

Interim Relief Under the Arbitration & Conciliation Act, 1996: A Comparative Analysis of Section 9 & Section 17

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Abstract

The Arbitration and Conciliation Act, 1996, governs arbitration in India, emphasizing minimal Court intervention and efficient dispute resolution. A key feature is the power to grant interim relief, which plays a crucial role in protecting parties' rights and interests during arbitration proceedings. This article presents a comparative analysis of Section 9 and Section 17, examining their scope, applicability, and judicial interpretations. Section 9 empowers Courts to grant interim measures at three stages—before arbitration begins, during proceedings, and post-award but before execution. The 2015 Amendment introduced a 90-day arbitration initiation timeline and restricted Court intervention once a tribunal is constituted. Judicial precedents such as *Sundaram Finance v. NEPC India Pvt. Ltd.* (1999) and *Bharat Aluminium Co. v. Kaiser Aluminium* (2012) have played a significant role in shaping its scope, particularly in international commercial arbitration. Conversely, Section 17 authorizes arbitral tribunals to order interim measures once arbitration proceedings commence. Strengthened by the 2015 Amendment, tribunal-ordered reliefs now hold the same enforceability as Court orders. However, enforcement challenges still persist, leading to contempt proceedings under Section 27(5). This article explores key distinctions between Sections 9 and 17, analysing judicial

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trends and procedural aspects. While Section 9 provides broader relief, including third-party involvement, Section 17 is confined to arbitration-bound parties. Recent rulings increasingly favor arbitral autonomy, enhancing Section 17's effectiveness and reinforcing the evolving framework of interim relief under Indian arbitration law in alignment with global standards.

Keywords: arbitration, interim measures, judicial precedents, enforcement, tribunal

Introduction

The Arbitration and Conciliation Act, 1996 ("the Act") is a landmark legislation that governs arbitration proceedings in India. It was enacted with the objective of ensuring speedy dispute resolution while minimizing Court intervention. One of the most crucial aspects of arbitration is the power to grant interim relief, which can be sought before, during, or even after the arbitration proceedings. This article delves into the comparative study of Section 9 and Section 17 of the Act, analysing their scope, applicability, and judicial interpretations.

Section 9 of the Arbitration & Conciliation Act, 1996

Section 9: Interim Measures by Courts

Section 9 of the Arbitration and Conciliation Act, 1996 provides parties with the right to seek interim measures, which are temporary or provisional reliefs granted through interim orders by the Court. This provision ensures that arbitration remains an effective alternative dispute resolution mechanism while granting Courts limited jurisdiction.

In contrast to the Arbitration Act of 1940, where excessive Court interference hindered arbitration proceedings and defeated the objective of the law, Section 9 of the 1996 Act grants jurisdiction to Courts while ensuring that arbitration remains an effective alternative dispute resolution mechanism.

Types of Reliefs under Section 9

- Preservation, interim custody, or sale of goods involved in arbitration.
- Securing the amount in dispute in arbitration.
- Granting interim injunctions or appointing receivers.

- Any other relief deemed necessary by the Court to protect the subject matter of the dispute.

Under Section 9, there are three stages at which a party can approach the Court for interim measures:

1. **Before the commencement of arbitration proceedings:** A party may invoke Section 9 before the arbitration process begins to seek urgent interim relief from the Court.
2. **During the arbitration proceedings:** At any stage of the arbitration, if a party feels that the proceedings are biased, the principles of natural justice are not followed, or the rule of *audi alteram partem* is violated, they may approach the Court for interim relief. This is particularly relevant in cases where substantial injustice or bias is evident, or when the rights of a minor (such as in arbitration agreements involving child rights) are at stake. Seeking interim relief at this stage helps avoid procedural irregularities and unnecessary delays, ensuring that the objective of arbitration—speedy resolution of disputes—is not defeated.
3. **After the passing of the arbitral award but before execution:** If an arbitral award has been passed but not yet executed, a party may approach the Court for interim measures during this period to safeguard their interests.

The Court's interference under Section 9 is discretionary and limited to granting interim measures. Courts must ensure that their orders assist rather than hinder the arbitration process. While passing interim orders, the Court must consider:

1. Prima facie case
2. Balance of convenience
3. Irreparable injury or loss

Additionally, under Section 17 of the Act, arbitrators have the power to grant interim measures. However, if such measures are deemed insufficient, the parties may still approach the Court under Section 9.

