

IMPACT ON COMMERCIAL COURTS ACT

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ABSTRACT

The number of cases pending in various courts in India has increased dramatically during the previous decade. The lengthy procedural nature, as well as vacancies in the Supreme Court, High Courts, and subordinate courts, are all contributing factors. As of April 2018, there were approximately three crore cases pending in the Supreme Court, High Courts, and other courts. (This includes district courts.) More than 86 percent of cases are still pending in lower courts, with only 13.8 percent in the 24 High Courts. The remaining 0.2 percent of cases are now being heard by the Supreme Court. Between 2006 and 2018, there was an 8.6% increase in the number of cases pending in all courts (up to April). The number of cases pending in the Supreme Court increased by 36%, in the High Courts by 17%, and in the subordinate courts by 7%. The rate of disposition varies between 28 and 55 percent, and the backlog is expanding as the number of new cases/years increases. In 2018, while speaking in Parliament about the proposed amendments, the Minister of Law and Justice relied on the World Bank's Ease of Doing Business ranking criteria, claiming, with justifiable zeal, that India's ranking had risen from 142nd to 100th in the list of 190 countries since this Government came to power.

In 2020, India will be ranked 63rd in the aforementioned ranking, which will be a source of happiness. While this achievement is noteworthy, it is questionable whether it can be linked to the Commercial Courts Act's performance and/or influence.

INTRODUCTION

In India, the number of cases pending in various courts has surged during the last decade. There are various causes for this, including the lengthy procedural aspect as well as vacancies

in the Supreme Court, High Courts, and subordinate courts. There are nearly three crore cases outstanding in the Supreme Court, the High Courts, and the lower courts as of April 2018. (Including district courts). More than 86 percent of cases are pending in subordinate courts, with 13.8 percent pending in the 24 High Courts. The Supreme Court is currently hearing the remaining 0.2 percent of cases. There has been an 8.6% increase in the number of cases pending in all courts between 2006 and 2018 (up to April). Pendency in the Supreme Court climbed by 36%, in the High Courts by 17%, and in the lower courts by 7%. The rate of disposition varies between 28 and 55 percent, and the growing number of new cases per year adds to the backlog. When comparing 2006 to 2016, the number of cases disposed of in the Supreme Court increased by about 57,000 to 76,000, in the High Courts by 14.4 lakhs to 16 lakhs, and in subordinate courts by 1.6 crore to 1.9 crore. Despite an increase in case disposition in most years, the number of new cases has outpaced the number of cases disposed of, resulting in an increase in case pendency. The Supreme Court's disposition rate has remained between 55 and 59 percent, while the High Courts' rate has remained at 28 percent and the lower courts' rate has remained at 40 percent. Subordinate courts get more criminal cases than the High Courts and Supreme Court. For example, criminal cases accounted for 81 percent of all cases pending in subordinate courts in 2016, compared to 19 percent civil proceedings. In contrast, a higher percentage of civil cases (60%) were filed in High Courts than criminal proceedings (40 percent).

BRILLOPEDIA

PROBLEMS THAT THE INDIAN GOVERNMENT HAS TO DEAL WITH

In order to entice international enterprises to India, the government must address various issues. The global economic environment has gotten more competitive, and India needs to improve its rating in the World Bank's "Doing Business Report," which evaluates the country's dispute resolution environment as one of the factors for doing business, among other things. Furthermore, the country's rapid economic development has ushered in a slew of commercial activities, including foreign direct investments, public-private partnerships, and so on, prompting lawmakers to enact legislation to speed up the resolution of commercial disputes, expand the jurisdiction of courts to deal with commercial disputes, and make doing business easier. It goes without saying that resolving commercial conflicts of even little importance as soon as possible generates a positive impact. Needless to add, the prompt resolution of even minor commercial issues gives investors a favourable impression of India's

powerful and responsive legal system. The legislator's goal is to raise awareness of potential issues with the Amendment 2018 in relation to pre-institution mediation of commercial disputes, with the goal of proactively supporting the government initiative and assisting in the effective and long-term sustainable implementation of the scheme that benefits both.

