

The Commercial Courts (Amendment) Bill, 2024: A Pathway to Efficient Dispute Resolution in India

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The Government of India enacted the Commercial Courts Act in 2015, with an aim to ensure the resolution of commercial cases expeditiously, efficaciously, and at a reasonable cost. The Act was amended in 2018 to introduce various provisions such as mandatory pre-institution mediation, the establishment of commercial courts at the district level, and the reduction of pecuniary jurisdiction from one crore rupees to three lakh rupees. These amendments aimed to improve India's ranking in the World Bank's 'Doing Business Report', which considers the dispute resolution environment as one of the key parameters for assessing business friendliness.

It is evident that the legislature is proactively trying to broaden the scope of the Act by enabling the courts to handle commercial disputes more effectively, encouraging out-of-court settlements, and creating an investment-friendly environment in India. With this aim, the Department of Legal Affairs proposed the Commercial Courts (Amendment) Bill, 2024, to further expedite the commercial dispute resolution process and simplify applicable procedures. While the proposed bill is well-thought and well-intentioned, it leaves rooms for addressing certain additional areas in greater detail. This blog aims to highlight the gaps in the bill that require further consideration.

I. Who Should be Appointed to Dedicated Commercial Courts?

Following prior consultation with the concerned High Court, Section 3 of the Bill grants power to the State Government to constitute "*dedicated Commercial Courts*" at the district level. Moreover, the explanation provided thereto states that such commercial courts may be designated to deal exclusively with arbitration matters. While this is indeed a welcome move, the Act must provide more clarity regarding the pecuniary jurisdiction of these courts to ensure uniformity across districts. Inconsistent jurisdiction across districts would adversely impact businesses and litigation trends. Parties will engage in the practice of *forum shopping*, selecting the court more favorable for their position. Parties will thus engage in preliminary litigation to decide the appropriate forum for them, and it may also lead to inconsistent judgements in similar cases, further complicating the resolution process. Thus, the jurisdictional clarity for these dedicated commercial courts must be provided in the Act itself.

Furthermore, the right to argue cases through virtual means should be expressly provided to the litigants rather than being subject to the discretion of the court or the availability of technological infrastructure. This provision would enable a rural area-based company to engage a lawyer from a metro city without facing any logistical concerns. Such a step would not only simplify the process but also save significant time and resources, aligning the Act's primary objective of expediting and streamlining dispute resolution.

Another critical aspect that remains unaddressed is: *What would be the minimum qualification of judges presiding over these dedicated courts?* If the judges are drawn from the existing pool without additional appointments, the very purpose of the amendment would stand defeated. The judge-to-case ratio would remain unchanged, potentially increasing burden on designated judges. The amendment proposed under CPC Order XX, Rule 1(1), which reduced the time frame for delivering judgments from 120 days to 60 days after concluding arguments, adds to this concern. Therefore, the possibility of new judicial appointments- preferably experts appointed on an ad-hoc basis- must be explored to ensure adherence to these strict timelines while maintaining the quality of judgements.

In response to a writ petition filed in 2021 concerning the alarming backlog of pending cases in courts, the Supreme Court has already laid down guidelines for the appointment of ad-hoc judges in High Courts under Article 224A of the Indian Constitution. Importantly, in the said ruling, the Court stated, "*The trigger for*

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would otherwise be amount expended as their allowances and perks.” This makes it evident that remuneration and allowances to ad-hoc judges is not a problem for the Country’s legal system.

These guidelines can effectively serve as a reference for incorporating previsions for ad-hoc judges under this Act. Expertise in both commercial laws and arbitration laws should be a mandatory requirement for judges in these specialized courts to ensure the effective resolution of disputes within strict deadlines. It is recommended that the Bill include provisions for the ad-hoc appointment of domain experts, which aligns with international best practice. For example, Section 18 of the Singaporean Supreme Court of Judicature Act, 1969 states that an International Judge may be appointed as the President of the Singapore International Commercial Court. It is suggested that India should adopt a similar framework to leverage specialized expertise in handling commercial disputes. Incorporating provisions for ad-hoc appointments of lawyers, professors, law firm partners, etc. would enhance the efficiency and effectiveness of the proposed Commercial Courts and streamline the broader objectives of the Act.

