Peer Reviewed

Volume 7
Issue I

ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)

August 2025

VIPS STUDENT LAW REVIEW

VIVEKANANDA INSTITUTE OF PROFESSIONAL STUDIES - TECHNICAL CAMPUS

Affiliated to GGSIP University, Delhi
Grade A++ Accredited Institution by NAAC & Recognized by Bar Council of India and AICTE,
Recognized under section 2 (f) by UGC, NBA Accredited for MCA Programme
An ISO 9001:2015 Certified Institution

Volume 7, Issue I August, 2025 ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)

TABLE OF CONTENTS

S. No.	Title of the Paper / Author	Page No.
1.	Sextortion: Addressing the Impact and Law in India *Dr. Smita Sarmah & Dr. Kasturi Gakul*	1
2.	Cyber Operations Against Space Assets: A Legal Reassessment under the Law of Armed Conflict and International Telecommunication Regulation *Raghavendra S Kollurkar*	17
3.	The Basic Structure Doctrine as a Thin Line of Distinction Between Constitutional Amendment & Constitutional Dismemberment: An Analysis *Raajdwip Vardhan & Susmit Isfaq*	28
4.	Faith and Law at Crossroads: Unravelling the Complexities of Cult Crimes in India's Socio-Legal Framework *Saumya Tripathi*	46
5.	Navigating The Extent of Judicial Intervention in Pre-Arbitral Proceedings vis-a-vis Contemporary Judicial Trends in India *Meher Malik*	58
6.	Bridging Arbitration and Mediation: Evaluating the Arb-Med-Arb Hybrid in India's Investor-State Disputes *Jagyansh Kumar*	76
7.	Navigating Conflicts between IBC and PMLA: Prioritizing Insolvency Resolution over Asset Attachment *Shraddha Tiwari*	93
8.	Unearthing the Vices in Presumed Consent Law In Light of Recent Amendments To Transplantation of Human Organs and Tissues Act *Rishi Khemnani & Hardik Jain*	105
9.	Clickwrap Agreement: Validity, Enforceability And Challenges *Akarsh Raj*	115

10. Ethics v. Governance: A Critical Study of Misleading Advertisements And Consumer Rights in India
Palak Sharma 126

11. Post-Decisional Hearing In Administrative Law: Balancing Procedural Fairness And Administrative Efficiency
Garima Bansal 146

12. Balancing Corporate Tax Incentives and Revenue Collection: A Framework for Promoting Sustainable Business Practices in India
Shrey Bhatnagar & Mahi Singh 165

13. Electoral Disqualification Due To Criminal Antecedents: A Comparative Study
Diya Dhall & Suhani Anand 179

14. From Boardrooms to Ecosystems: A Study of Directors' Duty under Section 166(2) and Environmental Concerns With Reference To UK And Indian Laws
Prabhav Tripathi & Gargi Bindal 200

15. The Enforcement Dilemma of Interim Measures in Foreign Seated Arbitration: Emergency Arbitrator's Award in India
Divyam Desai & Shravin Relan 216

LEGISLATIVE COMMENT

16. Legislative Comment on the WAKF (AMENDMENT) BILL, 2025: Quoting the Contemporary Analysis of the Bill
Taarini Bhardwaj 226

Submission Guidelines 234

THE ENFORCEMENT DILEMMA OF INTERIM MEASURES IN FOREIGN SEATED ARBITRATION: EMERGENCY ARBITRATOR'S AWARD IN INDIA

Divyam Desai*
Shravin Relan**

VIPS Student Law Review
August 2025, Vol. 7, Issue 1, 216-225
ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)
© Vivekananda Institute of Professional Studies
https://vslls.vips.edu/vslr/

ABSTRACT

The research article highlights the issues and challenges faced by an Emergency Award-creditor in India when seeking enforcement of an Emergency Arbitrator's (EA) award in Indian courts. This is particularly problematic for awards passed in International Commercial Arbitrations (ICA) not seated in India. Parties often choose a seat distinct from their home countries to ensure neutrality, leading to scenarios where emergency awards from foreign-seated arbitrations require enforcement in India. However, the current lack of clarity, especially in Sections 2(1)(d) and 44 of the Arbitration and Conciliation Act, 1996 (the 1996 Act), creates significant difficulties. Since these arbitrations are foreign-seated, Part I of the 1996 Act does not apply, making remedies like Section 17(2) unavailable. This research article explores a possible solution to these challenges, citing relevant case law for better understanding. It also examines the availability of remedy under Part I (Section 9) for ICAs seated outside India and, lastly, considers whether the proposed Arbitration and Conciliation (Amendment) Act, 2024 would effectively address these issues.