The 2015 Amendment to the Arbitration and Conciliation Act added subsections (2) and (3) to Section 9, clarifying the timeline for starting arbitration proceedings after seeking interim

relief. Before this amendment, the Supreme Court in *Sundaram Finance v. NEPC India Pvt. Ltd.* (1999)¹ ruled that when a party seeks interim measures under Section 9, it implies acceptance of a valid arbitration agreement and recognition of a dispute meant for arbitration. If a party files a Section 9 petition before arbitration begins, they must show a clear intent to proceed with arbitration, which can be demonstrated by issuing a notice under Section 21 of the Act.

If a party seeks Section 9 relief before even issuing such a notice, the Court must first be satisfied that a valid arbitration agreement exists and that the applicant genuinely intends to initiate arbitration. In such cases, the Court can impose conditions on the applicant to ensure that arbitration proceedings are commenced without undue delay².

The 2015 amendment to Section 9 introduced two significant provisions:

- **Section 9(2):** If a Court grants an interim order before the commencement of arbitration, the arbitration proceedings must begin within 90 days; otherwise, it would lead to procedural laxity.
- **Section 9(3):** Once the arbitral tribunal is constituted, the Court shall not entertain applications for interim relief unless the remedy under Section 17 is deemed insufficient.

Scope & Judicial Discretion

1. The parties under Section 9 include only those within the arbitration agreement. However, if a third party is related to the arbitration agreement and has an interest, they may also invoke Section 9, provided all procedural requirements are met.
2. The Court applies judicial discretion while granting interim relief.

¹ AIR 1999 SC 565, 1999 AIR SCW 225

² Vikash Kumar Jha, Ena Kapur, *Timeline to follow under Section 9(2) of the Arbitration and Conciliation Act 1996*, Dispute Resolution Blog, Cyril Amarchand Mangaldas (Nov. 25, 2024), <https://disputeresolution.cyrilamarchandblogs.com/2024/11/timeline-to-follow-under-section-92-of-the-arbitration-and-conciliation-act-1996/>

3. If a plea of fraud is raised in an arbitration agreement, the Court cannot entertain it; it is for the arbitral tribunal to decide.
4. The Court's role under Section 9 is limited to granting interim measures and not deciding the entire case.
5. Section 9 does not flow from the arbitration agreement; it is a statutory remedy. Even if the arbitration agreement is silent about going to Court, parties can still approach the Court for interim relief. The arbitration agreement cannot abridge Section 9.

Objectives of Section 9

1. Protect the rights of parties to prevent prejudice.
2. Ensure arbitration proceedings are conducted meticulously.
3. Maintain a concise subject matter.
4. Facilitate ongoing arbitration proceedings.
5. Serve as a "stop-gap" arrangement.

Legal Precedents & Case Laws

1. Intertoll Inc. v. Cecon O&M Co. Pvt. Ltd., National Highway Authority of India³

In this case, the Court held that the scope of interim measures under Section 9 is wider than Section 17.

2. Government of Orissa case (1992) Supreme Court

In this case, the Court stated that Section 9 can be invoked even if there is no explicit mention of going to Court in the arbitration agreement, implying that Court intervention is still possible.

3. Deepak Mishra case

³ AIRONLINE 2013 DEL 2

In this case, it was held that interim measures under Section 9 are statutory in nature and serve to ensure justice. Additionally, the Court clarified that interim award via writ petition is devoid or debarred but Article 226 can be invoked as Courts include High Courts.

4. Bhatia International v. Bulk Trading⁴

The Court in this case held that Section 9 is applicable in international commercial arbitration when a foreign element is involved.

5. Bharat Aluminium Co. v. Kaiser Aluminium Technical Service Inc. (BALCO Case)⁵

In this case, the Court overruled the judgement given in Bhatia International, holding that Part I of the Arbitration and Conciliation Act, 1996 (including Section 9), is not applicable to foreign-seated arbitration. However, Section 2(2) was later amended to clarify that Section 9 applies to international arbitration unless expressly excluded.

Judicial Remedies & Compliance

1. Remedies granted under Section 9 require judicial application of mind.
2. Courts cannot decide disputes on a prima facie level.
3. Section 41 of the Specific Relief Act must be adhered to when granting interim relief.
4. Section 41 of the Specific Relief Act also outlines when interim relief cannot be granted.
5. Filing under Section 9 must be done under Order 39, Rule 1 and 2 of CPC, similar to seeking a temporary injunction.

