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A Critical Analysis: Nuances of Interim Relief in International Commercial Arbitration

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International commercial arbitration is a different approach to private-party conflicts originating from cross-border economic transactions, which spares the parties from going to court in their own country. It facilitates the settlement of disagreements between foreign parties resulting from internal business agreements. Interim relief is sought to be achieved by parties through international commercial arbitration. It refers to a variety of remedies typically sought at an early stage of arbitration as a provisional measure until the final resolution of the dispute. The laws relating to interim relief in India can be found in a particular act.

In contrast, in English law, parties are free to act by the directions given by the respective arbitration tribunal. The researchers substantiate this by employing the doctrinal research methodology. The primary aim of this research paper is to investigate the relevance, procedural characteristics, and efficacy of interim relief remedies in the context of international commercial arbitration. The secondary aim is to provide a comparative analysis of the interim relief provisions in English and Indian arbitral legislation, as well as the rules of leading arbitral institutions, in terms of court and tribunal authority to order interim relief, limitations on such authority, and the scope of interim relief measures that may be requested. The final aim is to investigate the enforceability of emergency arbitrator relief in India and other jurisdictions. This paper highlights the need for enforceable interim relief provisions in arbitral laws to facilitate efficient dispute resolution processes.

Keywords: *arbitration, cross-border economic transactions, emergency arbitrator, interim relief, private parties.*

INTRODUCTION

In cross-border economic transactions, disputes often arise between parties from different jurisdictions. International commercial arbitration provides an alternative to traditional court litigation, offering efficiency and flexibility. Central to this process is the concept of interim relief, which serves as a provisional measure to address pressing issues during arbitration. Practitioners are concerned about the availability of interim measures such as attachments, injunctions, and partial final awards from arbitrators and courts. These measures are crucial for preserving interests in property, protecting perishable goods, mitigating foreseeable damages, or maintaining the status quo. Interim relief can be sought from the arbitral tribunal or the courts in the jurisdiction where arbitration is held or where a party's assets are located.

Arbitrators' authority to grant interim relief comes from their inherent powers, the contract between the parties, and the rules governing the arbitration proceedings. Commonly used rules include those of the American Arbitration Association[1] (AAA), the International Chamber of Commerce (ICC)[2], the London Court of Arbitration[3], and the United Nations Commission on International Trade Law (UNCITRAL)[4]. These rules typically grant arbitrators the power to order protective measures, though specific procedures may vary. The legal landscape governing interim relief varies across jurisdictions, with distinct approaches evident in countries like India and England. In India, the laws governing interim relief in arbitration are enshrined within specific legislative enactments, providing a structured framework for parties to navigate.[5] Conversely, in English law, parties enjoy greater autonomy in shaping the interim relief process, guided by the directions of the arbitration tribunal.

This research paper delves into the relevance, procedural intricacies, and efficacy of interim relief in international arbitration. It employs a doctrinal research methodology to analyse the authority of courts and tribunals to order interim relief, limitations on such authority, and the

[1] American Arbitration Association 1962
[2] International Chamber of Commerce 1919
[3] London Court of International Arbitration 1892
[4] The United Nations Commission on International Trade Law 1966
[5] M S Rawat, 'International Commercial Arbitration And Transnational Public Policy' (2007) 49(1) Journal of the Indian Law Institute <https://www.jstor.org/stable/43952075> accessed 18 August 2024

scope of measures that may be granted. Additionally, it compares interim relief provisions in English and Indian arbitral legislation and the rules of leading arbitral institutions. The paper also examines the enforceability of emergency arbitrator relief, focusing on India.

The research aims to provide insights into optimising the interim relief regime to better serve global commerce. By examining case studies and real-world scenarios, it highlights the significance of interim relief in preserving the integrity of the arbitration process and ensuring equitable outcomes. Furthermore, it explores the strategic considerations parties must weigh when seeking interim relief, including impacts on business operations, financial interests, and reputational concerns.

An in-depth examination of the procedural characteristics surrounding interim relief is also conducted, focusing on the application process, evidentiary requirements, and the role of the arbitral tribunal. This provides practical guidance to practitioners and arbitrators navigating the complex terrain of interim relief proceedings.