Keywords: *Arbitration, Emergency Arbitrator, Emergency Award, International Commercial Arbitration, Arbitration and Conciliation Act, 1996.*

* 5th Year Law Student, BBA LL.B., Jindal Global Law School, Sonipat.
** 5th Year Law Student, BBA LL.B., Jindal Global Law School, Sonipat.

1. INTRODUCTION TO INSTITUTIONAL INTERNATIONAL COMMERCIAL ARBITRATION

India's Arbitration and Conciliation Act, 1996 (the 1996 Act)[1] is structured into four parts. Part I governs arbitrations seated in India, while Part II deals with the enforcement of awards passed in foreign-seated ICAs. When the award debtor in a foreign-seated arbitration is an Indian entity, the foreign party must adhere to the procedures and rules outlined in Part II of the 1996 Act.

Parties often opt for institutional arbitrations such as those administered by the Singapore International Arbitration Centre (SIAC), London Court of International Arbitration (LCIA), or International Chamber of Commerce (ICC). This choice is typically made to resolve commercial disputes through a neutral third party when parties hail from different jurisdictions, thereby mitigating the risk of bias that might exist in national courts. Institutional arbitrations offer convenience and certainty, providing their own established rules, procedures, panels of arbitrators, and expert facilities for efficient dispute resolution.

A crucial precondition for enforcing foreign-seated awards under Part II[2] of the 1996 Act is that the country where the foreign party is situated must be a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958),[3] to which India is also a signatory. Currently, 172 countries have signed this treaty.

2. DEFINING EMERGENCY AWARD: AN EXAMPLE

Most arbitration institutions today include a provision for an emergency arbitrator in their rules, which a party can invoke to seek urgent interim relief.

Let's illustrate this with a hypothetical example involving an SIAC arbitration. Schedule 1 of the SIAC Rules, 2016[4] specifically provides for emergency arbitration.

An Emergency Arbitrator (EA) is a provisional arbitrator appointed by the institution to grant urgent interim relief before the main arbitral tribunal is constituted. Typically, an EA does not delve into issues of jurisdiction or the validity of the arbitration agreement. Instead, the EA swiftly reviews limited documents and issues directives to prevent irreparable harm

1 Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

2 Arbitration and Conciliation Act, 1996, pt. II (India).

3 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 3.

4 Singapore International Arbitration Centre Rules, sch. 1 (2016).

to either party before the full tribunal is formed. It's important to note that the main arbitral tribunal can subsequently modify or vacate the EA's decision after due procedure.

Consider this scenario: Rolls Joyce, a leading Indian automobile manufacturer, entered a joint venture (SSWL) with Force Royce, a Singapore-based automobile manufacturer. Force Royce agreed to share advanced technology for manufacturing automobile machines. Their Shareholder's Agreement (SHA) included a Right of First Refusal (ROFR) clause in favour of Force Royce, stating that any shares held by Rolls Joyce in SSWL could not be sold to anyone else without first offering them to Force Royce. If the offer was refused, the shares could not be sold to a third party at a price lower than that offered to Force Royce. The SHA also contained an arbitration clause stipulating that: "Any dispute arising out of or in connection with the SHA, shall be resolved by the Arbitral Tribunal constituted by SIAC and in accordance with the SIAC Rules, 2016. The SIAC shall appoint sole arbitrator to resolve the dispute between the parties mentioned above and the seat of arbitration is London."