Section 9 & International Commercial Arbitration

A key question arises that – can Section 9 be invoked in international commercial arbitration?

In the case of *Bhatia International v. Bulk Trading*⁶ held that Section 9 is applicable in international commercial arbitration when it has a foreign seat. Later, in the case of *Bharat*

⁴ 2002 2 SCC 105

⁵ (2012) 9 SCC 552

⁶ (2002) 4 SCC 105

*Aluminium Company v. Kaiser Aluminium Technical Service International Company*⁷ (*BALCO Case*), a five-judge bench overruled *Bhatia International* and held that Part I of the Arbitration and Conciliation Act, 1996 (including Section 9), does not apply to foreign-seated arbitrations. However, the 2015 amendment to Section 2(2) reinstated the applicability of Section 9 in certain cases.

This Section 9 aligns with Article 9 of the UNCITRAL Model Law on International Commercial Arbitration and corresponds to Section 41(b) and Schedule II of the Arbitration Act, 1940. It is based on the maxim "*What cannot be done directly cannot be done indirectly.*" This principle ensures that Section 9 is not misused to bypass procedural limitations.

In conclusion, Section 9 of the Arbitration and Conciliation Act, 1996, provides an essential statutory remedy, ensuring that parties can seek judicial intervention for interim relief without compromising arbitration's efficiency. Even if an arbitration agreement is silent on Court intervention, Section 9 remains applicable. The Courts' role under this section is purely supportive and does not extend to adjudicating the dispute itself. This provision serves as a safeguard, ensuring that arbitration proceedings are fair, effective, and just.

Section 17 of the Arbitration & Conciliation Act, 1996

Section 17: Interim Measures ordered by Arbitral Tribunal

Arbitration has become a preferred dispute resolution mechanism in commercial matters, primarily due to its efficiency and flexibility. A crucial aspect of arbitration is the power to grant interim measures, which helps protect the subject matter of the dispute while proceedings are ongoing. Section 17 of the Arbitration and Conciliation Act, 1996, plays a pivotal role in this regard, allowing the arbitral tribunal to grant interim reliefs. This article explores the scope of Section 17, its comparison with Section 9, and relevant judicial interpretations. The provision was significantly amended by the Arbitration and Conciliation (Amendment) Act, 2015, which strengthened the enforceability of tribunal-ordered interim reliefs by treating them on par with orders of a Court under Section 9 of the Act.

⁷ (2012) 9 SCC 552

Section 17 & Its Analogy to the UNCITRAL Model Law

Section 17 of the Arbitration and Conciliation Act, 1996 is analogous to Article 17 of the UNCITRAL Model Law. While Section 9 allows a party to approach the Court for interim relief at any stage—before, during, or after arbitration, but before execution—Section 17 can only be invoked once arbitral proceedings have commenced.

Scope of Section 17 & Third-Party Involvement

- The term "parties" under Section 17 refers strictly to those bound by the arbitration agreement.
- Generally, third parties have no locus standi to seek relief under Section 17 unless they can demonstrate irreparable injury linked to the dispute.
- Only when the arbitral tribunal is constituted can an application under Section 17 be filed.

Enforcement of Interim Measures Under Section 17 of the Arbitration & Conciliation Act, 1996: Challenges & the Role of Contempt Proceedings

Interim measures play a crucial role in arbitration, helping parties protect their rights and interests while proceedings are underway. Section 17 of the Arbitration and Conciliation Act, 1996 empowers arbitral tribunals to grant such reliefs in various situations. For instance, a tribunal may direct a party to furnish a bank guarantee or other security to safeguard the sum in dispute. These measures are essential to ensure fairness and prevent any party from taking undue advantage before the final award is rendered.

However, a major challenge historically associated with Section 17 was the lack of an enforcement mechanism. Before 2015, even if a tribunal granted interim relief, there was no statutory provision compelling compliance, which significantly weakened the effectiveness of such orders. Courts highlighted this shortcoming in cases like *Sundaram Finance Ltd. v. NEPC India Ltd.*⁸ and *Army Welfare Housing Organisation v. Sumangal Services (P) Ltd.*⁹

Strengthening Section 17: The 2015 Amendment

⁸ (1999) 2 SCC 479

⁹ AIR 1999 SUPREME COURT 565

Recognizing this gap, the 246th Law Commission Report (Paragraphs 46 & 47) recommended changes to strengthen Section 17. In response, the 2015 Amendment introduced Section 17(2), which states that any interim measure granted by an arbitral tribunal will be treated as an order of the Court and will be enforceable under the Code of Civil Procedure, 1908 (CPC), just like a Court order. This was a significant step in ensuring that interim reliefs granted by tribunals carry real weight¹⁰.

