emergency arbitrators as provided in the Arbitration and Conciliation (Amendment) Bill, 2024 represents an important but incomplete reform, codifying the judicial approach as set out in the decision in the case of *Amazon.com NV Investment Holdings LLC v. Future Retail Limited*, but not fully addressing the ambiguity and enforcement issues that characterized the pre-reform Indian approach in the first place.

There are two supporting propositions that add texture to this core argument. The first is that the continued existence of Section 9 of the 1996 Act as an independent means of obtaining court-ordered interim relief creates a structural overlap that the 2024 reforms do not adequately address, thereby maintaining the circumstances in which the parties may evade emergency arbitration awards by engaging in parallel judicial proceedings. The second is that an assessment of the Indian reformed system, when viewed in the context of the underlying institutional and judicial framework that underpins emergency arbitration in Singapore and the United Kingdom, evidences underlying gaps, particularly with respect to the enforcement of emergency awards in foreign-seated arbitral proceedings, that cannot be addressed by the act of statutory recognition alone.

These hypotheses are not immediately obvious or merely descriptive statements, but rather contestable propositions regarding the relationship between form and legal substance. The paper critically assesses these hypotheses through both an examination of the relevant statutory provisions and case law, and also through a comparative assessment of jurisdictions where emergency arbitration has attained a more established and functional status.

## 6. CONCEPTUAL FRAMEWORK — EMERGENCY ARBITRATOR

### 6.1 Conceptual Definition

Much of the real-world appeal of arbitration as a process lies in the promise of efficiency. However, there exists a structural weakness inherent in the efficiency of arbitration, namely the potential temporal gap between the crystallisation of the dispute and the constitution of the full arbitral tribunal, during which the interests of the party, be it the protection of assets, the maintenance of performance, or the prevention of irreparable harm, may be at serious risk. It was the temporal gap that the emergency arbitrator set out to fill.

An emergency arbitrator is "a neutral appointed by or through an arbitral institution on an expedited basis and empowered to provide interim or conservatory relief that cannot await the constitution of the tribunal without risk of serious prejudice to the requesting party."<sup>8</sup> The emergency arbitrator procedure was not created by statute but rather emerged as a natural evolution in arbitral institutions. The SIAC Rules provide for emergency arbitration in Schedule 1 thereof,<sup>9</sup> while the ICC Rules provide for emergency arbitration in Article 29 read in conjunction with Appendix V, although in this instance, the decision is in the form of an "order" rather than an award, which could have significant implications for enforceability.<sup>10</sup> The LCIA Rules also provide for emergency arbitration in Article 9B.<sup>11</sup> This demonstrates that emergency arbitration was created as a response to a need that was not met by statute.

Interim relief is a form of provisional measures taken to maintain the status quo, to protect property, to stop actions, or to collect evidence. Unlike a final award, interim measures are by their very nature temporary. Gary Born identifies three key roles for interim measures. These are protective, to preserve the subject matter of the dispute; regulatory, to maintain the relationship between the parties during proceedings; and evidentiary, to preserve evidence necessary for adjudication. The emergency arbitrator procedure is, in effect, a procedural innovation to provide interim relief prior to the operation of arbitral procedure to remedy a perceived gap in the system that previously forced recourse to national courts irrespective of a party's choice of arbitration.

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<sup>8</sup> Gary Born, *International Commercial Arbitration*

<sup>9</sup> SIAC Rules, Sched. 1, rr. 1–10 (2016).

<sup>10</sup> ICC Rules of Arbitration, art. 29 & App. V (2021).

<sup>11</sup> Born, *supra* note 1, at 2102–2104.

## 6.2 Key Features of Emergency Arbitration

The essential characteristic of emergency arbitration is the fact that it takes place prior to the constitution of the tribunal. It differs from the approach of seeking relief from a constituted tribunal pursuant to Section 17 of the Arbitration and Conciliation Act, 1996,<sup>12</sup> or from the courts pursuant to Section 9,<sup>13</sup> in the sense that there exists a space prior to the constitution of any tribunal to hear the party's claim. For the invocation of this mechanism, it is necessary to have a valid arbitration agreement that includes the institutional rules or a separate agreement that grants jurisdiction. The filing of the application is permitted simultaneously or after the filing of the Notice of Arbitration and must show urgency as well as grounds for relief.<sup>14</sup>

Two aspects of this new form of relief are particularly significant from an analytical perspective. First, it is provisional: the emergency arbitrator's decision is not binding on the newly constituted tribunal, which is entitled to vary, set aside, or even supersede it.<sup>15</sup> Second, there has been a question regarding enforceability: as emergency arbitrators do not fit within the conventional definition of "arbitral tribunal," there were serious concerns, particularly in systems with pre-institutional statutory regimes, as to whether orders issued by emergency arbitrators could be enforced through conventional arbitral award-enforceability mechanisms.

This tension will be one of the preoccupations in subsequent chapters.

## 6.3 Distinction Between Emergency Arbitrator, Arbitral Tribunal, and Courts

The relationship between emergency arbitrators, constituted arbitral tribunals, and national courts is characterized by the presence of overlapping jurisdictions and competing procedures. The relationship is complex and ambiguous. The analytical differentiation of the three is imperative to any meaningful discussion of emergency arbitration in India.

An arbitral tribunal possesses plenary jurisdiction over both interim measures and merits. Under Section 17(1), it possesses the authority to order protective measures, security, or preservation of property pending the award.<sup>16</sup> The orders made by it under Section 17(2) are directly enforceable

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<sup>12</sup> Arbitration and Conciliation Act, No. 26 of 1996, § 17(1) (India).

<sup>13</sup> *Id.* § 9.

<sup>14</sup> SIAC Rules, Sched. 1, r. 1 (2016).

<sup>15</sup> ICC Rules of Arbitration, App. V, art. 6(8) (2021).

<sup>16</sup> Arbitration and Conciliation Act § 17(1).

as court orders.<sup>17</sup> The authority vested in the arbitral tribunal is plenary in extent, provided it is within the scope of the reference and possesses the full weight of the statutory enforcement framework. “Section 9 jurisdiction is available for granting interim orders before, during, or after arbitration proceedings.”<sup>18</sup> Section 9 is territorial and coercive in nature and is available for enforcement through contempt jurisdiction. Section 9 is available independently of arbitration agreements, subject to Section 9(3), which provides that once the arbitral tribunal is constituted, Section 9 applications are not normally entertained unless Section 17 is found to be inadequate.<sup>19</sup> The emergency arbitrator holds a functionally intermediate and institutionally distinct role. The emergency arbitrator does not have jurisdiction over the merits, and its jurisdiction is based solely on agreement and rules, not legislation. The main differences are as follows. With regard to timing, the emergency arbitrator only deals with cases prior to constitution, the tribunal deals with cases during the proceedings, and the court deals with cases at all times. With regard to jurisdictional basis, the emergency arbitrator's jurisdiction is based on consent and rules, the tribunal's jurisdiction is based on consent and legislation, and the court's jurisdiction is based on legislation and non-consent. With regard to enforceability, the tribunal's Section 17(2) orders are enforceable without going to court, Section 9 orders have coercive judicial enforceability, and emergency arbitrator orders, prior to the 2024 reforms, were in uncertain statutory positions. With regard to the powers, the emergency arbitrator deals only with urgent provisional relief, the tribunal deals with interim relief and makes a final award, and the court deals with interim relief and the enforcement of awards.

The most significant tension is between the emergency arbitrator and Section 9. For if the dissatisfied party can obtain relief elsewhere, the utility of the institutional mechanism is undermined, while if the party has already obtained relief under Section 9, it will have little reason to seek emergency arbitration. This tension, which the 2024 reforms have only partially addressed, is one of the most important of the doctrinal fault lines in the Indian arbitration regime and is explored further in the following chapters.<sup>20</sup>

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<sup>17</sup> *Id.* § 17(2).

<sup>18</sup> *Id.* § 9(1).

<sup>19</sup> *Id.* § 9(3).

<sup>20</sup> O.P. Malhotra, *The Law and Practice of Arbitration and Conciliation* 412–415 (3d ed. 2014).

