

Government starts exercise to create pool of arbitrators

In a first, the government has initiated an exercise to create a pool of arbitrators at a time when most entities prefer to settle their high-value commercial disputes through arbitration.

The Department of Legal Affairs in the Law Ministry has put out an advertisement calling retired judges, advocates, engineers, chartered accountants, shipping experts and senior commercial executives to apply for empanelment as arbitrators.

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute.

In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court, according to World Intellectual Property Organisation.

This is for the first time the government has decided to create a panel of arbitrators which it can recommend to settle high-value commercial disputes under the 'alternative dispute resolution mechanism' in cases where government, a Union ministry or a government department is a party.

Whenever, the government or its entity signs an agreement on behalf of the President, there is a clause that in case of a dispute, the arbitrator will be appointed by the Law Ministry.

But this clause is not followed in letter and spirit and often people with little legal background are appointed as arbitrators. The Defence Ministry and CPWD often appoint arbitrators of their choice and do not consult the Law Ministry, sources claimed.

Their decisions many a time fail to stand the scrutiny of courts.

"This is a grey area. We will now push for inclusion of this clause in agreements pertaining to arbitration...If an arbitrator from our panel fails to deliver in terms of quality judgments, he or she can be removed," said a senior government functionary.

For empanelment as an arbitrator, the person should have experience of at least 20 years in his or her field and possess 10 years' experience as an arbitrator and must have dealt with at least 20 arbitration cases, the advertisement said.

The areas of expertise indicated by the Law Ministry in its 'expression of interest' include intellectual property, insurance, telecom, oil and gas, corporate law, construction, aviation, power/energy, information technology and international investment, among others.

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