Despite this legislative change, challenges in enforcement still arise when a party refuses to comply with an arbitral tribunal's interim order. In such situations, the aggrieved party often resorts to contempt proceedings under Section 27(5) of the Arbitration and Conciliation Act.

The Supreme Court, in *Alka Chandewar v. Shamshul Ishrar Khan*¹¹, clarified that a party failing to comply with a tribunal's order can be held guilty of contempt. This ruling was an important step toward ensuring compliance with arbitral orders.

While contempt proceedings are intended to deter non-compliance by imposing penalties, their effectiveness is often limited by several factors, such as:

1. Jurisdictional Challenges – The need for Court intervention can create hurdles, especially when multiple jurisdictions are involved.
2. Procedural Delays – Court processes can be slow, defeating the very purpose of urgent interim relief.
3. Judicial Reluctance – Courts are often hesitant to impose stringent penalties, which can dilute the deterrent effect of contempt proceedings.

Given these limitations, there is a growing need for a more efficient enforcement mechanism that ensures immediate compliance with tribunal-ordered interim reliefs without relying entirely on contempt proceedings.

Nature of Interim Measures

¹⁰ Shaurya Sahay, *Enhancing Enforcement of interim arbitral orders in India: Proposal for an alternative mechanism*, Bar and Bench (Oct. 5, 2024), <https://www.barandbench.com/columns/enforcement-interim-arbitral-orders-in-india-proposal-alternative-mechanism>

¹¹ AIR ONLINE 2017 SC 792

Interim measures under Section 17 provide temporary relief to prevent irreparable harm or injustice. For example, in a dispute between X and Y involving perishable goods, an interim relief may be granted to prevent deterioration. Unlike Section 9, where Courts strictly adhere to three principles—

1. Prima facie case
2. Balance of convenience
3. Irreparable injury

Arbitral tribunals under Section 17 have more flexibility. While they consider these principles, they are not bound by rigid procedural constraints.

Discretionary Power of the Arbitral Tribunal

Arbitrators are not obligated to grant interim relief merely because an application is filed and if an application is rejected, the party can appeal under Section 37 of the Act.

Grounds for Seeking Interim Measures under Section 17

An application under Section 17 can be filed for one or more of the following reasons:

1. Appointment of a guardian for a party suffering from a legal disability
2. Preservation, custody, or sale of subject matter related to arbitration
3. Securing the disputed amount by deposit
4. Inspection, preservation, or determination of immovable property
5. Entry onto land/building for observation or collection of samples
6. Appointment of a receiver

Orders under Section 17 are enforceable as Court orders due to the 2015 amendment, which enhanced the tribunal's power.

Key Amendments

2015 Amendment: Expanded the tribunal's power by adding a *residuary clause* allowing it to grant any necessary interim relief. This amendment ensured that tribunal-ordered interim relief is enforceable like a Court order.

2019 Amendment: Allowed tribunals to pass interim orders even after an arbitral award is issued, reinforcing their authority.

Key Judicial Interpretations – Important Case Laws

1. NTPC v. Bharat Aluminium Co.¹²

The issue in this case was whether Section 9 or Section 17 holds greater authority. The Court held that they are in parity with each other and interdependent and are nexus to each other. It is co-extensive.

2. BPL Ltd. v. Morgan Securities & Credit Pvt. Ltd.¹³

The issue once again before the Court was whether Section 9 or Section 17 holds greater authority. The Court held that Section 17 is broader than Section 9 post-2015 amendment due to its residuary power.

3. Sanjay Aurora v. Rajan Chada & Anr.¹⁴

In this case it was held that arbitral tribunals can pass interim orders at any time, even before a statement of claim is filed.

4. L.A.L Goses Sant Hospitality Pvt. Ltd. v. Suri Devi Commercial Infra Pvt. Ltd.¹⁵

In this case the issue was whether Section 9 or Section 17 has wider authority. The Court without giving head to it stated Section 17 has wider ambit than Section 9, as only expressed undisputed contractual terms or matters can be referred prior to filing of claims or counterclaims under Section 9 and hence, Section 17 is more powerful.