One year later, a dispute arose when Rolls Joyce announced an IPO in India, planning to sell 10% of its stake in SSWL without first offering the shares to Force Royce. Given the public nature of the IPO, Force Royce invoked emergency arbitration under the SIAC rules. The Emergency Arbitrator issued an Emergency Award within four days due to the extreme urgency. This award was a restraining order, prohibiting Rolls Joyce from proceeding with the IPO, as a prima facie case suggested a violation of the SHA. The emergency award also directed Rolls Joyce to deposit ₹50 crores with an Indian court until the main arbitral tribunal was constituted. In this case, the urgency was paramount, as waiting for the main tribunal to form would have led to irreparable harm for Force Royce if the shares were sold in the open market.

Now, Force Royce seeks to enforce this Emergency Award in India under the Arbitration and Conciliation Act, 1996. This paper will analyse the legal position regarding the enforcement of such an award in India.

3. GLOBAL TRENDS IN EMERGENCY AWARD RECOGNITION

Globally, several jurisdictions have provided statutory recognition to Emergency Awards. Countries like Switzerland, Singapore, Hong Kong, and New Zealand have aligned their domestic legislations with international institutional practices, demonstrating a pro-

arbitration stance.[5] While the United States of America and the United Kingdom have not incorporated specific amendments in this regard, their courts have consistently recognized emergency awards through a catena of judicial decisions.[6] This global trend highlights the growing acceptance and importance of emergency arbitration in international commercial dispute resolution.

4. ENFORCING THE EMERGENCY AWARD AND ADDRESSING THE PROBLEM

In our hypothetical scenario, the SIAC arbitration is an International Commercial Arbitration seated in London, making it a foreign-seated arbitration. It is a settled legal principle in India that Part I of the 1996 Act applies exclusively to arbitrations seated in India, not to foreign-seated arbitrations. However, Section 9[7] of the 1996 Act, which deals with interim reliefs, stands as an exception. Indian courts have consistently held that interim reliefs can be granted under Section 9 even for arbitrations seated outside India. The proviso to Section 2(2)[8] of the 1996 Act explicitly states that the Section 9 remedy is available in foreign arbitrations unless parties have specifically agreed otherwise in their arbitration agreement.[9] The applicability of this provision to our case will be discussed in detail.

Arguments against the enforcement of an Emergency Award often stem from the premise that an Emergency Arbitrator is not the arbitral tribunal that will ultimately decide the entire arbitration. Critics argue that an EA merely directs parties based on a cursory review of documents, without a full appreciation of facts, pleadings, and evidence. However, this argument, in the author's opinion, should not impede enforcement. EA decisions are inherently temporary, and the main tribunal can later vacate, modify, or affirm the EA's ruling. Moreover, parties voluntarily subject themselves to the rules of an institution that provides for emergency arbitration; therefore, they should generally not be permitted to

5 See Singapore International Arbitration (Amendment) Act 2012, § 2(a); Arbitration Ordinance, pt. 3A (H.K.) (referring to the Arbitration Ordinance (Cap. 609).

6 See Gerald Metals SA v. Timis, (2016) EWHC 2327 (Ch) (U.K.); Yahoo! Inc. v. Microsoft Corp., 983 F. Supp. 2d 310 (S.D.N.Y. 2013); Companion Prop. & Cas. Ins. Co. v. Allied Provident Ins., No. 13-cv-7865, 2014 U.S. Dist. Lexis 136473, 8 (S.D.N.Y. Sept. 26, 2014); Draeger Safety Diagnostics, Inc. v. New Horizons Interlock, No. 11-50160, 2011 U.S. Dist. Lexis 14414, 8 (E.D. Mich. Feb. 14, 2011).

7 Arbitration and Conciliation Act, 1996, § 9 (India).

8 Arbitration and Conciliation Act, 1996, § 2(2) (India).

9 Aaushi Doshi, Section 9 of the Arbitration and Conciliation Act, 1996 Would Apply to International Commercial Arbitration, *Where the Place of Arbitration is Outside India: States Calcutta High Court,* India L. (2022), https://www.indialaw.in/blog/arbitration-and-conciliation/section-9-of-the-arbitration-and-conciliation-act-1996-would-apply-to-international-commercial-arbitration-where-the-place-of-arbitration-is-outside-india-states-calcutta-high-court/ (last visited July. 10, 2025).

derogate from these rules unless expressly agreed. Given that most arbitration institutions worldwide offer emergency arbitration due to the critical importance of time, non-enforcement of such awards undermines the principle of party autonomy.