Therefore, the research offers a comprehensive understanding of interim relief in international commercial arbitration. By conducting a comparative analysis of English and Indian legal frameworks and examining the enforceability of emergency arbitrator relief, it provides valuable insights for practitioners, academics, and policymakers. The paper underscores the importance of robust and enforceable interim relief provisions in arbitral laws, fostering greater confidence and efficiency in the international arbitration process. Moreover, the research will analyse the strategic considerations that parties must weigh when seeking interim relief, including the[6] potential impacts on ongoing business operations, financial interests, and reputational concerns.

Furthermore, an in-depth examination of the procedural characteristics surrounding interim relief will be undertaken, with a focus on the mechanisms available to parties for obtaining such relief. This will involve scrutiny of the application process, evidentiary requirements, and the role of the arbitral tribunal in adjudicating interim relief requests. By delineating these

[6] Husain M. Al-Baharna, 'International Commercial Arbitration in Perspective' (1988) 3(1) Arab Law Quarterly <https://doi.org/10.2307/3381739> accessed 18 August 2024

procedural intricacies, the paper aims to provide practical guidance to practitioners and arbitrators navigating the complex terrain of interim relief proceedings.

In conclusion, this research endeavours to offer a comprehensive understanding of interim relief in international commercial arbitration, addressing its conceptual underpinnings, procedural intricacies, and practical implications.[7] Ultimately, it underscores the importance of robust and enforceable interim relief provisions in arbitral laws, thereby fostering greater confidence and efficiency in the international arbitration process.

THE SIGNIFICANCE OF INTERIM RELIEF

In practice, interim relief is frequently felt to be necessary by the disputing parties in international commercial arbitration. A party to the arbitration may immediately and temporarily preserve their rights or property while waiting for the arbitral tribunal to rule on the merits of the case. These measures of relief are also known as conservatory and provisional remedies.

Such measures, which are highly practical, are frequently necessary for the success of an award that is later made. Arbitrators or municipal courts may grant a variety of interim measures, including attachment, injunctions or orders protecting and preserving perishable goods, demanding payment of a portion of a claim, or requiring the deposit of security for costs. Given that international trade, practice continues to produce new types of remedies in response to the needs of the disputing parties and the growing complexity of cases, these measures are especially inventive and varied[8]. As arbitration is, by its very nature, based on a commercial agreement between parties, there isn't a single or even central forum for international arbitration. Consequently, it is necessary to examine the regulations controlling arbitrators' authority to grant temporary relief in light of the different international arbitration frameworks.

[7] *Ibid*
[8] *Ibid*

PROCEDURE AND AVENUES

A party may ask the arbitral tribunal for the proper remedies in order to be protected. Occasionally, it may be necessary to request relief from the courts of the jurisdiction in which the arbitration is being conducted or where one of the parties has assets located[9].

There are several choices that need to be taken and incorporated into the arbitration provision when parties decide to employ arbitration to resolve any dispute resulting from a contract. The selection of the arbitration rules that will apply to the case may be the most crucial one. Often, parties may designate one of the major organisations with their own set of arbitration rules to oversee any arbitration resulting from their agreement. The International Chamber of Commerce (ICC), the American Arbitration Association (AAA), the LCIA Arbitration International (LCIA), and the UNCITRAL Arbitration Rules (UNCITRAL Rules) are a few of the most commonly utilised arbitration rules. Parties should indicate any deviations from the arbitration rules they wish to have followed as well as their approach to resolving non-rules-governed disputes once the rules have been chosen. Express wishes of the parties are likely to be upheld by national courts and arbitration tribunals unless it is determined that duress occurred during the negotiation process. This is due to the fact that courts all over the world regularly recognise parties' autonomy and right to enter into contracts. As a result, the arbitration clause can be carefully drafted to include provisions for enforcement, recommendations the parties would like to follow, and the authority for arbitrators to give temporary measures of protection[10]. A well-crafted arbitration provision can eliminate the gaps that now exist in institutional arbitration regulations and make it clear what function national courts and arbitrators are supposed to do.