## 7. PRE-REFORM POSITION — THE "JUDICIAL MIRAGE" OF EMERGENCY ARBITRATION IN INDIA

### 7.1 Absence of Statutory Recognition under the Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act, 1996, based on the UNCITRAL Model Law, was India's first foray into developing a framework for international arbitration. However, the 1996 Act was surprisingly silent on the subject of emergency arbitration, and this was not merely an omission, but a fundamental conservatism about developing new forms of party-centric arbitral processes beyond what Parliament was willing to explicitly provide. The definitional framework has also been particularly constricting. In particular, the definition of "arbitral tribunal" contained in Section 2(1)(d) refers to a sole arbitrator or a panel of arbitrators.<sup>21</sup> An emergency arbitrator, appointed prior to the constitution of the arbitration for a limited mandate, does not easily fall into the above description. The words "unless the context otherwise requires" were present, but the courts were loath to apply these words when the entity had never been formally recognized by Parliament. Similarly, Section 17, which provides for interim measures by an "arbitral tribunal" during proceedings, was beyond access for emergency proceedings, as emergency proceedings are initiated in the absence of any arbitral tribunal, thus falling outside the temporal ambit of Section 17.<sup>22</sup> The approach for emergency proceedings was to refer to Section 9, which provides for measures to be granted before, during, or after arbitral proceedings by courts.<sup>23</sup> This was paradoxical, as parties who opted for institutional arbitration to bypass the courts were forced to approach the courts for emergency measures, which was essentially what institutional arbitration was intended to facilitate. Emergency awards under SIAC, ICC, or LCIA Rules were not enforceable under Section 17(2); thus, reliance was left to the good offices of the courts.<sup>24</sup>

### 7.2 Judicial Responses and Conflicting Approaches

Judicial response to such legislative inaction was neither uniform nor doctrinally sound. It was a reflection of what individual benches of courts felt on a case-by-case basis. A good early example of the Delhi High Court is in *Raffles Design International India Pvt. Ltd. v. Educomp Professional*

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<sup>21</sup> Arbitration and Conciliation Act, No. 26 of 1996, § 2(1)(d) (India).

<sup>22</sup> *Id.* § 17(1).

<sup>23</sup> § 9(1).

*Education Ltd.*<sup>24</sup> There was a SIAC emergency arbitrator decision, which was not complied with by the respondents. The petitioners were forced to approach the court under Section 9, not to enforce the emergency award, but to obtain a fresh injunction for what was essentially identical to what the emergency arbitrator had granted. The Court held that the emergency award, being from a foreign-seated arbitration, was not enforceable under the Act, and the sole method for enforcement was through civil litigation.<sup>25</sup> This demonstrates an inherent limitation of considerable importance: whilst the emergency award, being valid in an institutional sense, was legally hollow in India, there was no corresponding provision in the Act, unlike Article 17H of the UNCITRAL Model Law, which specifically provides for the enforceability of interim measures ordered by arbitral tribunals, irrespective of their seat.<sup>26</sup> Whilst the Court accepted emergency arbitration, it effectively made it meaningless by forcing the parties to go through Section 9 proceedings to enforce it, thus completely negating the purpose of emergency arbitration.

A similar dichotomy is seen in the case of *Ashwani Minda v. U-Shin Ltd.*,<sup>27</sup> where the Delhi High Court declined to act as an appellate court over the emergency arbitrator's award and yet went ahead to act on its own Section 9 jurisdiction. The pattern that is seen through this body of case law is that the courts have recognized emergency arbitration, have used its rationale to grant their own relief, and yet have declined to enforce its awards. The pattern is not a framework; it is a series of ad hoc decisions that show the uncertainty that is present.

### **7.3 The Turning Point: *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. (2021)***

The landscape changed dramatically in this regard following the decision in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*<sup>28</sup> Amazon had obtained an emergency arbitrator award under SIAC Rules restraining a transaction in relation to Future Retail assets and sought its enforcement under Section 17(2). However, after conflicting decisions at the Delhi High Court, the case was taken to the Supreme Court. The Court, per Nariman and Gvai, JJ., was able to resolve this issue via purposive interpretation. It ruled that the definition of "arbitral tribunal" under

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<sup>24</sup> *Raffles Design Int'l India Pvt. Ltd. v. Educomp Prof'l Educ. Ltd.*, 2016 SCC OnLine Del 5521 (India).

<sup>25</sup> *Id.*

<sup>26</sup> UNCITRAL Model Law on International Commercial Arbitration, art. 17H (2006).

<sup>27</sup> *Ashwani Minda v. U-Shin Ltd.*, Order dated May 12, 2020, OMP (Comm.) 920/2020 (Delhi H.C., India).

<sup>28</sup> *Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd. & Ors.*, (2022) 1 SCC 209, also reported as 2021 SCC OnLine SC 557 (India) (Nariman and Gvai, JJ., judgment delivered August 6, 2021).

Section 2(1)(d), subject to the qualification "unless the context otherwise requires," must be construed in light of the institutional rules which the parties had agreed to adopt.<sup>29</sup> As the SIAC Rules adopted emergency arbitration, the emergency arbitrator was deemed to be an "arbitral tribunal" for the purposes of Section 17. The words "during the arbitral proceedings" in Section 17(1) of the Act, construed with Section 21 of the Act, were deemed to be wide enough to include emergency proceedings commencing upon the receipt by the institution of the Notice of Arbitration. As such, the emergency arbitrator's decision was enforceable under Section 17(2).<sup>30</sup> The Court also based its decision on the doctrine of party autonomy, as the adoption of the SIAC Rules by the parties must be respected, and nothing in the Act prohibits this.<sup>32</sup> *Amazon v. Future Retail* was indeed a real shift in the law. The extension of Section 17 enforcement to emergency arbitrators in institutional arbitrations seated in India was a significant departure from the *Raffles Design* approach.

#### 7.4 The "Judicial Mirage": An Analytical Evaluation

And yet, to describe the post-Amazon position in this way is to mistake judicial ingenuity for statutory certainty. The term "judicial mirage" should not be seen as in any way critical of the Supreme Court, whose approach was both purposive and sensitive to commercial realities. The judicial mirage was elsewhere: in the structural insecurity of a position where the existence of a commercially vital mechanism was dependent upon judicial rather than legislative intervention. The restrictions are significant. First, the decision was specifically restricted to India-seated arbitrations, as it was based upon the applicability of Part I and Section 17 of the Act to the proceedings. The emergency awards in the foreign-seated arbitrations had still been in the same place as they had been left in the *Raffles Design* decision: not enforceable under the Act and only available in civil suit or Section 9 equivalent proceedings.<sup>31</sup> The jurisdiction that Amazon had gained was restricted in its geography, and a significant group of cases involving Indian parties in international arbitrations had still not been considered at all. Secondly, the approach of the Court was informed by its interpretative approach to the contextual qualification contained in Section

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Raffles Design Int'l India Pvt. Ltd. v. Educomp Prof'l Educ. Ltd.*, 2016 SCC OnLine Del 5521; see also O.P. Malhotra, *The Law and Practice of Arbitration and Conciliation* 412–415 (3d ed. 2014).

2(1)(d). The interpretative approach is inherently precarious. The scope of Section 2(1)(d) as interpreted in the Amazon case is not self-defining. The applicability of the section to different institutional rules and ad hoc proceedings is questionable.<sup>32</sup> A different approach to the interpretation of the section may have limited the ruling to its facts without offending the literal rule. Thirdly, the structural overlap between the emergency arbitrator process and Section 9 of the arbitration law was not addressed or rationalised. Thus, the suggestion of Amazon that the appointment of the emergency arbitrator engaged the restriction of Section 9(3) on the initiation of parallel proceedings was not explored. Finally, and most importantly, a decision cannot be relied upon as providing what only legislation can: uniformity, certainty, and accessible compulsion. Counsel advising clients on the availability of the emergency arbitration process in 2022 or 2023 could rely on the Supreme Court decision, but not on any statutory basis. The acknowledgment of the availability of the process was real, but conditional: the facts had to correspond to the Amazon case, and the courts had to be willing to apply the decision without distinction.

This, in essence, is the judicial mirage. The emergency arbitration was present in the jurisprudence of the Supreme Court. The parties were on reasonable notice that the awards would be enforceable. However, the foundation was not strong enough, with no express statutory text, no framework of enforcement, no clarity on foreign-seated cases, and no resolution of the Section 9 overlap. The recognition was substantial enough to induce reliance, yet unclear enough to negate assurance. It is upon these inadequacies that the 2024/2025 statutory reforms need to be assessed.