The remedy for enforcing awards passed in foreign-seated arbitrations is found in Part II of the 1996 Act. Section 44[10] defines a 'foreign award' but does not explicitly list or define the types of awards enforceable under Part II. In the author's view, this definition implicitly refers to final and conclusive awards. Furthermore, Section 2(1)(d)[11] defines an 'arbitral tribunal' as consisting of a sole arbitrator or a panel of arbitrators, notably excluding an Emergency Arbitrator. Consequently, under the current legal framework, it is exceptionally challenging to enforce interim reliefs granted by an EA in foreign-seated arbitrations unless the relief falls strictly within the definition of an 'Award' and the 'Tribunal' as defined by the 1996 Act. This effectively means that any relief not constituting a final award from a foreign-seated arbitration is almost impossible to enforce. For instance, in a multi-tier arbitration clause involving a Dispute Adjudicatory Board (DAB), enforcing a DAB decision would be impossible under the current 1996 Act if parties have not invoked arbitration to challenge it and consider it a binding decision.

5. THE LARGER PROBLEM: INTERIM ORDERS VS. INTERIM AWARDS

Previously, Section 17[12] of Part I of the 1996 Act, dealing with interim measures in India-seated arbitrations, suffered from a similar problem now faced by interim measures in foreign-seated arbitrations. The arbitral tribunal's powers to grant interim relief were perceived as inferior to the court's powers under Section 9, primarily due to the absence of an effective enforcement mechanism for tribunal-ordered interim reliefs.[13] The only available recourse was to approach courts under Section 9 or 27[14] of the 1996 Act. This issue was resolved by the Arbitration and Conciliation (Amendment) Act of 2015, which inserted Section 17(2). This crucial amendment states: *"any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908, in the same manner as if it*

10 Arbitration and Conciliation Act, 1996, § 44 (India).

11 Arbitration and Conciliation Act, 1996, § 2(1)(d) (India).

12 Arbitration and Conciliation Act, 1996, § 17 (India).

13 Vasanth Rajsekharan, *Interim Reliefs in Arbitration: Emerging Judicial Trends in India,* SCC Online Blog (Mar. 27, 2024), https://www.scconline.com/blog/post/2024/03/27/interim-reliefs-arbitration-emerging-judicial-trends-india/ (last visited July. 10, 2025).

14 Arbitration and Conciliation Act, 1996, § 27 (India).

were an order of the Court."

However, this resolution does not extend to interim measures in foreign-seated arbitrations. The Delhi High Court in *Raffles Design International v. Educomp Professional Education*[15] declined to enforce an emergency award, observing:

> *"103. It is relevant to mention that Article 17H of the UNCITRAL Model Law contains express provisions for the enforcement of interim measures. However, the Act does not contain any provision pari materia to Article 17H for enforcement of interim orders granted by an Arbitral Tribunal outside India."*
>
> *"104. In the circumstances, the emergency award passed by the Arbitral Tribunal cannot be enforced under the Act and the only method for enforcing the same would be for the petitioner to file a suit."*

As established, interim reliefs issued in foreign-seated arbitrations under institutional rules are generally unenforceable under the 1996 Act unless the ICA is seated in India. This highlights the crucial distinction between an order and an award. The Supreme Court, in *McDermott International Inc v. Burn Standard Co. Ltd*,[16] clarified this difference:

> *"Award as defined under Section 2(c)[17] of 1996 Act, includes interim awards, these are to be distinguished from interim orders issued by an arbitral tribunal. The primary difference between the two is that the former conclusively/finally determines, on merits, certain aspects of the lis between the parties, whereas the latter does not. An interim order is merely a stop-gap arrangement which is only prima facie in nature."*[18]

The fundamental issue is that most interim measures, including those by EAs, are typically in the form of an order, intended for urgent stop-gap arrangements to prevent the arbitration from becoming infructuous. While some institutions label an EA's decision an 'Award' and others an 'Order', Indian courts have largely viewed emergency awards as orders, as they are not decisions on merits but rather prima facie adjudications. Consequently, these are

15 Raffles Design Int'l v. Educomp Prof. Educ., 2016 SCC OnLine Del 552.

16 McDermott Int'l Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181 (India).

17 Arbitration and Conciliation Act, 1996, § 2(c) (India).

18 The Developing Compass of Emergency Arbitration in India, Int'l Bar Ass'n (n.d.), https://www.ibanet.org/emergency-arb-india (last visited July. 10 2025).

often deemed unenforceable under Part II.

