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India wants to be an arbitration hub. It won't be an easy task.

Experts suggest that the proposed appellate tribunals for arbitration could enhance India's position as a global arbitration hub, provided they are staffed with domain experts.

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Arbitration appeal tribunals could reduce court backlogs and improve arbitration quality, making India a more attractive option for international businesses.

India's plan to introduce appellate tribunals dedicated to arbitration would reduce the burden on courts and position the country as a global hub to arbitrate disputes only if these bodies are staffed with the right talent, according to legal experts.

Institutional arbitration could foster discipline and accountability among Indian arbitrators and possibly reverse the trend of such cases moving overseas, said senior advocate Janak Dwarkadas. For this, he said, both arbitral and appellate tribunals should include domain experts.

He proposed substituting the term “court” in the existing act with “domain expert arbitration tribunals”, staffed by retired judges and skilled lawyers who are willing to dedicate their time, with the final appeal resting before the Supreme Court. “By leveraging this talent, we could establish 10 to 15 arbitration tribunals across the country ready to deliver what our courts currently struggle to provide due to their backlog—not due to inefficiency, but simply because they lack the time.”

The Union law ministry's draft amendment on 18 October introduced arbitral appellate tribunals. These would allow disputing parties to appeal arbitral awards without resorting to the courts, but only if the arbitration is conducted through recognized institutions that currently face low caseloads.

Mint reported on 29 September that the government was working to strengthen the India International Arbitration Centre (IIAC), the country's only centrally funded arbitration institution, by increasing the institution's caseload.

Pendency of cases

There are 61,573 arbitration cases pending across all district courts, 13,597 across high courts, and 43 pending cases before the Supreme Court as of 24 October. Apart from that, according to Dwarkadas, Indian parties were involved in 160 cases before the Singapore International Arbitration Centre (SIAC), 79 cases before the International Court of Arbitration (ICC), and 1.6% of the total cases before the London Court of International Arbitration (LCIA).

If the government and the judiciary could adjust the strategy around arbitration, India could not only retain cases within its borders but also position itself as an international arbitration centre, akin to SIAC, ICC, and LCIA, he said.

There is more data to suggest that a significant number of high-stakes arbitrations involving Indian parties were conducted in foreign jurisdictions.

“Since 2011, SIAC has administered over 1,400 cases involving Indian parties, with the disputes amounting to more than SGD 20 billion,” said Sanjeev Kapoor, partner at Khaitan & Co. “India has topped SIAC’s list of foreign users for four years in a row and Indian parties also appear among the top ten users of ICC arbitration.”

According to Kapoor, this trend is particularly visible in sectors like energy, infrastructure, and technology, where contracts often specify arbitration in centres like Singapore, London, and Paris.

To arbitrate such cases within the country, India needs more than the mechanism proposed by the Central government, according to Kapoor. “It is the most entire arbitration ecosystem—from the appointment of the arbitral tribunal to the enforcement of awards, including incidental processes—that needs to be strengthened and expedited if India wants to limit the exodus of India-related arbitration disputes to foreign jurisdictions.”

However, Vyapak Desai, leader of international disputes & investigations at Nishith Desai Associates, said one should not see the proposed mechanism with a narrow lens. “It is not designed to just cater to the 200 cases going to foreign arbitration centres, but it is to address the approximately 5 million pending cases in India,” referring to cases pending before arbitrators in addition to courts.

For effective dispute resolution

The proposed mechanism, coupled with curated appellate tribunals, intends to bring effectiveness and efficiency to the dispute-resolution process, making it a competitive centre among all international options, he said. “Even after the Indian system becomes robust, there may be reasons for cases involving Indian parties to be adjudicated in foreign seats. In a larger context, both can coexist and flourish.”

The main thrust of the amendments is to institutionalize the arbitration process with appropriate checks and balances through the establishment of an Arbitration Council, according to Desai. It is essential, he said, that the council does not exceed its mandate or forgets its objective to promote arbitration and become another unmanageable body.

All experts unanimously advocate for domain experts to improve the technical accuracy of awards, particularly in specialized sectors like construction, technology, and finance.

Nonetheless, some remain sceptical about the ground-level implementation and who would appoint the members to the appellate tribunal.

Since the act states it “may” provide for an appellate arbitral tribunal, this implies the mechanism is optional, said Shaneen Parikh, partner and international arbitration head at Cyril Amarchand Mangaldas. In certain specific instances, parties may opt for the appellate tribunal mechanism, particularly in commodities disputes, she said.

"I am sceptical about this expectation (of selecting domain experts) as the prevailing trend of appointing only retired judges may continue, without experts also being on the panel."

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