## **8. THE 2024/2025 REFORMS — STATUTORY RECOGNITION OF EMERGENCY ARBITRATORS IN INDIA**

### **8.1 Legislative Background and Introduction of Reforms**

The Draft Arbitration and Conciliation (Amendment) Bill, 2024, published by the Department of Legal Affairs on 18 October 2024, marks the most far-reaching proposal of reforms to the Indian arbitration landscape since the amendments introduced in 2015 and 2019.<sup>33</sup> The rationale behind the reforms has been both doctrinal and aspirational. The Supreme Court decision in the case of

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<sup>32</sup> Gary Born, *Supra* note 1 at 2476–2480.

<sup>33</sup> Draft Arbitration and Conciliation (Amendment) Bill, 2024 (India), released by the Department of Legal Affairs, Government of India, on October 18, 2024 [hereinafter "Draft Bill 2024"].

*Amazon.com NV Investment Holdings LLC v. Future Retail Limited*<sup>34</sup> had already established the potential of the existing regime to incorporate the concept of emergency arbitration through interpretative creativity, but only up to a certain extent. The aspirational rationale behind the reforms has been the Indian ambition of competing with Singapore or London as a venue of arbitration. The Draft Bill was preceded by the Expert Committee on Arbitration Law, headed by Dr. T.K. Vishwanathan, which made recommendations in February 2024.<sup>35</sup> The key gap identified by the Expert Committee on Arbitration Law was the lack of a specific emergency arbitration provision, along with issues of court involvement and delays. The objectives of the Draft Bill, which are to incentivise institutional arbitration, minimise court involvement, and expedite proceedings, form the policy context in which the emergency arbitration provisions are to be understood.<sup>36</sup>

## 8.2 Statutory Recognition of Emergency Arbitrators

The most significant change brought about by the Draft Bill is the formal incorporation of the concept of emergency arbitrator into India's arbitration statutes. Under proposed Section 2(1)(ea), for the first time, "emergency arbitrator" is statutorily defined as "an arbitrator appointed in accordance with Section 9A."<sup>39</sup> However, this change is more than just semantic because, under the 1996 Act in its pre-amended form, the concept of emergency arbitrator was only recognized in contractual space provided by institutional rules, and its interface with the statute was only subject to judicial inference.

A key question of structure remains, however. Rather than subsuming the emergency arbitrator within the definition of "arbitral tribunal" in Section 2(1)(d), as was achieved in *Amazon v. Future Retail*<sup>37</sup> by the Supreme Court through contextual interpretation, a parallel regime is established in Sections 2(1)(ea) and 9A, running in parallel to the existing tribunal regime. The emergency arbitrator is a creature of statute in its own right, with its own defined space. The extent to which

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<sup>34</sup> *Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd. & Ors.*, (2022) 1 SCC 209 (India).

<sup>35</sup> See Expert Committee on Arbitration Law, Report of the Expert Committee to Examine the Working of Arbitration Law in India (Feb. 7, 2024) (constituted under the chairmanship of Dr. T.K. Vishwanathan, submitted February 2024) [hereinafter "Vishwanathan Committee Report"].

<sup>36</sup> Draft Bill 2024, *supra* note 35, Statement of Objects and Reasons.

<sup>39</sup> § 2(1)(ea)

<sup>37</sup> *Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd. & Ors.*, (2022) 1 SCC 209, ¶¶ 78–82 (India).

such a separation adds clarity or merely adds to the existing taxonomic muddle is examined in the section below.

### **8.3 Changes to the Interim Relief Framework**

Further, Section 9A(1) stipulates that “an arbitral institution may appoint an emergency arbitrator before the constitution of the arbitral tribunal, specifically for the purpose of granting interim measures of the kind contemplated in Section 9.”<sup>38</sup> The Draft Bill’s basis in Section 9 is intended to clarify the scope of the available interim measures, as the jurisdiction of the emergency arbitrator is tied to the categories of Section 9. The proposed addition of Section 17(da) would enable the constituted tribunal to confirm, vary, or set ad interim measures ordered pursuant to Section 9 or the emergency arbitrator pursuant to Section 9A.<sup>39</sup> It connects the emergency proceedings with the regular arbitral proceedings. The constituted tribunal is not bound by or required to ignore the decision of the emergency arbitrator, as the constituted tribunal has the sole responsibility. It also makes it clear that the decision of the emergency arbitrator is subject to a temporal limitation, or it has been subordinated.

These changes have a significant impact on party autonomy. Parties entering into institutional emergency arbitration will now be able to rely on a legislative framework which provides for their contractual choice, as opposed to having to rely on court interpretation. A Section 9A emergency arbitration should, in theory, negate the need for Section 9 applications, reinforcing the overall policy objective of reducing court intervention.

### **8.4 Enforcement Mechanism of Emergency Arbitrator Orders**

Section 9A(3) states, with respect to emergency arbitrator orders, “they shall be enforceable in the same way as an order of the arbitral tribunal under Section 17(2).”<sup>40</sup> This is the most operationally relevant provision in the new system. Section 17(2) gives the same weight to arbitral tribunal orders as court orders, permitting civil enforceability, including contempt, which contractual obligations alone could never achieve. Section 9A(3) effectively codifies the judicial interpretation of the position of *Amazon v. Future Retail* and can be said to be a consolidation of the Amazon

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<sup>38</sup> Draft Bill 2024, *supra* note 35, § 9A(1).

<sup>39</sup> *Id.* § 17(da)

<sup>40</sup> § 9A(3)

position rather than a departure from it. This helps to clear up the enforcement position for India-seated institutional arbitrations. However, a major structural flaw persists. The proviso to Section 2(2), which sets out the provisions of Part I which apply to foreign-seated arbitrations, includes 9A(2) but does not include 9A(3).<sup>41</sup> This leaves parties to Singapore or London-seated arbitrations without a direct enforcement mechanism for obtaining emergency awards under the SIAC or ICC Rules, a position which Raffles Design found itself in. For a significant proportion of high-value commercial cases between Indian parties seated abroad, the reform does not apply.<sup>42</sup>

### 8.5 Analytical Evaluation of the Reforms

The 2024 Draft Bill does, however, achieve what might be called legislative consolidation, as it is the first time that emergency arbitration has a statutory basis, a process, and enforcement without the need for judicial interpretation. Parties in India-seated institutional arbitrations can now rely on the legislation, rather than case law. The move from judicial tolerance to legislative acceptance, therefore, represents a real improvement in the law. The flaw, however, remains one of basic structure. Most obviously, the exclusion of Section 9A(3) from the foreign-seated provisions of Section 2(2) means that the enforceability question raised in Raffles Design, which has never really been fully answered as a result of the Amazon decision, remains.<sup>11</sup> This is no small flaw, as it undermines the achievement of the reforms.

Similarly, the overlap of Section 9 is as unclear as ever. The Draft Bill seeks to restrict the role of the courts once proceedings have commenced in Section 9(1).<sup>43</sup> However, the interplay between Section 9 as amended, Section 9A, and Section 9(3) has yet to be clearly articulated. The possibility of emergency relief and Section 9 applications being commenced simultaneously, and indeed before the completion of institutional appointment, is a concern. The restriction of emergency relief to institutional proceedings under Section 9A(1) has created another asymmetry.<sup>44</sup> Ad hoc proceedings remain entirely dependent upon Section 9. While this may have been oversight or policy choice, it is clear that the advantages of the reform have been denied to a large section of domestic users.

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<sup>41</sup> *Id.* § 2(2) proviso.

<sup>42</sup> *Raffles Design Int'l India Pvt. Ltd. v. Educomp Prof'l Educ. Ltd.*, 2016 SCC OnLine Del 5521 (India); *see also* Gary B. Born, *International Commercial Arbitration* 2476–2480 (3d ed. 2021).

<sup>43</sup> Draft Bill 2024, *supra* note 35, § 9(1)

<sup>44</sup> § 9A(1).

Finally, the question of whether the Draft Bill does more than simply codify the decision of *Amazon v. Future Retail* must be honestly posed. Section 9A(3) essentially mirrors the decision of the Supreme Court, which had arrived at the same conclusion through interpretation. The definitional structure essentially formalises what judicial creativity had already achieved. The reform is certainly meaningful, but it must be noted that the ambition of the reform is limited by the degree to which it follows the jurisprudence, rather than the questions left open by the jurisprudence, such as the foreign-seated enforcement gap or the Section 9 overlap. The 2024 reforms are a real and necessary legislative milestone; the lingering uncertainties, however, suggest that they are more a milestone than a destination on the journey of India's emergency arbitration.