[9] Michael F. Hoellering, 'Interim Relief in Aid of International Commercial Arbitration' (1984) 1 Wisconsin International Law Journal <https://heinonline.org/HOL/LandingPage?handle=hein.journals/wisint1984&div=5&id=&page=> accessed 18 August 2024

[10] *Ibid*

To pursue options in order to secure urgent interim relief, one might do so in two major ways: either before a court or before an arbitrator. The selection of which of these paths to pursue and at what time depends on a number of criteria.

Tribunal Limitations and Constraints: Due to public policy considerations, states historically believed that the national courts had the exclusive authority to issue interim orders. States did, however, eventually come to recognise the efficiency and dependability of arbitration as a dispute resolution process[11]. The ability of an arbitral tribunal to order interim or conservatory measures hinges on various factors. Initially, certain measures may be necessary before the tribunal is even constituted. However, even after the tribunal is formed, its authority may be restricted, as seen in jurisdictions like Italy, China, Thailand, and Argentina, where local legislation reserves the grant of such measures exclusively for local courts. Additionally, there are inherent limitations to the tribunal's power due to the contractual nature of arbitration agreements. Tribunals can typically only order measures against parties to the arbitration and lack authority over third parties. Furthermore, they often cannot enforce their provisional measures, requiring national courts to intervene. This reliance on national courts is particularly pronounced in cases where the tribunal's orders may be insufficiently swift or enforceable. Moreover, *ex parte* measures, not commonly granted in arbitral proceedings, may also present a challenge.

Timing Considerations: In international arbitration, the timing and urgency of interim measures are crucial considerations that can significantly impact the effectiveness of dispute resolution efforts. In some cases, parties may require urgent interim measures to address pressing issues or prevent irreparable harm. The timing of interim relief proceedings can vary depending on the procedural rules and practices of the arbitral institution or jurisdiction involved. Some arbitration rules provide for expedited procedures or emergency arbitrator mechanisms to address urgent interim relief requests. Parties may need to act quickly to initiate these procedures and secure interim measures in a timely manner.

[11] *Ibid*

In situations where immediate action is necessary, parties may seek interim relief on an *ex-parte* basis, meaning without notifying the opposing party. *Ex-parte* applications allow for swift decision-making by the arbitral tribunal or national courts, but they also raise concerns about procedural fairness and the opportunity for the opposing party to be heard. Balancing the need for urgent relief with principles of due process is a key consideration in *ex parte* applications.

Forum Neutrality and Confidentiality: Parties often weigh the neutrality of the forum when deciding on dispute resolution mechanisms. Arbitral tribunals are generally perceived as neutral bodies, selected through mutual agreement of the parties, and tasked with impartially adjudicating disputes. However, the same level of neutrality cannot always be guaranteed when resorting to national courts. When considering the neutrality of the forum, parties evaluate factors such as the composition of the tribunal or judiciary, the reputation of the legal system, and the likelihood of procedural fairness.

International arbitration proceedings are typically conducted in private, with strict confidentiality provisions safeguarding sensitive business information and trade secrets. In contrast, proceedings before national courts are generally public, subject to open hearings and public records. While certain jurisdictions may allow for confidentiality orders or protective measures, the default position often favours transparency and public access to court proceedings. While arbitral tribunals offer a level of neutrality and confidentiality that may be attractive to parties engaged in cross-border transactions, the choice between litigation and arbitration requires a thorough consideration of the specific circumstances of the dispute and the preferences of the parties involved.

PROVISIONAL MEASURES UNDER INDIAN AND ENGLISH LAW

Indian Law: According to section 17[12] of the Act, parties may request interim measures from the tribunal for any of the issues covered by section 17(11)[13] of the Act at any time throughout the arbitral procedures. This covers, among other things, safeguarding the amount at issue in the arbitration, selling or preserving any goods covered by the arbitration agreement, and 'such

[12] Arbitration and Conciliation Act 1996, s 17
[13] Arbitration and Conciliation Act 1996, s 17(1)

other interim measure of protection as may spear to the arbitral tribunal to be just and convenient.'

Section 9[14] of the Act, which is largely dependent on Article 9 of the Model Law, states that a court may award interim measures in addition to the authority granted to tribunals under section 17.