¹² 2004 SCC Online Delhi 1309

¹³ (2008 (101) DRJ 188)

¹⁴ (2021 SCC Online Delhi 4619)

¹⁵ (2024 SCC Delhi 1146)

In conclusion, Section 17 of the Arbitration and Conciliation Act, 1996, has evolved significantly, particularly with the 2015 and 2019 Amendments, to strengthen the tribunal's power to grant interim relief. While Section 9 and Section 17 operate in parallel, the latter has a broader scope due to its residuary power. Courts have consistently upheld its importance in minimizing judicial intervention and ensuring the effectiveness of arbitration proceedings in India.

Understanding the Distinction between Section 9 & Section 17 of the Arbitration & Conciliation Act, 1996

Interim reliefs are a crucial aspect of arbitration, ensuring that the rights and interests of parties are safeguarded during the pendency of arbitral proceedings. In India, both Section 9 and Section 17 of the Arbitration and Conciliation Act, 1996 provide mechanisms for granting interim measures.

While Section 9 allows parties to seek interim relief from a Court before, during, or even after the conclusion of arbitration, Section 17 empowers the arbitral tribunal to grant interim measures once arbitration has commenced. Although both provisions aim to protect parties from irreparable harm, their scope, applicability, and procedural aspects differ significantly.

This article explores the key differences between Section 9 and Section 17, analyzing their scope, enforceability, judicial interpretations, and practical implications in arbitration proceedings.

Sl. No.	Section 9: Interim measures by Court	Section 17: Interim measures by arbitral tribunal
1	Talks about interim measures by Court upon grounds specified there in.	Encompasses interim measures by the tribunal upon more enlargement grounds with security deposit
2	Parties to the arbitration agreement shall invoke Section 9. However, third party claims can also be included or executable with	Third party interference is barred. Orders passed under section 17 are not executable against them, unless otherwise provided.

	matters if dispute is connected with the arbitration agreement.	
3	Wider authority.	More narrow authority in comparison to Section 9.
4	Restricts the power of the Court if efficacious remedy is available before the arbitrators.	Gives residuary power under the ambit of any other matters.
5	<p>This section can be invoked :</p> <p>(a) Before arbitration proceeding</p> <p>(b) During arbitration proceedings</p> <p>(c) After passing of arbitral award but before it is executed under section 36</p>	<p>This section can be invoked when :</p> <p>(a) During arbitration proceedings</p> <p>(b) After passing of arbitration award but before it is executed</p>
6	Mandates within 90 days constitution of arbitration seat	However, some essential sections are not present for adjudicating the interim measures.
7	Court's supervisory role is limited by virtue of Section 5 of the Act.	Arbitration proceedings role is wide under section 17.
8	Appeal procedure has to be followed under the statute.	Appeal can be preferred against the interim measure or order under Section 37(2)(b).
9	Parties can invoke this section but no suo moto interference is permitted.	At the instance of party , only when the party refer to invoke section 17 then the proceedings shall commence (expressly consenting for) i.e no suo-moto interference.

10	There are instances in which Court has delegated its power to its officers.	Arbitrators under Section 17 cannot delegate his power to any person but can obtain expert or legal opinion or advice.
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Conclusion

Both Section 9 and Section 17 of the Arbitration and Conciliation Act, 1996 play a pivotal role in ensuring that parties to arbitration proceedings have access to effective interim reliefs. While Section 9 provides broader recourse by allowing parties to approach the Courts at any stage—before, during, or after arbitration—Section 17 strengthens the authority of the arbitral tribunal by granting it the power to issue enforceable interim measures once arbitration has commenced.

The 2015 Amendment was a game-changer, bringing Section 17 orders on par with Court orders in terms of enforceability, thereby reducing excessive Court intervention and promoting arbitration as a self-sufficient dispute resolution mechanism. However, practical challenges remain, particularly when it comes to enforcement, as tribunals lack coercive powers like those of Courts under Section 9.

Ultimately, the choice between invoking Section 9 or Section 17 depends on the timing of the relief sought, the urgency of the matter, and the practical feasibility of enforcement. A well-balanced approach, ensuring minimal judicial interference while empowering arbitral tribunals, is essential to uphold the efficiency and effectiveness of arbitration in India.