The Supreme Court's ruling in *Amazon.Com Investment Holdings LLC v. Future Retail Limited & Ors*[19] addressed the enforceability of emergency awards. It held that an emergency award could be considered an interim order passed under Section 17(1)[20] and thus enforceable by the court under Section 17(2) of the 1996 Act. While this was a progressive decision, it is hardly an authority for arbitrations not seated in India, as Section 17 is specifically applicable to India-seated arbitrations. The relevant part of the judgment noted:

> *"The Delhi High Court judgment in Raffles Design International (India) (P)Ltd. v. Educomp Professional Education Ltd. dealt with an award by an EA in an arbitration seated outside India (as was mentioned in the Srikrishna Committee Report). What is of significance is that the said Report laid down that it is possible to interpret Section 17(2) of the Act to enforce Emergency Awards for arbitrations seated in India and recommended that the Act be amended only so that it comes in line with international practice in favour of recognising and enforcing an emergency award."*

6. HOW HAVE COURTS DEALT WITH SECTION 9 APPLICATIONS FOR ENFORCEMENT OF EMERGENCY ARBITRATOR AWARDS?

Under Section 9, Indian courts can grant interim reliefs at any stage: before, during, or after the arbitral process, until the final award is enforced. However, courts are expected to independently consider the application and cannot directly enforce an Emergency Award or any other interim relief from a foreign-seated arbitration, as Section 9 does not provide a direct enforcement mechanism for such orders.

In *Raffles Design International India Private Limited & Ors. Vs Educomp Professional Education Limited & Ors.*[21], the court observed regarding the availability of this remedy in the context of an EA:

> *"105. However, in my view, a party seeking interim measures cannot*

19 Amazon.com Inv. Holdings LLC v. Future Retail Ltd., (2022) 1 SCC 209.

20 Arbitration and Conciliation Act, 1996, § 17 (India).

21 Raffles Design Int'l India Pvt. Ltd. v. Educomp Prof. Educ. Ltd., 2016 SCC OnLine Del 552.

> *be precluded from doing so only for the reason that it had obtained a similar order from an arbitral tribunal. Needless to say, the question of whether the interim orders should be granted under section 9 of the Act or not would have to be considered by the Courts independent of the orders passed by the arbitral tribunal."*

This remedy, while available, is not as effective for the urgent enforcement of EA decisions. Section 9 requires the court to apply its independent mind, which can involve time-consuming consideration, rather than a straightforward enforcement. However, recent trends from the Bombay High Court show a more accommodating approach, respecting EA decisions if they are well-reasoned and fairly passed.

In *Plus Holdings Limited v. Xeitgeist Entertainment Group*,[22] the court acknowledged that the applicant's rights, as recognized in the SIAC emergency award, held persuasive value even if the Section 9 application required a *de novo* hearing.

More recently, Justice Doctor, in *Ashok Kumar Goel & Ors. v. Ebixcash Limited & Ors.*,[23] took a highly progressive view in favor of EA enforcement, reiterating that Section 9's objective is to support and aid the arbitration process, not derail it. Key observations included:

> *"The only ground taken in the Affidavit in Reply to oppose the present Petition is maintainability.....Fifth, I have perused the EA Decision, which is well reasoned, detailed and rendered after an extensive hearing given to Parties. The Respondents have not so much has attempted raise any grievance qua the merits of the EA Decision before me. Hence, I find no reason not to accept the findings as recorded in the EA Decision. I find that it is such an approach that will support arbitration and ensure its effectiveness. I am fortified in my view by the judgment of the Hon'ble Supreme Court in the case of Amazon.com NV Investment Holdings LLC (supra) wherein the Hon'ble Supreme Court specifically held that once a party agrees to institutional rules, such as the SIAC Rules, and participates in an emergency arbitration proceeding, it cannot later claim that the Emergency Arbitrator's ruling is non-binding or invalid."*