Both before and during the arbitration process, as well as after the decision, but before it is put into effect. Section 9 of the Act surpasses Article 9 of the Model Law in this regard since it grants the court the authority to provide interim remedies only prior to and during arbitral procedures.

It was well acknowledged prior to the Arbitration and Conciliation (Amendment) Act, 2015 (the '2015 Amendment')[15] that a tribunal's authority to grant temporary relief was more limited than the courts. Three modifications were made in the 2015 Amendment with the intention of bolstering the remedy granted by section 17 of the Act:

(a) It has rendered the remedies provided by section 17 comparable to those accessible in accordance with Act Section 9.

(b) It has rendered a tribunal order issued according to section 17 of the Act enforceable in the same manner as a court order.

(c) Unless there are circumstances that might make the remedy under section 17 of the Act ineffective, it has made it unlawful for courts to consider petitions for interim relief after a tribunal has been established.

Essentially, the following situations currently qualify for a court granting of interim measures:

i. even if the arbitral procedures must thereafter be started within 90 days of the court order date or within a time frame that the court has specified before a tribunal is established.

ii. following the award's rendering but prior to its enforcement and

[14] Arbitration and Conciliation Act 1996, s 9
[15] Arbitration and Conciliation (Amendment) Act 2015

iii. during the arbitral processes, in the event that the tribunal's intermediate remedies prove ineffective. Some courts have recommended that a stringent approach be used in this category and that the petitioner prove to the court that there are circumstances that would make a remedy under section 17 of the Act ineffective. Relief under section 17 has been deemed ineffective in situations where the tribunal handled the actions requested under section 17 in a sluggish manner, and there were delays and, despite the petitioner's best efforts, it was unaware of the tribunal's constitution, the tribunal could not function after its constitution as one of the arbitrator's had rescued themself. [16]

Prior to the Arbitration and Conciliation Act, 2015 Amendment[17], it was widely accepted that a tribunal lacks authority to issue temporary injunctions against a third party under section 17 of the Act. Given that the tribunal's powers under section 17 of the Act have been brought into line with the court's powers under section 9[18] of the Act, it is unclear if a tribunal can now issue interim relief against third parties in the wake of the 2015 Amendment.

The question of whether section 9 of the Act applies to foreign commercial arbitrations has been discussed extensively. The 2015 Amendment aimed to provide some clarification after the back and forth in ***Bhatia International v Bulk Trading SA[19] and Bharat Aluminium Co. v Kaiser Aluminium Technical Services Inc.[20]***; the Arbitration and Conciliation (Amendment) Act 2019 followed this case. "Subject to an agreement to the contrary, the provisions of sections 9[21], 27[22], and clause (a) of sub-section (1) and sub-section (3) of section 37[23] shall also apply to international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award made or to be made in such place," reads the proviso to section 2(2)[24] of the Act.

[16] UNCITRAL Model Law on International Commercial Arbitration 1985, art 9
[17] Arbitration and Conciliation (Amendment) Act 2015
[18] Arbitration and Conciliation Act 1996, s 9
[19] *Bhatia International v Bulk Trading SA* (2002) 4 SCC 105
[20] *Bharat Aluminium Co. v Kaiser Aluminium Technical Services Inc.* (2016) 4 SCC 126
[21] Arbitration and Conciliation (Amendment) Act 2019, s 9
[22] Arbitration and Conciliation (Amendment) Act 2019, s 27
[23] Arbitration and Conciliation (Amendment) Act 2019, s 37
[24] Arbitration and Conciliation (Amendment) Act 2019, s 2(2)

English Law: As stated in section 38(1)[25] of the English Act, parties are allowed to agree on the powers that the tribunal shall have in relation to conservatory or temporary procedures. The tribunal will have the authority outlined in section 38 of the English Act in the absence of such an agreement. Security for costs, instructions regarding any property subject to the proceedings (or as to which a question arises in the proceedings), instructions requiring that a party or witness be questioned under oath or affirmation (and administering the necessary oath or affirmation), and instructions for the preservation of any evidence in a party's custody are among the 'default' measures that a tribunal may grant under section 38 or authority for the duration of the legal process.

