Is India ready for its own international commercial court?

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On 14 October 2024, the Singapore Parliament introduced the Singapore International Commercial Court ("**SICC**") (International Committee) Bill ("**SICC Bill**"). This seeks to establish an International Committee of the SICC to adjudicate appeals from foreign court judgments in civil matters, including orders on interim reliefs ("**Foreign Appeals**"). (*Section ("**Sec.**") 6(a)., SICC Bill*)

The SICC International Committee's jurisdiction over Foreign Appeals stems from specific arrangements between Singapore and the respective foreign jurisdiction. For instance, earlier this year, Singapore and the Kingdom of Bahrain

signed a Bilateral Treaty on Appeals, to establish a new Bahrain International Commercial Court ("**BICC**") [A1] [A2] and a designated body in Singapore to hear appeals from the BICC. Upon the SICC Bill's implementation, the SICC International Committee will have the authority to hear appeals from the BICC. This appellate framework is expected to boost Bahrain's popularity as a neutral dispute resolution hub, making it more attractive for cross-border disputes.

The SICC Bill provides that for the purpose of enforcement by Singapore courts, a decision issued by the International Committee on the Foreign Appeal (arising from specific arrangements between Singapore and the foreign jurisdiction) is to be treated as a decision of a court from that foreign jurisdiction.

This International Committee, distinct from the Singapore judiciary, is designed to function as a transnational commercial dispute resolution forum. Its members will include Supreme Court judges, international judges from the SICC, and *ad hoc* members. The initiative seeks to enhance the SICC's standing as a trusted and neutral forum for resolving international disputes.

With the SICC advancing as a leading neutral forum for transnational disputes, the question remains: is India ready to establish its own international commercial court ("**ICC**")?

The Indian judiciary has long been overburdened, with a significant backlog of pending cases, insufficient judicial appointments and a litigious environment, all resulting in substantial delays in dispute resolution. The Indian Commercial Courts Act 2015 was enacted to expedite the resolution of commercial disputes through the establishment of specialised commercial courts in major cities such as Delhi, Mumbai, Kolkata, and Bengaluru. This in turn, was expected to improve the ease of doing business and increase the inflow of foreign direct investment, in India. [A3] [A4] Indeed, India's ranking in the 'Enforcing Contracts' indicator of the Doing Business Report has improved considerably, from 186 in 2014 to 63 in 2020.

However, India has yet to establish its own ICC, which could offer the actual and perceived neutrality essential for cross-border disputes. Drawing on global best practices – such as flexible procedural rules, multilingual proceedings, and inclusion of foreign judges – such a court could enhance India's appeal as a dispute resolution hub.

Moreover, with a well-integrated approach, an ICC could complement India's arbitration framework, encouraging both foreign and domestic parties to select India as their seat of arbitration. For instance, an ICC could be tasked with handling all court applications related to international commercial arbitrations ("**ICAs**") and foreign-seated arbitrations. While institutional arbitration in India has improved the efficiency of arbitration proceedings, parties still face considerable delays during arbitration-related court proceedings. An ICC dedicated to managing these applications could provide the speed, specialisation, and support necessary to resolve such disputes efficiently.

This approach is not novel to India. Specialised tribunals such as the Debts Recovery Tribunals and the National Company Law Tribunals have been established to provide focused and expedited adjudication in their respective areas. Similarly, an ICC could achieve these objectives for arbitrations.

The 2021 Queen Mary-White & Case Survey revealed that the two most popular adaptations sought by parties selecting a seat outside traditional arbitration hubs are "*greater support for arbitration by local courts and judiciary*" and "*increased neutrality and impartiality of the local legal system*." By establishing an ICC to handle arbitration-related court proceedings for ICAs and foreign-seated arbitrations, India could meet these expectations, thereby enhancing its attractiveness as a global dispute resolution hub.

While there are compelling advantages for India to establish its own ICC, the question of whether India should allow appeals from such an ICC to an external forum like the International Committee of the SICC is more complex. Allowing such appeals could enhance the perceived neutrality of an Indian ICC and reduce the burden on the Indian judiciary.

However, this approach presents significant challenges, including concerns about the dilution of India's sovereign judicial authority and the enforceability of appellate decisions within India's legal framework. These concerns are further amplified by provisions in the SICC Bill, which stipulate that decisions of the International Committee are final and not subject to appeal or review by any court.

Concerns regarding sovereignty have emerged in connection with ICCs worldwide, strongly resembling the reservations that nations confronted during the early development of the international arbitration framework. Over time, countries came to accept arbitration as an exception to their judicial jurisdiction, provided it was accompanied by certain safeguards to serve the public interest. A similar approach characterizes the evolution of ICCs, as states carefully calibrate the extent to which these courts may diverge from domestic legal procedures. For instance, while the Frankfurt Chamber for International Commercial Disputes and the Paris International Commercial Court continue to operate within the parameters of the German and French Codes of Civil Procedure respectively, they enhance accessibility for non-local parties by allowing proceedings in English. By contrast, the SICC even permits parties to apply for orders substituting Singapore's evidential rules with others. Against this backdrop, India can likewise determine how far an ICC or any appellate framework may depart from its own legal standards, thereby balancing internationalization with the need to uphold national sovereignty.

Moreover, there is ambiguity around whether the International Committee would be required to apply the law of the originating court when deciding on a Foreign Appeal. Although the SICC Bill empowers the International Committee to apply foreign law, it does not mandate its use, introducing uncertainty about the applicable law for such appeals.

As the International Committee becomes operational, these procedural and substantive ambiguities may be resolved. Concerns regarding the scope of appeals to the International Committee and the enforceability of its decisions in India could also be addressed through future legislation and bilateral treaties between India and Singapore tailored to this purpose.

In the interim, India could focus on establishing its own ICC, marking a significant step into the transnational dispute resolution framework and towards being a preferable seat of arbitration. This is likely to lay the foundation for future integration with international appellate mechanisms, like the International Committee of SICC, and strengthen India's position in the global legal landscape.

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Previous

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