## **9. COMPARATIVE ANALYSIS OF EMERGENCY ARBITRATION — INDIA, SINGAPORE, THE UNITED KINGDOM, AND THE UNCITRAL MODEL LAW**

### **9.1 Introduction to the Comparative Framework**

In this sense, comparative analysis is essential to the field of arbitration law. Because emergency arbitration was not codified under legislation, but was instead developed institutionally, the pace and character of its adoption and utilization have varied significantly from jurisdiction to jurisdiction. Some jurisdictions have codified emergency arbitration, some have left it to institutional rules and the goodwill of the judiciary, and some have only partially engaged with emergency arbitration. The frameworks will be used to assess India's 2024/2025 reforms from a principled perspective, measuring its approach against jurisdictions that have successfully navigated this space, and some that have navigated it differently. The jurisdictions used for comparison were deliberately chosen. The jurisdiction of Singapore was selected for its institutional maturity with respect to emergency arbitration, having rules, legislation, and a sophisticated judiciary. The jurisdiction of the United Kingdom was selected for having historically relied upon the judiciary to provide emergency and interim relief, and only having codified emergency arbitrators under the Arbitration Act 2025. The UNCITRAL Model Law, as the foundational template from which India's 1996 Act was derived, provides the baseline against which departures and innovations are most meaningfully assessed. Together, these comparators illuminate where India now stands and where its residual challenges lie.

## 9.2 Singapore: A Model for Institutional Emergency Arbitration

The position of Singapore as one of the preeminent arbitral centers can be attributed to the level of development in the rules and regulations of the SIAC, as well as the level of sophistication in the statutory framework that supports it. The SIAC Rules, in their seventh edition, in effect from January 1, 2025, boast some of the most developed rules regarding emergency arbitrators available from any arbitral institution worldwide.<sup>45</sup> In contrast to the position in India, which until the reforms in 2024 failed to afford a clear route for emergency relief, Singapore has long offered a clear route for emergency relief. The Rules in effect from January 1, 2025, enable a party to apply for the appointment of an emergency arbitrator even before filing a Notice of Arbitration—a significant departure from the Rules in effect from 2016, which required such applications to be filed concurrently or subsequent to each other.<sup>49</sup> The SIAC President aims to appoint an emergency arbitrator within one day, with the emergency arbitrator being required to set out his procedural plan within two days.<sup>46</sup> These emergency orders are binding and must be complied with on the date of issuance.<sup>47</sup> Most importantly, the 2025 Rules have ushered in a Protective Preliminary Order procedure for the grant of *ex parte* emergency relief, which is intended to prevent the opposing party from dissipating assets to defeat the application for relief.<sup>48</sup> This is a first for SIAC, a position India has yet to achieve.

This advantage is also bolstered through the statutory component. The International Arbitration Act (Cap. 143A) has been construed to cover emergency arbitrators as part of the "arbitral tribunal" definition and thus can be enforced through the same means as other arbitral tribunal decisions.<sup>49</sup> In *CVG v. CVH* [2022] 3 SLR 1559, the enforceability of emergency proceedings was asserted without qualification.<sup>50</sup> The consequence is that there is a cohesive system of swift institutional procedures, clear enforceability through legislation, and judicial support that is yet to be fully achieved through the changes to the system in India.

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<sup>45</sup> SIAC Rules, Sched. 1, rr. 1–34 (7th ed. 2025); *see also* SIAC Rules, Sched. 1, rr. 1–9 (6th ed. 2016) <sup>49</sup> SIAC Rules, Sched. 1, r. 2 (7th ed. 2025).

<sup>46</sup> SIAC Rules, Sched. 1, r. 7 (7th ed. 2025).

<sup>47</sup> SIAC Rules, Sched. 1, r. 10 (6th ed. 2016).

<sup>48</sup> SIAC Rules, Sched. 1, rr. 25–34 (7th ed. 2025).

<sup>49</sup> International Arbitration Act, (Cap. 143A), § 2(1) (Sing.)

<sup>50</sup> *CVG v. CVH* [2022] 3 SLR 1559 (Sing.)

### 9.3 United Kingdom: Judicial Support without Statutory Recognition

The approach adopted by the United Kingdom provides a useful comparison, one of gradualist judicial support rather than proactive legislative design. The Arbitration Act 1996 makes no specific provision for emergency arbitrators, a reflection of the limited adoption of the procedure at the time of the legislation.<sup>51</sup> Section 44 gave support to arbitral proceedings, although this was subject to the limitation that the court could only act if there was no power or inability of the relevant institution or tribunal to act.<sup>52</sup> In this sense, the pre-reform position in the United Kingdom was analogous to the pre-Amazon position in India, insofar as the default position was to rely upon the court if the institutional mechanism was not statutorily underpinned.

The limitations of this approach were highlighted in the case of *Gerald Metals SA v. Timis* [2016] EWHC 2327 (Ch), where the English High Court found that where the institution had taken action on the emergency application, the residual gateway to the court under Section 44(5) was closed.<sup>53</sup> This further emphasised the position of the institutions but also highlighted the problem that if the institutions failed, the courts could not plug the gap. The changes to the process in India have maintained the alternative route of Section 9, which is a different approach, but arguably no more logical.

The Arbitration Act 2025, which was granted Royal Assent on 24 February 2025, resolved these tensions through targeted reform.<sup>54</sup> The 2025 Act gives emergency arbitrators peremptory orders that are enforceable by the court and permission for Section 44 applications, which are available to constituted tribunals only.<sup>55</sup> Unlike Singapore, which has taken a comprehensive and integrated approach to reform, and unlike India, which has created a bespoke Section 9A, the UK has taken a more incremental and calibrated approach, building upon rather than redesigning the existing architecture. However, this does not provide clarity in the way that Section 9A does in India.

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<sup>51</sup> Arbitration Act 1996, c. 23 (UK).

<sup>52</sup> *Id.* § 44(5)

<sup>53</sup> *Gerald Metals SA v. Timis* [2016] EWHC 2327 (Ch) (Eng.)

<sup>54</sup> Arbitration Act 2025, c. 4 (UK)

<sup>55</sup> *Id.* § 8.

#### 9.4 UNCITRAL Model Law: Silence on Emergency Arbitration

Unlike in Singapore and in the United Kingdom, there is no mention in the UNCITRAL Model Law regarding pre-constitution emergency arbitration. In fact, while the 2006 revisions to the Model Law have developed an elaborate system for interim measures in Articles 17 to 17J, this is applicable only to constituted arbitral tribunals.<sup>56</sup> The pre-constitution phase, which is exactly the time period for which emergency arbitration was developed, is completely absent from the Model Law's provisions. This was no oversight, as in fact, emergency arbitration was discussed by UNCITRAL working groups in the context of the 2006 revision, but it was felt that institutional practice was not sufficiently developed to be reflected in the Model Law.<sup>57</sup>

This silence has significant structural implications for all jurisdictions that based their legislation on the Model Law, including India and Singapore. Both are unable to turn to the Model Law for guidance on a response to emergency arbitration. Both are forced to find their own solution. India's long period of reliance on judicial interpretation, and Singapore's active development in terms of institutions and legislation, are both a response to a lack that is fundamental to all of them. The difference between them is a powerful illustration of just how great an impact national legislative and institutional approaches can have on a solution that is entirely ignored by the Model Law. A jurisdiction that legislates on emergency arbitration is no longer following the Model Law, but is in fact in a position to lead.

#### 9.5 India in Comparative Perspective

If we compare this to the position of India as reflected in the 2024/2025 Draft Bill, we can say that it is one of progress but of limited achievement. Perhaps the most telling of these comparisons is that between Singapore and India. Both have their origins in the Model Law and faced the same problem of silence as to emergency arbitration. Singapore has addressed this problem through institutional and interpretative approaches and a comprehensive enforcement regime. By contrast, India has had to rely on judicial creativity, which was taken to its ultimate extent in *Amazon v. Future Retail*. The Draft Bill has gone part of the way to addressing this problem through the creation of a definition in Section 2(1)(ea), a procedural provision in Section 9A, and enforcement

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<sup>56</sup> UNCITRAL Model Law on International Commercial Arbitration, arts. 17–17J (2006).