22 Plus Holdings v. Xeitgeist Entertainment Group, (2022) 4 I.A.L.R 75 (India).

23 Ashok Kumar Goel v. Ebixcash Ltd., 2024 SCC OnLine Bom 3233.

This evolving judicial stance, particularly from the Bombay High Court, suggests a move towards a more pragmatic recognition of EA decisions, even if Section 9 does not explicitly provide for direct enforcement. The procedure for execution of these orders, however, remains dependent on the court's discretion and its independent assessment of the merits of the interim relief sought. This still leaves a gap, as the 'independent assessment' can delay the very urgent relief an EA award aims to provide.

7. SOLUTION TO THE PROBLEM AND WHETHER THE 'DRAFT ARBITRATION AND CONCILIATION (AMENDMENT) BILL, 2024' PROVIDES A SOLUTION?

To resolve this enforcement dilemma, legislative amendments are crucial. The 246th Law Commission Report proposed the following change to the definition of 'Arbitral Tribunal' in Section 2:

> *"Amendment of Section 2 (i) In sub-section (1), clause (d), after the words "…panel of arbitrators" add "and, in the case of an arbitration conducted under the rules of an institution providing for appointment of an emergency arbitrator, includes such emergency arbitrator;" [NOTE: This amendment is to ensure that institutional rules such as the SIAC Arbitration Rules which provide for an emergency arbitrator are given statutory recognition in India.]"*

While Professor Chauhan and Advocate Prachee Satija suggested uniform recognition for enforcement through international instruments like the New York Convention, they also acknowledged that even such recognition might not fully overcome variations in national jurisdictions' measures.[24]

The most effective solution is legislative support, precisely as suggested and proposed in the Draft Arbitration and Conciliation (Amendment) Bill, 2024. This Bill proposes the insertion of a new provision:

> *"9A. Emergency arbitrators – (1) Arbitral institutions may, for the purpose of grant of interim measures referred to in section 9, provide for appointment of emergency arbitrator prior to the constitution of an arbitral tribunal. (2) The emergency arbitrator appointed under sub-*

24 Prakhar Narain Singh Chauhan & Prachee Satija, *Expressions of the Emergency Arbitrator: Order or Award? Legislative Perspectives,* 12 Indian J. Arb. L. (2024).

> *section (1) shall conduct proceedings in the manner as may be specified by the Council. (3) Any order passed by an emergency arbitrator under sub- section (2) shall be enforced in the same manner as if it is an order of an arbitral tribunal under sub-section (2) of section 17 of the Act."*

Crucially, it is also proposed that this newly inserted provision shall apply to arbitrations seated outside India as well. This amendment, if adopted, would solve the problem entirely, allowing the emergency-award creditor to directly enforce the EA in the same manner as if it were an order from the court. The specific procedure for executing such an order would then align with the Code of Civil Procedure, 1908, as is the case for orders under Section 17(2). This would significantly streamline the enforcement process, eliminating the need for a fresh application under Section 9 and the associated independent judicial review, thereby upholding the urgency and effectiveness of emergency awards.

8. CONCLUDING REMARKS

While Indian courts currently provide interim relief under Section 9, this mechanism is not a direct avenue for enforcing emergency awards from foreign-seated arbitrations. This limitation stems from the existing definitions of *"arbitral tribunal"* and *"foreign award"* within the 1996 Act, which primarily focus on final awards. The challenges have persisted in India for approximately a decade.

However, the 246th Report of the Law Commission of India and, more importantly, the Draft Arbitration and Conciliation (Amendment) Bill, 2024, represent significant efforts to introduce sweeping reforms to bridge this gap. If the proposed amendments are adopted by the Parliament, India will be on the verge of finding a definitive solution to the enforcement dilemma of emergency awards in foreign-seated arbitrations, thereby strengthening its pro-arbitration stance, and aligning with international best practices.