THE ACT'S OBJECTIVES TO BE ACHIEVED

The Commercial Courts, Commercial Division, and Commercial Appellate Division of High Courts (Amendment) Act 2015 was enacted aiming to achieve the following objectives:

Its first and foremost objective was constituting commercial courts and a commercial division of high court to resolve commercial disputes in a prompt and expeditious way. The constitution of courts is not formation of separate courts for the purposes of this act but merely declaring the existing courts as commercial courts. It aims to impart special training to the judges and have its own procedures meaning it need not follow any of the procedures that fall under Code of Civil Procedure and the Indian Evidence Act. The act emphasized on whirlwind disposal of the commercial lawsuits by diligently remoulding the already prevailing procedural structures of commercial suits. This Act established Commercial Courts and other courts in the State High Courts to encounter commercial problems, whether indirect or direct, up to a certain monetary sum. It established stringent deadlines for the submission of documents and the publication of verdicts. It also entertains appeals from international commercial arbitration to the commercial appellate division of High court This act provided pecuniary jurisdiction for the reference of commercial disputes to the commercial courts constituted under it where the subject matter of the issue is not less than 1Crore Rupees. But the territorial jurisdiction of the courts are subject to the discretion of the states. The Act also established an innovative mechanism for the monthly gathering and distribution of statistical data on the number of lawsuits filed, their stages of pendency, and their rate of disposition. The act's goal also includes speeding up the growth of the economy and improvising the country's image globally. The act aimed to include within its purview a broad variety of issues including those of bankers, merchants, electromagnetic spectrums, etc. All these were brought under a single head Commercial Disputes.

Though this statute was enacted mainly to crush the lethargic judicial image of our Country, it did not effectively remove all the hurdles in its application and had its own drawbacks such as;

- There was no transparent system or special manner of appointment of judges to these specially constituted courts.
- The act imposed limitation period of six months for disposing of appeals but did not impose the same for the original petitions. If it had been done the act would have been more efficacious.
- Though it recognised E-records as admissible evidence, it did not facilitate E-filing of applications, virtual hearings, etc. These would have been helpful in resolving the commercial disputes much faster.
- If a person is not pleased with the decision of the Commercial Appellate Division, the act fails to establish a legislative right to appeal to the Supreme Court.

Hence a need to amend the act was proposed by the Ministry of Law and Justice and ,The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) act, was passed in 2018.

The key Objectives of the amendment act were;

- It reduced the pecuniary jurisdiction where the subject matter of the disputes that can be referred to commercial courts was reduced to 3 lakh Rupees. It was 1Crore Rupees in the principal act.
- Where the high court of any area does not possess original jurisdiction, the state has the authority to establish commercial appellate courts in districts to hear appeals from the commercial courts.
- It also allows establishment of commercial courts at the district level even where the high court has ordinary jurisdiction which was not provided for in the original statute
- There was no mandatory requirement regarding mediation before referring the disputes to the commercial courts in the principal act. But is has been mandated by the amendment act that every issue shall be pass through mediation process before it goes to the court. But an exception is provided to parties claiming any interim relief where they are not required to take the matter to mediation.
- The state Government was earlier bound by the approval of Chief justice of High court but it's no longer bound by that concordance.

OPINION REGARDING THE AMENDMENT

It's a good thing that there's a movement to make mediation more accessible and faster. The "opt-out" strategy is going through an obligatory mediation session at first and then having the option to opt out and go to court for additional relief. Other countries that have implemented this concept have had a lot of success. In Italy, for example, this concept of forced mediation was implemented in 2010, with 50% of mediations considered to be successful. The effectiveness of this opt-out paradigm, however, is largely determined by the quality of mediation services supplied to the parties. The Supreme Court recognised the necessity for some sort of regulation in *Salem Advocate Bar Association v. Union of India [(2003) 1 SCC 49]*, recognising that mediation is mostly an informal process and that 'modalities' for how hearings must be conducted were needed to be created. The Mediation and Conciliation Project Committee was founded as a result of this. The Civil Procedure Alternative Dispute Resolution and Mediation Rules, 2003, were created as a result of this. They are non-binding. As a result, different states' Legal Service Authorities have had varying degrees of success with mediation as an alternate form of conflict settlement.