While the court will not step in simply because the tribunal has declined to use its authority to order the measures in question, parties are usually expected to approach the tribunal where the tribunal has the authority to grant the measures in question. The courts have broad authority to issue orders for the preservation of documents and evidence under Section 44 of the English Act. The English Act's section 44(2)[26] outlines the court's authority in this respect, which is the same authority that the court may use in court. In accordance with English Act section 44(3), the court, on the application, upon request from a party or prospective party to the arbitration proceedings, issues any instructions it deems appropriate to preserve assets or evidence.

Parties may choose to omit Section 44's application since it is not a required provision (as long as the exclusion is stated clearly). The clause can be used even if the arbitration has a foreign seat or no defined seat at all; nevertheless, in these situations, the court will require a valid justification to exercise its jurisdiction because any interim remedy would typically be granted by the courts of the arbitration's seat. According to the ruling in ***UG-M Mining Zambia Ltd v Konkola Copper Miles Pic***[27]**,** 'a party may uncommonly be allowed to seek temporary relief in a court other than the seat, if the application may reasonably be submitted there for practical reasons, given that the legal process is not a covert effort to circumvent the arbitration agreement.' After the award has been made, Section 44[28] is no longer available. Any further

[25] The English Arbitration Act 1996, s 38(1)
[26] The English Arbitration Act 1996, s 44(2)
[27] *UG-M Mining Zambia Ltd v Konkola Copper Miles Pic* [2013] EWHC 3250
[28] The English Arbitration Act 1996, s 44

injunctions granted by the court may only be granted in accordance with the court's normal injunction-granting authority, not in accordance with the authority under section 44 of the English Act.

Section 44[29] of The English Act distinguishes between instances that are urgent and those that are not. In non-urgent instances, the court may only take action on an application made by a party to the arbitral proceedings after receiving consent in writing from every other party or approval from the tribunal. This is compliant with the English Act's general policy.

The tribunal should handle conducting the arbitral process. ***In Cetelem v Roust***[30], the Court of Appeal determined that the court's extensive authority under sections 44(1) and (2) can only be used in urgent circumstances if it is 'necessary for the purpose of preserving evidence or assets,' as defined by section 44(3). Since the term 'assets' is interpreted widely to cover choices in action (including rights in contracts) in addition to actual assets, there isn't much of a practical difference made by this ruling.

The UK Supreme Court ruled in ***Ust-Kamenogorsk v AES***[31] that section 44 of the English Act only applies in cases where arbitration is ongoing or planned. The court further stated that the reference in section 44(2)(e) (of the English Act) to the granting of an interim injunction was not intended to duplicate part of the general power contained in section 37[32] of the 1981 Act, nor to exclude the Court's general power to act under section 37 of the 1981 Act in circumstances outside the scope of section 44[33] of the 1996 Act. As stated in the ruling, in cases where an injunction to stop foreign proceedings in violation of an arbitration agreement is requested as an interim remedy, regardless of when the arbitration agreement was signed, Section 37[34] of the Senior Courts Act, 1981, rather than Section 44[35] of the English Act, is the source of authority to give such an injunction while arbitral procedures are underway or planned.

[29] *Ibid*
[30] *Cetelem v Roust* [2004] EWCA Civ 618
[31] *Ust-Kamenogorsk v AES* [2013] UKSC 35
[32] The Senior Courts Act 1981, s 37
[33] The English Arbitration Act 1996, s 44
[34] The Senior Courts Act 1981, s 37
[35] The English Arbitration Act 1996, s 44

INTERIM MEASURES UNDER INSTITUTIONAL RULES

London Chambers of International Arbitration Rules: According to Article 25[36] of the LCIA Rules 2014 (as well as the new LCIA Rules 2020), the tribunal has the authority to impose the measures listed in Article 25 upon request from a party, subject to conditions the tribunal deems appropriate in the given situation and after providing all other parties with a fair chance to respond. Noteworthy, the tribunal has the authority to award "any relief which the Arbitral Tribunal would have the power to grant in an award[37]" (Article 25.1(iii)), which that the arbitral process itself, the arbitration agreement, and the law governing the arbitration are the only limitations on this authority. According to Article 25.3, a party's ability to request interim remedy from national courts or other legal bodies is unaffected by the tribunal's authority. Before the tribe was formed, the parties were allowed to ask national courts for temporary remedy.[38]