<sup>57</sup> *Supra* note 1, *International Commercial Arbitration* 2464–2466 (3d ed. 2021).

through Section 9A(3). However, it has not gone as far as Singapore's approach in that it does not extend Section 9A(3) to foreign-seated cases. In the case of the UK, the result is more nuanced. Pre-Arbitration Act 2025, the position of India, as established after the Amazon decision, was analogous to the UK's approach, as set out in Section 44, of providing accommodation through interpretative ingenuity rather than express statutory wording. However, the India Draft Bill of 2024, in its approach of providing a specific regime, arguably improves upon the original UK legislation of 1996 as far as clarity of statutory wording is concerned. However, the UK's approach in the 2025 amendments arguably provides a more sophisticated approach to the balance between the role of the emergency arbitrators and the courts, which India has yet to achieve, as far as the Section 9 overlap is concerned.

In contrast, India's position is the strongest when measured against the UNCITRAL Model Law. The introduction of Sections 2(1)(ea) and 9A represents a legislative affirmative departure from the Model Law's silence, placing India on the same footing as Singapore, which has clearly legislated on the availability of emergency arbitration. This is a comparative achievement of real significance.

Ultimately, what the above analysis reveals, however, is that the legislative requirement, however necessary, remains insufficient. Singapore's achievement lies in the efficiency of its institutions, the sophistication of its judiciary, and the breadth of its enforcement practice. These are the factors that provide the statutory framework with content. India has clearly taken the first step with its reforms, which provide a credible statutory basis. The development of the institutions, the building of the judiciary, and the legislative work required to give content to the reforms remain a work in progress. India has clearly moved from a jurisdiction where emergency arbitration has been judicially created to one where it has clearly been legislated. It remains a transition, genuine, significant, but incomplete.

## **10. CRITICAL ANALYSIS — EVALUATING THE LIMITS OF STATUTORY RECOGNITION OF EMERGENCY ARBITRATORS IN INDIA**

### 10.1 Substantive vs Procedural Recognition

Moreover, it is noted that the scope of legal recognition is not fixed and can vary considerably. On one end of the spectrum, there is substantive legal recognition, which is the complete integration of a legal regime into the normative structure of a legal system, complete with definitional parameters, a logical framework of procedure, and enforcement mechanisms that work without judicial ingenuity. On the other end of the spectrum, there is the weaker form of legal recognition, procedural accommodation, which is the inclusion of a legal regime in the text of the law but without the support of the necessary infrastructure to give it substance. It is submitted that the 2024/2025 reforms are more of the latter than the former and that this is a problem that the legislator has failed to address. The addition of Section 2(1)(ea) and the procedural mechanism in Section 9A are welcome contributions. For practitioners in India seated institutional arbitrations, the text, however imperfect, offers a degree of certainty that judicial interpretation alone does not offer. However, the reform remains structurally incomplete in that the emergency arbitrator, while referenced in Section 9A, is not included in the definition of "arbitral tribunal" in Section 2(1)(d). This taxonomy gives rise to a normative problem that has real-world consequences. Whether the challenge grounds in Section 12 apply to an emergency arbitrator, or whether the court may assume removal jurisdiction under Section 14, are questions that are simply unanswered.<sup>58</sup> What is answered is the most commercially pressing question: enforceability. The rest remains in limbo. This is selective incorporation, and it is not codification. The acknowledgment is genuine, and its incompleteness will become apparent in short order.

### 10.2 Enforcement Challenges in Practice

Formal enforceability and practical enforceability are not identical concepts, and in India's new scheme, the distinction between them is wide. Section 9A(3) makes orders by emergency arbitrators equivalent to orders made by courts under Section 17(2) for civil enforcement.<sup>59</sup> This bridges the gap for India-seated institutional arbitrations. The reform remains structurally incomplete, however, because procedural weakness remains along two axes beyond India's control.

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<sup>58</sup> Arbitration and Conciliation Act, No. 26 of 1996, §§ 12, 14, 2(1)(d) (India).

<sup>59</sup> Draft Arbitration and Conciliation (Amendment) Bill, 2024, § 9A(3) (India)

The first is territorial. Section 9A(3) does not apply to foreign-seated arbitrations. Thus, Indian parties who obtain emergency relief under the SIAC or ICC Rules in Singapore or London seated proceedings remain precisely where Raffles Design left them: without a direct enforcement procedure under the Act and reliant upon a civil suit or Section 9 application that involves the very delay that emergency arbitration is intended to overcome. The changes have addressed the domestic enforcement problem but have left the international problem entirely untouched. The asymmetry is difficult to defend on principled grounds and limits the relevance of the changes to an important class of international disputes.

The second challenge is systemic, not textual, and thus, in a sense, harder to address via legislation. The notion of equivalent enforceability between an emergency measure and a Section 17(2) court order rests on the assumption that the civil courts can react with the speed required by commercial emergencies. However, this assumption is not universally true. The caseloads handled by India's courts are extraordinary, and the structural delay in civil court enforcement is a familiar phenomenon.

The formal equivalent, in this case, is thus purely theoretical, existing on paper but in reality dependent on an institutional infrastructure that frequently cannot deliver.<sup>60</sup> The requirement of statutory enforceability is a necessary, though not sufficient, condition for emergency arbitration.

### **10.3 Efficiency vs Jurisdictional Overlap: The Conflict with Section 9**

Of the structural tensions in the 2024 reforms that remain unanswered, none are more significant than the relationship between emergency arbitration and Section 9. Section 9(1) gives the court authority to order interim measures before, during, or after arbitration proceedings.<sup>61</sup> This directly corresponds to the pre-constitution period in which emergency arbitrators are appointed. Section 9(3), which was added in the 2015 Amendment, places limitations on court applications where a tribunal is constituted unless the Section 17 remedy is found to be ineffective.<sup>62</sup> *In Amazon v. Future Retail*, the Court's logic suggested that appointment of an emergency arbitrator would engage this limitation on parallel court applications.<sup>63</sup> The Draft Bill does nothing to clarify or

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<sup>60</sup> *Supra* note 1, 2476–2480 (3d ed. 2021)

<sup>61</sup> Arbitration and Conciliation Act § 9(1).

<sup>62</sup> *Id.* § 9(3) (inserted by the Arbitration and Conciliation (Amendment) Act, No. 3 of 2016)

<sup>63</sup> *Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd. & Ors.*, (2022) 1 SCC 209, ¶¶ 78–82 (India).

negate this suggestion, and in doing so, reveals a tension at the heart of the reformed system. However, it is nowhere specified in the Draft Bill when exactly this restriction under Section 9(3) comes into play in the context of emergency arbitration. A party may apply for relief through emergency arbitration under Section 9A and to the courts under Section 9 simultaneously. The responding party is left in the dark as to which of these conflicting decisions it must comply with. The flaw here is that of inconsistency that the changes have created. The rationale behind emergency arbitration is that of efficiency, which is only possible if exclusivity is achieved; yet the Draft Bill has inadvertently maintained the very circumstances that it sought to avoid.

#### **10.4 Risk of Parallel Proceedings and Forum Shopping**

The unresolved overlap in Section 9 does not merely create theoretical confusion, but it can be exploited for strategic abuse as well. A savvy party anticipating an adverse emergency award can use Section 9 as leverage. A party that has failed before an emergency arbitrator can raise the same arguments as a basis for intervention under Section 9, asserting that the emergency relief was insufficient. The Draft Bill's failure to address the temporal interaction between Section 9A and Section 9(3) does not afford courts any basis to preclude one or both of these approaches.<sup>64</sup>

In Singapore, the question of institutional primacy in the provision of emergency relief is settled to such an extent that the possibility of parallel court applications is precluded. India does not possess such a high degree of institutional and judicial congruity. It is a settled practice for courts to entertain interim applications in arbitration cases. The distinction between Section 9 and Section 9A applications has not been judicially explored. It is submitted that the result would be not merely the inefficiency of the process but the potential for the very efficacy of the emergency relief mechanism to be undermined to the extent of becoming a preliminary battleground.<sup>65</sup> This would be a negation of the very purpose of the reforms and would amount to a retrograde step from the doctrinal certainty which *Amazon v. Future Retail* had begun to establish.