In India, there may be significant challenges to overcome in properly adopting mandatory pre-institution mediation. In fact, the Delhi High Court issued a notice in petition challenging the constitutional validity of Section 12A of the Commercial Courts Act, 2015, less than a week after the Rules were introduced. The petitioner's complaint is that there is currently no effective framework in place for required pre-institution mediation, leaving a huge number of aggrieved parties without recourse. When you've been referred to the Legal Service Authority (the Authorities under Section 12A). Despite the Rules being notified on July 3rd, 2018, the petitioner was advised that no mechanism has been implemented as of yet. As a result, there is a lot of ground to cover in India before mandatory pre-institution mediation can be implemented effectively. This must be done with the understanding that, despite the fact that mediation is a non-formal process, its successful execution necessitates a certain level of expertise.

THE AMENDMENT ACT'S MOST IMPORTANT FEATURES

1. Commercial Appellate Courts" means the Commercial Appellate Courts designed under Section 3A6 & further" Commercial Appellate Courts" means the Commercial Appellate Courts designed under Section 3A6 & further" Commercial Appellate

Courts" means the Commercial Appellate Courts designed under Section 3A6 & further" Commercial Appellate Courts" means the Commercial Appellate Courts designed under Section 3A6 & further Commercial courts and commercial divisions of high courts can decide on disputes with a value of not less than three lakh rupees or a higher value that the Central Government must notify. (Pecuniary restrictions are reduced from one crore to one million rupees.)

2. Commercial Appeal Courts Designation- In places where the High Courts lack conventional original civil jurisdiction, state governments may designate commercial appellate courts at the district judge level. The Appellate Court will hear appeals from commercial court orders (below the level of a district judge).
3. A new Chapter IIIA on Mediation and Settlement has been added. "Pre-Institution Mediation and Settlement" is an acronym for "Pre-Institution Mediation and Settlement." In this chapter¹², there is a provision for forced mediation in circumstances where the parties to the dispute are not seeking immediate redress. Authorities established under the Legal Services Authorities Act of 1987 may conduct the mediation (such as the National and District Legal Services Authority) The mediation process must be completed within a three-month time frame (may be extended by another two months). Under the Arbitration and Conciliation Act of 1996, a written settlement between the parties has the same force as an arbitral ruling.
4. Any person aggrieved by a judgement or order of a commercial court below the level of District Judge may appeal to the Commercial Appellate Court within 60 days from the date of judgement or order, and any person aggrieved by a judgement or order of a commercial court at the level of District Judge exercising the original Civil jurisdiction may appeal to the Commercial Division of a High Court may appeal to the Commercial Appellate Court within 60 days from the date of judgement or order. It further states that such orders issued by a commercial court division or commercial court that are governed by Order XLIII of the Code of Civil Procedure, 1908, and Section 37 of the Arbitration and Conciliation Act, shall be appealable.
5. Counterclaims cannot be transferred- Under the Act, a civil court could transfer a matter to a commercial court if a counterclaim was filed in a commercial dispute worth at least one crore rupees in a civil court. In the case of suit transfer, the Act repeals this provision.

CONCLUSION

Both the act and the amendment act had their main goals to improve our country's picture as an investment hub. However, these procedural improvements will become ineffectual and superficial except when accompanied by futuristic reforms aimed at altering India's court customs. This latter issue appears to have been pushed to the side lines and the government's policies and legislative amendments continue to ignore it. It also emphasises how, in actuality, making policies and setting out agendas are not totally logical and evidence built. There are apparent progressions from the amendments such as the establishment of commercial courts for lower-value cases and the provision of pre-institution mediation. Nonetheless, in certain areas, such as the jurisdiction of the commercial divisions, which is separate from the authority of the business courts, more clarity is required. Furthermore, the public authority's ability to appoint judges to commercial courts may raise controversy. The focus of public authorities has been on improving the ease of doing business in India; nevertheless, as studied, the legislation is even more of a jumble.

In this approach, one might argue that the statute will, in the long run, reduce the number of active lawsuits and the burden that existing courts have in deciding commercial cases. With the establishment of Commercial Courts to handle Commercial Disputes, the speed with which such discussions are dismissed is likely to increase along similar lines, making such a lengthy procedure less difficult and efficient. Whilst commercial courts are required in India, their establishment should be considered as a beneficial step toward enhancing Justice system of the country.