Additionally, the LCIA Rules provide for the rapid appointment of a replacement arbitrator (Article 9C), EAs (Article 98), and tribunal formation in circumstances of exceptional urgency (Article 9A). A party's capacity to seek interim remedy from the English courts may be restricted by the LCIA Rules' provision of emergency relief. The English Commercial Court, for example, denied ***Gerald Metals v Timis***[39] application for interim relief under section 44(3) of the English Act because the claimant had not received urgent and emergency remedy under Articles 9A and 9B of the LCIA Rules, 2014[40]. The court clarified that the goal of these LCIA Rules provisions was to lessen the necessity for relief under section 44 of the English Act to be granted only in situations where these provisions were insufficient or could not be applied in a way that would allow the court to assist in an urgent manner.

International Chamber of Commerce Rules: The document Article 28 of the ICC Rules 2017[41] (and the new ICC Rules 2021) states that upon a party's request following transmission of the

[36] The London Court of International Arbitration Rules 2014, art 25
[37] *Ibid*
[38] *Shakti International Private Limited v Excel Metal Processors Private Limited* (2016) 41-COMSS479-17.DOC
[39] *Gerald Metals v imis* [2016] EWHC 2327 (CH)
[40] The London Court of International Arbitration Rules 2014
[41] The International Chamber of Commerce Rules 2017, art 28

matter to the tribunal (prior to the Terms of Reference, as defined in the ICC Rules, an established), the tribunal may, absent agreement between the parties, order any interim or conservatory measure it deems appropriate. The measure may be implemented, but only if the person making the request provides the necessary security. It may take the form of an award or an order with justification. Although Article 28 does not specify the actions that might be taken, common requests for interim relief include actions to maintain the status quo while the dispute is being resolved, for cost-effective security, evidence preservation, etc. Although the ICC Rules do not provide for completely *ex parte* temporary relief, the Secretariat's Guide does mention that tribunals have occasionally granted decisions to maintain the status quo while awaiting a response from the respondent party.

Singapore International Arbitration Centre Rules: Rule 30.1[42] of the SIAC Rules states that a tribunal may inue an order or award granting an injunction of any other interim relief deemed appropriate upon the request of a party (and may order the requesting party to provide appropriate security). Rule 27 sets outlines various types of temporary remedies that the tribunal may offer, such as directives to protect, store, sell, or dispose of any assets or objects that are or are part of the dispute's subject matter or an order to provide security for the claim's expenses.

According to Rule 30.3[43], a judicial authority may be asked for an interim remedy before the tribunal is created or, in extraordinary cases, after the tribunal is established. This includes circumstances in which the relief sought is urgent and essential, but the tribunal lacks the authority or cannot act effectively in the interim, such as when the enforcement powers of the court are required or the tribunal lacks jurisdiction (such as when relief is requested in relation to third parties or *ex parte*).

Hong Kong International Arbitration Centre Rules: Article 23.2[44] of the HKIAC Rules provides that a tribunal may order any interim measures deemed necessary or appropriate upon the request of a party, and some examples of such measures are listed in Article 23.3 – they include orders/awards or decisions in form for maintenance or restoration of the status quo pending

[42] The Singapore International Arbitration Centre Rules 2016, art 30.1
[43] The Singapore International Arbitration Centre Rules 2016, art 30.3
[44] The Hong Kong International Arbitration Centre Rules 2018, art 23.2

determination of the dispute, supplying a way to protect assets from which a later award could be fulfilled, safeguarding proof, etc. Article 24[45] further provides that the tribunal may make an order for a party to provide security for costs. The tribunal may require the requesting party to provide appropriate security (Article 23.6) and may also require any party to disclose promptly any material change in the circumstances upon which the interim measure was requested or granted by the tribunal (Article 23.7).

Article 23.9[46] states that any request for interim relief by a party to a competent authority is not thought to be in conflict with the arbitration clause or a waiver of it.