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<sup>64</sup> Draft Bill 2024, §§ 9, 9A

<sup>65</sup> See Born, *supra* note 1, at 2481–2485

### 10.5 The Institutional vs Ad Hoc Arbitration Divide

The restriction in Section 9A(1) of emergency arbitration to proceedings administered by "arbitral institutions" reflects another limitation that has been insufficiently acknowledged by the reform's supporters.<sup>66</sup> While the policy of encouraging institutional arbitration may be sensible as a legislative policy, its consequences in relation to parties outside this system give rise to a doctrinal inconsistency that should not be dismissed as mere happenstance.

Ad hoc arbitration remains the dominant form of domestic commercial dispute resolution in India, at least for smaller businesses, where costs are indeed a legitimate impediment. In these cases, Section 9A of the amended legislation simply does not exist. These parties remain utterly dependent upon Section 9 of the original legislation, not as a fall-back, but as their sole option. What the reform has achieved, then, is the establishment of a dual system of interim relief: institutional parties have access to a statutory system of emergency relief with established procedures, whereas ad hoc parties are relegated to the judicial system with all the associated delays. If the policy intention behind the reform is the improvement of efficiency in the resolution of commercial disputes, then the restriction of the availability of emergency relief to one of the forms of arbitration has the effect of leaving a significant percentage of the potential constituency of the reform utterly unserved.<sup>67</sup> Whether or not this represents a policy intention or simply a drafting oversight remains unclear, but what is certain is the limitation of the effectiveness of the reform, as well as the claim of the reform to any degree of universalist doctrinal consistency.

### 10.6 Due Process Concerns and Ex Parte Relief

The conditions under which emergency arbitration operates are, at the same time, structurally at tension with the procedural fairness principles that all adjudicative processes must respect. The conditions of urgency that justify the process are the very conditions that put at risk the notice, hearing, and response requirements that together comprise the minimum content of due process. Where the emergency arbitrator provides relief on an ex parte basis, as the 2025 SIAC Rules now expressly permit with the Protective Preliminary Order procedure, the tension is at its greatest, as

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<sup>66</sup> Draft Bill 2024, § 9A(1)

<sup>67</sup> See O.P. Malhotra, *The Law and Practice of Arbitration and Conciliation* 418–420 (3d ed. 2014).

the opposing party has no opportunity to be heard, and the balance of convenience is determined on the basis of one party's account alone.

India's Draft Bill does not address the question of the permissibility of ex parte emergency relief either way. Instead, the question of the content of the emergency procedures has been left to the Arbitration Council of India pursuant to Section 9A(2).<sup>68</sup> However, the regulations have yet to be promulgated. Accordingly, the question of due process remains completely unaddressed at the legislative level. In the absence of any guidance as to the minimum standards applicable, the emergency arbitrators involved in India-seated cases will have recourse to the rules of the governing institution, which may or may not provide for ex parte relief. This is not a speculative concern. The emergency order, which was made without the hearing of the responding party, is susceptible to challenge under natural justice principles in the Indian courts under Sections 34 or 37 of the Act.<sup>69</sup> The Indian courts have shown a high degree of concern for procedural fairness, and the lack of procedural parameters under the statute makes India vulnerable. The provision relating to the enforcement of emergency awards under Section 9A(3) creates an expectation of reliability, which the lack of due process parameters may systematically undermine. Speed and fairness are not mutually exclusive, and achieving the balance between the two requires the procedural framework, which Section 9A(2) postpones without indicating when or how this will occur. Until the Arbitration Council of India promulgates the regulations, the foundation of the emergency arbitration system in India is based on regulatory, rather than statutory, certainty, and this makes for uncomfortable reading.

## **11. PRACTICAL IMPLICATIONS OF THE STATUTORY**

### **RECOGNITION OF EMERGENCY ARBITRATORS IN INDIA**

#### **11.1 Implications for Businesses**

The real importance of emergency arbitration from the perspective of commercial parties lies not in the intricacy of the rules, but rather in the ability of the process to provide timely relief during the moments when it counts most: when a joint venture partner begins to squander the joint assets, when a non-compete covenant is being breached in real-time, or when a party to a construction

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<sup>68</sup> Draft Bill 2024, § 9A(2)

<sup>69</sup> Arbitration and Conciliation Act §§ 34(2)(a)(iii), 37.

contract threatens to abandon the project mid-performance. In the context of businesses operating in India, the statutory acknowledgment of the role of the emergency arbitrators pursuant to the 2024 Draft Bill represents a qualitative shift in the landscape of interim relief, notwithstanding the practical viability of the process as noted above.

Previously, a commercial party to an India-seated institutional arbitration had to make an uncomfortable choice if it needed urgent interim relief: apply for the emergency relief procedure of the institution and risk an unenforceable award, or apply to the court under Section 9 and suffer the inevitable delays of a court application.<sup>70</sup> The Supreme Court's ruling in the *Amazon v. Future Retail* case had removed the unenforceability risk for India-seated arbitrations, but the legal uncertainty which had surrounded it had meant that reliance on the emergency procedure was a calculated risk rather than a viable option for the commercial party. Section 9A of the Draft Bill removes the uncomfortable ambiguity for institutional parties to India-seated arbitrations. Parties to a commercial arbitration can now draft their arbitration clause with the confidence that the institutional emergency procedures which they have incorporated will be the subject of a statutory framework and therefore binding, rather than a matter for the discretion of a sympathetic court.<sup>71</sup> The practical issues that remain are nonetheless very real. Emergency arbitration is a costly procedure. The financial burden of institutional emergency arbitration fees and legal costs, which must be met within a very short time frame, may indeed be disproportionate in lower-value disputes. The awareness of the procedure among smaller and mid-market businesses in India is limited. The willingness of parties to make use of emergency procedures without prior familiarity with the procedure is not automatic. The enforcement of emergency decisions, although now possible under Section 9A(3), is still subject to the inherent delay of the Indian civil court system if the opposing party is resistant. Commercial certainty, in the full sense of the term that businesses need, requires not only the legislation but also a judicial and institutional framework that can make it a reality, an area where India is still to fully achieve.

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<sup>70</sup> Arbitration and Conciliation Act, No. 26 of 1996, § 9(1).

<sup>71</sup> Draft Arbitration and Conciliation (Amendment) Bill, 2024, § 9A (India)

## 11.2 Implications for Foreign Investors

For foreign investors, the availability or absence of effective emergency arbitration provisions is not a peripheral concern but one that goes to the very heart of the question of whether India's overall framework for dispute resolution is adequate to the task of protecting investors' interests in the event of acute urgency, which sophisticated cross-border transactions tend to provoke. Indeed, the global economy of the 21st century is one in which investment decisions are increasingly conditioned on the strength of the legal framework for the resolution of disputes, and a jurisdiction that does not provide effective emergency interim relief is, for the investor, one in which rights are structurally under-protected.

Furthermore, the 2024 reforms carry important meaning for this constituency. The legislative acknowledgment of emergency arbitrators' decisions, particularly where such decisions are buttressed by the enforcement provision equating emergency decisions to those of courts under Section 17(2) may be read as a legislative commitment to providing arbitration-friendly infrastructure that cannot be achieved through voluntary compliance or judicial ingenuity.<sup>72</sup> For foreign investors who have traditionally been hesitant to hold their arbitrations in India and have instead favoured Singapore and London as more desirable locations because of their more developed emergency relief systems, the Draft Bill offers them something that was heretofore lacking. The residual concerns, however, should not be minimised in any honest assessment. The lack of enforcement for foreign-seated emergency awards, which, as has been demonstrated in the preceding chapters, is not addressed in the Draft Bill, means that investors in India-seated institutional arbitrations are better placed than they were before, while investors in foreign-seated arbitrations with Indian parties remain in limbo as to any direct method of enforcement under the Act. Delays in enforcement proceedings before the judiciary, the availability of Section 9 as a parallel route for satellite litigation, and the unknown quality of the Arbitration Council of India's secondary legislation in support of Section 9A(2) are all factors that will be set against the progress made by the reforms from the perspective of sophisticated foreign investors and their counsel.<sup>73</sup> The level of investor confidence is not, in fact, driven by the text of the legislation, which is merely one part of the system, but by the development of a reputation for consistent, efficient, and

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<sup>72</sup> *Id.* § 9A(3); see also *Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd. & Ors.*, (2022) 1 SCC 209 (India)

<sup>73</sup> Draft Bill 2024, § 9A(2)

impartial application of that legislation, which has yet to be demonstrated by India's new arbitration system.

