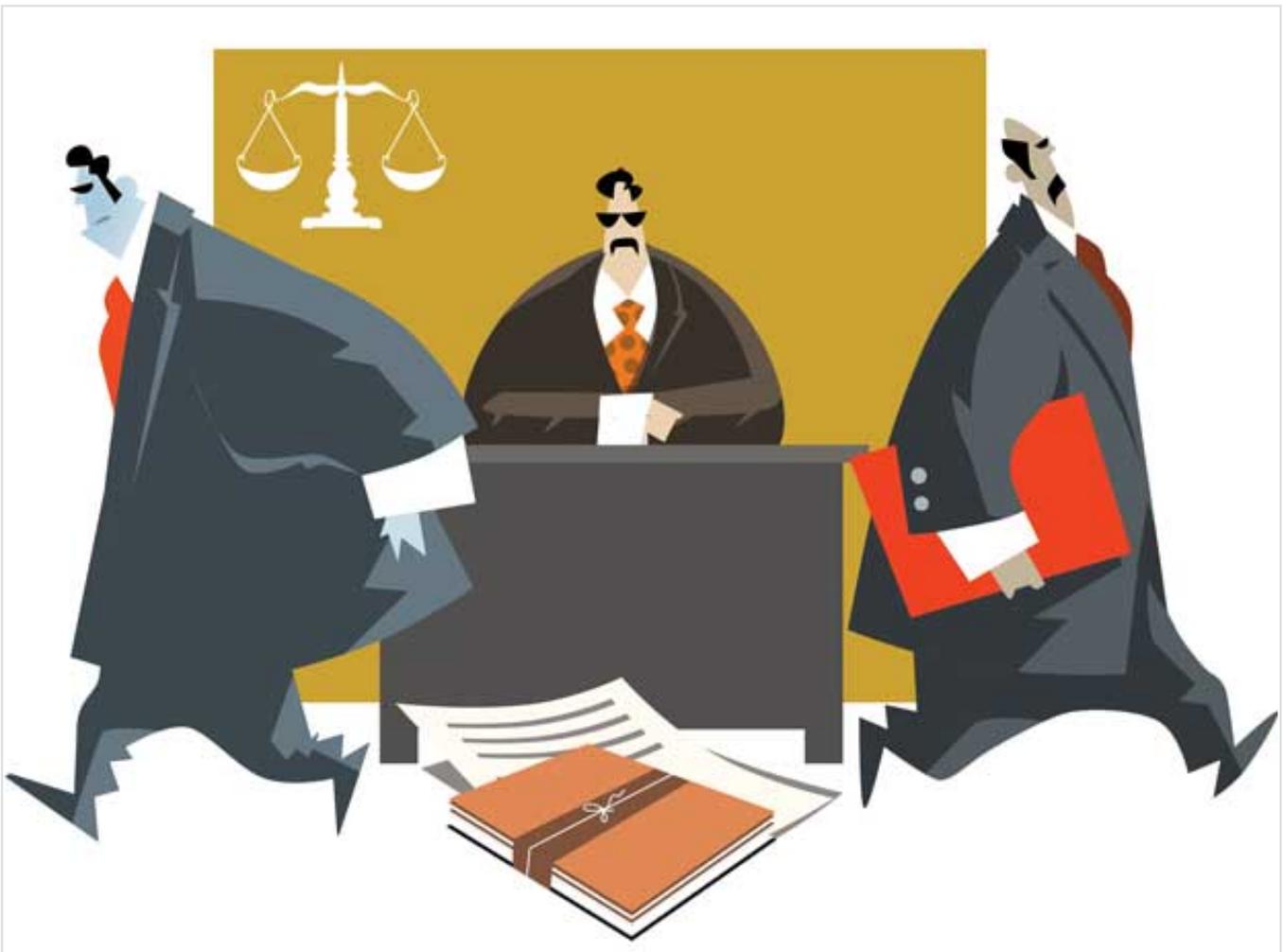


Business Standard

Arbitration Bill 2018: Missed opportunity to design promising framework

It is quintessential that a certain, strict timeline ought to be enforced in India

Kshama A Loya August 19, 2018 Last Updated at 21:20 IST



The arbitration landscape in India has witnessed a surge of legislative activism since the first amendment to the Arbitration and Conciliation (A&C) Act, 1996, in 2015. On August 7 this year, the Lok Sabha passed the A&C Amendment Bill, 2018, seeking to make India an “international hub for domestic and international commercial arbitration”.

Despite the prominence of the word “international”, does the Bill appear to sub-serve its purpose of being a momentous legislation on this front? Barely so. The overhaul misses an opportunity to extend a sufficiently promising framework to parties desiring to select India as the seat of arbitration.

International commercial arbitrations often envisage large-scale complex disputes; accentuated with multi-party involvement. Perhaps the gravest concern for parties is timely completion of

proceedings. Arbitral institutions play a critical role in administering arbitration, offering effective management and flexible timelines.



KSHAMA A LOYA
Leader, Nishith Desai
Associates

The 2018 Bill laudably recognises the efficacy of institutional arbitration. Creation of an Arbitration Council of India has been proposed to grade institutions. The Supreme Court has been armed with a mandate to designate arbitral institutions for appointing arbitrators in international commercial arbitrations.

However, while the Srikrishna Committee was mandated to differentiate between adhoc and institutional arbitration in August 2017, the Bill digresses to bifurcate domestic and international arbitration. Whilst passing the baton to arbitral institutions for appointment, it proposes a 12-month timeline post completion of a six-month period for filing claim and defence in domestic arbitration. But, the extant timeline for completion of international arbitration within 12 months has been left un-touched.

It is quintessential that a certain, strict timeline ought to be enforced in India. However, a short and inflexible timeline for international commercial arbitration, coupled with knocking judicial doors for extension, would dissuade parties from selecting India as the seat. The ideal solution is to encourage choice of institutional arbitration, entailing flexible timelines set out in the respective rules. As for adhoc arbitrations, their fate ought to be left in the hands of the judiciary. After all, the objective of international arbitration and the Bill is to avoid perils of litigation.

The views expressed are personal