In contrast to other institutional regulations, bringing a case before the courts after a tribunal is established is not restricted to circumstances in which the tribunal is unable or inefficient to provide interim relief; in addition, under Hong Kong law, courts possess broad authority to provide interim relief in support of arbitration, regardless of the arbitration's seat or status.[47]

EMERGENCY ARBITRATOR RELIEF

Parties may occasionally be forced to turn to national courts for urgent interim relief due to the delay between filing an arbitration request and the tribunal's formation. Many major arbitral institutions have updated their arbitration procedures over the past 20 years in an effort to solve this issue and allow parties to petition for urgent interim relief through a letter of authorisation (LA) even before the tribunal is constituted. Actually, the International Chamber of Commerce (ICC) took a step in this direction back in 1990 when it established the Pre-Arbitral Referee Procedure. This procedure allowed parties to seek urgent interim relief before the arbitration was referred to, with the understanding that most measures would be binding until the arbitral tribunal, the referee, or a court made a decision to the contrary. However, it wasn't until the turn of the millennium that a number of eminent institutions started to formulate the contemporary understanding and use of EA relief in international arbitral practice. The Arbitration Institute of the Stockholm Chamber of Commerce (SCC) and the SIAC initiated the use of EA procedures in

[45] The Hong Kong International Arbitration Centre Rules 2018, art 24
[46] The Hong Kong International Arbitration Centre Rules 2018, art 23.9
[47] Stephen York, 'India as an arbitration destination: the road ahead' (2009) 21(2) National Law School of India Review <https://www.jstor.org/stable/44283805> accessed 19 August 2024

2006. This was followed in 2010 by the International Centre for Dispute Resolution (ICDR)[48], in 2012 by the IOC, in 2013 by the HKIA[49]C and the Asian International Arbitration Centre (ALAC), formerly known as the Kuala Lumpur Regional Centre for Arbitration), in 2014 by the LCIA[50], and in 2016 by the Mumbai Centre for International Arbitration (MCIA).

SUGGESTIONS

Lack of Uniformity in Arbitral Procedures: Uniformity in arbitral procedures remains a challenge, particularly concerning the absence of standardised methods for parties to request interim measures of protection before the formation of the arbitral tribunal. This lack of uniformity can lead to uncertainty and procedural delays, affecting the efficiency and fairness of the arbitration process. Parties may face obstacles in seeking timely relief due to variations in procedural rules and practices across different jurisdictions and arbitral institutions.

The Need for Procedures for Pre-Tribunal Arbitral Interim Measures: One critical area where uniformity is lacking is in the procedures for parties to request arbitral interim measures of protection prior to the formation of the arbitral tribunal. In many jurisdictions and under various arbitral rules, there is a gap in provisions addressing interim relief at this early stage of the arbitration process. As a result, parties may encounter difficulties in securing necessary interim measures to preserve their rights and prevent irreparable harm before the tribunal is constituted.

Consideration of *Ex Parte* Interim Measures: A related issue is whether *ex parte* interim measures of protection should be granted in arbitral proceedings. *Ex part*e measures, where relief is granted without prior notice to the opposing party, raise concerns about fairness and due process. While *ex parte* measures may be necessary in urgent situations to prevent imminent harm or preserve assets, their use should be carefully considered to balance the parties' right to be heard and the need for prompt action.

[48] International Centre for Dispute Resolution Rules 2021
[49] The Hong Kong International Arbitration Centre Rules 2018
[50] The London Court of International Arbitration Rules 2017

CONCLUSION

International commercial arbitration serves as an alternative approach to resolving cross-border conflicts, sparing parties the need to litigate in their respective national courts. Interim relief plays a crucial role in this process, providing parties with provisional remedies to safeguard their rights and prevent irreparable harm pending final resolution. Understanding the scope and nature of interim relief is essential for effective dispute resolution in international arbitration. Through doctrinal research, this paper has investigated the relevance, procedural characteristics, and efficacy of interim relief remedies, as well as providing a comparative analysis of interim relief provisions in English and Indian arbitral legislation. Additionally, the enforceability of emergency arbitrator relief in various jurisdictions has been explored. It is evident that clear and enforceable interim relief provisions in arbitral laws are vital for facilitating efficient dispute resolution processes in the international commercial arena.