### 11.3 Implications for Arbitration Institutions

The institutional significance of the statutory role of the emergency arbitrators under the Draft Bill, therefore, represents both an opportunity and a challenge. The opportunity lies in the enhanced role that Section 9A of the Draft Bill accords to the arbitral institutions, as they are now empowered, as the gatekeepers of the process of emergency arbitration, to appoint the emergency arbitrators and thus activate the statutory enforcement machinery. The Mumbai Centre for International Arbitration (MCIA), the Delhi International Arbitration Centre (DIAC), the Indian Council of Arbitration (ICA), as well as the international arbitration centers like SIAC, ICC, and LCIA, which have frequently conducted India-seated arbitrations, are now well positioned to play a more central role in the Indian landscape than the previous regime allowed.<sup>74</sup>

The responsibility dimension is equally important. The ability of the institutional framework to administer emergency arbitrator decisions efficiently appointing qualified emergency arbitrators quickly, dealing with the tight procedure of emergency arbitrator decisions, and providing administrative support to emergency proceedings that have to operate under extremely tight time constraints is something that not all Indian institutions may currently possess to the extent that is necessary. The SIAC and ICC have decades of emergency arbitration behind them; the leading Indian institutions are at an earlier stage of institutional development in this area. The practical viability of emergency arbitration as a generalizable commercial dispute resolution device in India is, to a large extent, dependent upon the quality of institutional management that these bodies can offer under the new regime. The Draft Bill establishes the legal framework that is necessary for emergency arbitration to thrive; the extent to which Indian institutions can satisfy the practical demands that this system imposes is something that can only be determined over time.<sup>75</sup>

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<sup>74</sup> See Gary B. Born, *Supra* note 1 297–302 (3d ed. 2021)

<sup>75</sup> See Law Commission of India, 246th Report on Amendments to the Arbitration and Conciliation Act, 1996, at 10–14 (Aug. 2014).

#### **11.4 Impact on Ease of Doing Business in India**

The link between commercial dispute resolution infrastructure and the wider environment for conducting business has been well established in policy literature and in the development of regulatory assessment methodologies. The presence of a legal system that provides access to efficient and enforceable forms of interim relief reduces the transactional costs associated with commercial contracting because it minimises the risk that contractual rights will be irreparably impacted during the period of dispute. In particular, emergency arbitration addresses one form of risk, which is defined by the period between the emergence of a dispute and access to a judicial or arbitral remedy, that is particularly acute in high-velocity forms of commercial contracting, where time is equivalent to irreversible damage. The practical significance of the 2024 reforms, therefore, cannot be understood as merely technical. In offering institutional parties a statutory regime of emergency relief without the need for recourse to the courts as the first and sole option, the Draft Bill minimizes the risk of delay costs, which have traditionally flowed from proceedings under Section 9.<sup>76</sup> The enforcement of contracts, a facet of the business environment which has traditionally been a source of concern when assessing India's commercial infrastructure, is improved, at least as regards the class of party covered by the institutional system, through the availability of the emergency relief regime which can respond to urgent breaches of contract within days rather than months. The limitations of this contribution must, however, be honestly acknowledged. First and foremost, emergency arbitration is only beneficial to larger commercial parties who are involved in institutional arbitrations that are sufficiently valuable to support the costs associated therewith. The vast majority of commercial disputes in India, particularly for small and medium-sized enterprises in India, are neither subject to institutional arbitration nor sufficiently valuable to support emergency arbitration. The effect of this reform on the ease of doing business environment is therefore real but limited in scope in that it improves the dispute resolution environment for a numerically limited but nevertheless significant category of parties.

#### **11.5 India's Position as an Emerging Arbitration Hub**

The goal of developing India as a premier hub of international arbitration has been a recurring theme of Indian arbitration law development over the last two decades or more, as reflected in

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<sup>76</sup> See Arbitration and Conciliation (Amendment) Act, No. 3 of 2016, § 9(3) (India).

successive reports of the Law Commission, committee recommendations, and legislative reform proposals.<sup>77</sup> The Draft Bill of 2024 represents the latest, and arguably most detailed, instalment of this process. The question it poses most immediately to practitioners, investors, and policymakers is whether it brings India any closer to the institutional and legal sophistication of established arbitration centres like Singapore or London.

The honest truth is, yes, it does, but with qualifications and selectivity. The status of Singapore as a pre-eminent arbitral center is based on decades of concerted and simultaneous advances in all these areas. The international reputation of the SIAC was not established by virtue of any particular statutory change, but by virtue of a long history of administrative excellence, evolutionary rule-making, and unwavering support from the Singapore judiciary. The status of London as a leading arbitral center is based on centuries of tradition in commercial arbitration, a wealth of underlying legal talent, and a judiciary that has long understood and respected the primacy of the arbitral process. The 2024 reforms in India represent a substantial step forward in terms of statutory underpinning, including formal recognition of emergency arbitrators, an enforcement mechanism, and a dedicated procedural code, yet this is still set in a system characterized by underlying issues of judicial backlog, institutional limitation, and unpredictability of enforcement.

The trajectory is nonetheless truly encouraging. Each of the steps taken in the 2015 Amendment's addition of Section 9(3), *Amazon v. Future Retail's* judicial acknowledgment of emergency awards, and the Draft Bill's legislative codification has brought the country incrementally yet steadily closer to the standards that users of international arbitration demand. The trajectory of Indian arbitration law and policy, considered over the last decade or so, speaks to a country that has made a serious and sustained commitment to its aspirations as an international arbitration seat.<sup>78</sup> The question of whether that commitment is ultimately successful is, of course, one that is answered not in terms of the legislation itself but in terms of the judicial and regulatory attitudes and investment that lend meaning to legislation. The 2024 reforms represent an important milestone. The destination is very much still in the making.

## **12. RECOMMENDATIONS — STRENGTHENING THE FRAMEWORK**

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<sup>77</sup> Law Commission of India, 246th Report, at 1–5

<sup>78</sup> Born, *supra* note 1, at 308–312

## OF EMERGENCY ARBITRATION IN INDIA

### 12.1 Clarifying Enforcement Mechanisms

The enforcement regime established by the regime of Section 9A(3) of the Draft Arbitration and Conciliation (Amendment) Bill, 2024 marks a notable improvement in the law, but the reach of the regime reveals specific areas where targeted legislative intervention can and should fill the gaps.<sup>79</sup> The most urgent of these gaps relates to the enforcement of emergency awards from foreign-seated arbitrations involving Indian parties, which the Draft Bill's proviso to Section 2(2) excludes from the regime of Section 9A(3). It has been recommended that Parliament consider amending Section 2(2) of the Act, which would extend the applicability of Section 9A(3) of the Act, either generally or subject to conditions of reciprocity analogous to those applicable to foreign awards under Part II of the Act. Such an extension of the applicability of Section 9A(3) of the Act would bring the Indian enforcement regime more into line with the practical reality of the conduct of international trade, where Indian parties frequently conduct arbitrations seated outside India under the SIAC, ICC, or LCIA Rules, which may urgently require the enforcement of emergency awards in India without the cumbersome and inadequate alternative of a civil suit.<sup>80</sup>

In addition to the territorial restriction, it is further proposed that, when the Arbitration Council of India frames regulations pursuant to Section 9A(2), the regulations include a specific provision outlining the procedural timeframes and compliance requirements applicable to the awards of the emergency arbitrator, including a specific timeframe within which the party must comply with the order of the emergency arbitrator, as well as the consequences of noncompliance, which would trigger the enforcement process of Section 17(2) without the need for ancillary proceedings. It has also been proposed that, as part of the structured amendment, the question of the applicability of the provisions of Sections 12, 13, and 14 of the Act, governing the challenge and removal of the emergency arbitrators, be clarified, thereby resolving the definitional conundrum created by the taxonomy of Section 2(1)(ea) of the Act, which has created a separate category rather than including the emergency arbitrators as a part of the definition of the "arbitral tribunal."<sup>81</sup>

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<sup>79</sup> Draft Arbitration and Conciliation (Amendment) Bill, 2024, § 9A(3) (India).

<sup>80</sup> Arbitration and Conciliation Act, No. 26 of 1996, § 2(2) (India), read with Draft Bill 2024.

<sup>81</sup> *Id.* §§ 12–14.

## 12.2 Harmonising Section 9 and Emergency Arbitrator Powers

This overlap of jurisdiction between Section 9 interim relief and emergency arbitrator decisions under Section 9A is arguably one of the most structurally important of the outstanding issues in the reformed system of arbitration in India, as discussed in the previous chapters. The possibility of parallel proceedings where parties may seek emergency arbitration and Section 9 relief at the same time, or where the very issues that have been decided by emergency arbitrators may be re-litigated in the courts, threatens to defeat the rationale of the emergency procedure and to foster delay. It has been recommended that the Draft Bill be amended to include a specific provision disapplying the jurisdiction of the courts pursuant to Section 9(1) from the outset, when the application for emergency arbitration pursuant to Section 9A is made to a recognised arbitration institution, save for the gateway of Section 9(3) if the process of emergency arbitration is deemed not efficacious.<sup>82</sup> Such a specific provision would give statutory force to the reasoning of the Supreme Court in the *Amazon v. Future Retail* case regarding the restriction of the jurisdiction of the courts pursuant to Section 9(3) of the previous arbitration regime, concerning any application made after the constitution of the arbitration, a reasoning which cannot be achieved through judicial reasoning alone with respect to the process of emergency arbitration.<sup>83</sup> Guidelines issued by the Supreme Court pursuant to its inherent powers, concerning the specific circumstances when the process of Section 9 may be entertained notwithstanding the process of Section 9A, would reduce the degree of interpretative inconsistency between courts.

## 12.3 Promoting Institutional Arbitration in India

The viability of India's emergency arbitration procedure would thus directly depend upon the quality and accessibility of arbitral institutions through which it is administered. Section 9A(1) confines emergency arbitration to institutional arbitration procedures, and therefore, the effectiveness of India's arbitration reforms would be commensurate only with the extent and quality of India's arbitration institutions. It is recommended that the Arbitration Council of India, established under the amended Act, frame and publish a graded accreditation scheme for arbitral institutions desirous of administering emergency arbitration procedures, including the minimum

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<sup>82</sup> *Id.* § 9(3) (as amended by the Arbitration and Conciliation (Amendment) Act, No. 3 of 2016).

<sup>83</sup> *Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd. & Ors.*, (2022) 1 SCC 209 (India).

<sup>88</sup> Draft Bill 2024, § 9A(1)

administrative and other requirements that such institutions would need to satisfy for accreditation.<sup>88</sup> This would thus address, in a principled manner, the institutional capacity-related issues highlighted in the preceding chapter in assessing, for instance, whether a particular institution was genuinely capable and efficient in administering emergency arbitration procedures. At the policy level, it has been recommended that the Government of India offer incentives for the use of institutional arbitration in commercial contracts involving government entities or public sector undertakings, which together comprise a significant percentage of high-value commercial litigation. The development of model clauses on the use of institutional arbitration, undertaken and published by the Ministry of Finance or the Ministry of Law, would help normalize the use of institutional arbitration among a class of parties that has traditionally preferred litigation or ad hoc arbitration, thereby increasing the potential user base of the emergency arbitration process.<sup>84</sup>

#### **12.4 Capacity Building and Judicial Training**

The most carefully crafted set of rules and regulations would be impossible to achieve in practice without the support and backing of a judicial system that is both sensitive and knowledgeable enough to engage with it. India is home to thousands of different judicial institutions at various levels, and while it could be argued that all of them would be able to engage with emergency arbitration in the sophisticated and arbitration-sympathetic manner that the Draft Bill assumes, this would not be a realistic expectation, at least in the short term, prior to the establishment of any body of authority upon which lower judicial institutions could draw. It is suggested that the National Judicial Academy and the High Court-level judicial academies include a module on emergency arbitration and the procedure for institutional arbitrations as part of their judicial educational curriculum.<sup>85</sup> The module should include, among other things, the scope and limits of court jurisdiction in the context of Section 9 proceedings in the backdrop of Section 9A proceedings, the parameters of enforcement applications in Section 9A(3) proceedings, and the due process requirements that the emergency procedure must satisfy in order to pass the test of Section 34 challenges. Judicial guidelines should be developed, and it is suggested that these guidelines be in the form of a practice direction issued by the Supreme Court of India, so that

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<sup>84</sup> See Law Commission of India, 246th Report on Amendments to the Arbitration and Conciliation Act, 1996, at 12–15 (Aug. 2014).

<sup>85</sup> See Gary B. Born, *Supra* note 1, 308–312 (3d ed. 2021)

enforcement applications in the jurisdiction are directed to the commercial courts that have the necessary expertise in handling matters involving the enforcement of arbitral awards, as has been demonstrated is possible and significant in the Singapore International Commercial Court.<sup>86</sup> The interpretative inconsistency that characterised the pre-reform judicial treatment of emergency arbitration did not arise from bad faith; it arose from unfamiliarity with a novel mechanism in the absence of clear statutory guidance. Addressing that unfamiliarity through structured capacity building is, in the long run, as important to the success of India's reformed framework as any provision in the Draft Bill itself.

### 13. CONCLUSION

The question that has been the driver of this paper that whether the 2024/2025 statutory changes have really addressed the theoretical and practical issues that had been troubling the concept of emergency arbitration in India, or if they have simply formalised the framework that had been judicially constructed without addressing the structural issues that had been apparent is one that is capable of being answered in the affirmative to some extent and in a more circumspect fashion in other areas. The history of emergency arbitration in India is a long and winding one that can only be described as tortuous before it achieved its current legal position. From its position as something that was clearly acknowledged in institutional rules but entirely unknown to the 1996 Act itself, through its inconsistent use and ultimate apotheosis in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, to its formalisation in the Draft Arbitration and Conciliation (Amendment) Bill, 2024, it is clear that emergency arbitration has evolved in the only way that that phrase can be used: not simply in terms of its legal form but in terms of its underlying philosophy.

The research of this paper, i.e., the notion that statutory recognition is an important, though structurally incomplete, measure, is, upon reflection of the entire analysis, validated. The ambiguity which characterised the pre-reform status quo has been significantly, though not completely, clarified. For parties to India-seated institutional arbitrations, the definitional underpinning provided by the insertion of Section 2(1)(ea) and the procedural framework provided by Section 9A collectively offer a statutory basis which the earlier reliance upon interpretative case

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<sup>86</sup> See *id.* at 297–302

law could not. The enforceability of emergency awards has also been enhanced within the institutional context in India, with Section 9A(3)'s equivalence between Section 17(2) court orders and Section 9A(3) emergency orders removing the enforceability ambiguity which, in the pre-reform era, rendered emergency arbitration a risk worth taking, though only on a calculated basis. However, the territorial limitation which confines this enhanced enforceability to India-seated cases, the relationship between Section 9A and the residual jurisdiction of the courts under Section 9, and the institutional capacity issues which the Draft Bill leaves to secondary regulation all speak to structural limitations which the reforms have not overcome and which a new legislature will need to address.

This assessment of the situation is reinforced when we conduct a comparative analysis. Singapore, with its mature system of institutional efficiency, statutory enforceability, and judicial support, proves the point that the legislative move taken by India, although necessary, is clearly insufficient. The United Kingdom, with its graduated legislative approach of accommodating the role of the emergency arbitrators under the Arbitration Act 2025, proves the point that even the most mature arbitration jurisdictions continue to evolve. India's position, then, in the above landscape of jurisdictions, is clearly one of transition: no longer the jurisdiction of the judicial mirage of emergency arbitration, but certainly not yet the jurisdiction of the seamless efficiency of institutional arbitration.

It may thus be concluded that the changes introduced in 2024 represent the most important step in the evolution of emergency arbitration law in India since its inception as a feature of domestic commercial law and practice but that the task of building upon this foundation to ensure that it is complete is yet to be achieved. The foundation is laid; it is yet to be superimposed upon to see to it that the recognition afforded to emergency arbitrators finds its way into the practical utility that the users of this system of dispute resolution demand. The journey of arbitration law in India is, to say the least, in the right direction. The extent and completeness of this journey may ultimately be measured not in terms of any Bill that is introduced into Parliament but in terms of the experience of those users of this system of dispute resolution who place their interests within it.

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