I. Stricter Timelines: Benefit or Burden?

The Amendment proposed the addition of Section 18A, which states that an application for an injunction must be disposed of within 90 days from the date of filing. Additionally, in cases where an injunction is granted without prior notice to the opposite party, the Court must endeavor to dispose it within 30 days. Furthermore, under CPC Order V, Rule 1(1), time period for filing a written statement has been reduced from 120 days to 60 days.

While there is prevailing suspicion regarding the feasibility of adhering to these timelines, these provisions should be viewed as welcome steps. Globally, the most effective dispute resolution models enforce strict timelines. For instance, commercial courts in UAE adhere to strict timelines for submitting evidence and legal briefs, effectively reducing delays and ensuring the timely resolution of disputes. Similarly, the law regulating the Bahrain International Commercial Court empowers the Court Council to establish stringent regulations for rules and deadlines. Therefore, rather than viewing these changes as burdensome, they should be seen as positive steps toward creating a more robust and time-bound commercial justice system.

I. Is India’s Infrastructure Ready for Tech-Equipped Commercial Courts?

The amendment to Section 19 of the Act states that the State Government shall provide for “*necessary infrastructure including video conferencing facilities*” to facilitate the working of the commercial courts. However, to bring this provision to effect, substantial investment in electronic and video-conferencing infrastructure. The non-uniformity in availability of basic necessities like electricity and reliable internet access across districts casts major doubts about these amendments.

It must be noted that the unavailability of essential infrastructure could lead to delays in proceedings, defeating the purpose of expediting dispute resolution. Furthermore, inadequate infrastructure directly impacts parties’ access to justice, particularly in rural and remote areas. The burden of financing these facilities will inevitably fall on the central government, highlighting the need for clear and enforceable budgetary guidelines within the Act. A lack of proper guidelines could render these provisions ineffective, as seen in the case of consumer mediation cells. Despite the express mandate under the Consumer Protection Act, 2019, for establishing mediation cells at district and state levels, only 570 such cells existed nationwide by 2024. To avoid a similar fate, it is imperative for the Act to incorporate detailed provisions outlining the funding, timelines, and accountability mechanisms for setting up tech-quipped infrastructure.

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amendment is commendable and aligns with similar provisions under the IBC, 2016 (Section 61(2)), and the

Companies Act, 2013 (Section 421(3)), it could benefit from greater clarity. Specifically, the provision should include at least an indicative, if not definitive, list of what constitutes “sufficient causes.” Without such guidance, the ambiguity may lead to unnecessary litigation over what qualifies as valid grounds for delay, potentially undermining the very objective of expediting dispute resolution sought to be achieved under the Act. This was precisely pointed out by the Supreme court in the case of Government of Maharashtra (Water Resources Department) vs. Borse Brothers Engineers and Contractors Pvt. Ltd. (2021). In the context of the Arbitration Act, and the Commercial Courts Act, the Court stated that “the expression sufficient cause is not itself a loose panacea for the ill of pressing negligent and stale claims.” The explanation provided by the party to condone delay must be satisfactory and not merely a device to cover ulterior motives. Although no straight jacket formula is possible to determine whether a sufficient cause has been furnished in such situations (as held in Madanlal v. Shyamlal and Ram Nath Sao v. Gobardhan Sao), the basic parameters outlined by the Apex Court, namely, negligence, lack of bonafides, failure to act diligently, or prolonged inactivity, should be expressly incorporated into the provision.

- **How Effective is Mandatory Mediation?**

Section 12A mandates pre-institution mediation between parties before initiating litigation. This provision is significant as it offers the possibility of settlement prior to litigation, which potentially saving considerable costs for the parties and valuable court time. The amendment extends this mandate to cases where urgent relief has been sought and either granted or denied by the court. However, the amendment fails to specify a timeline for initiating mediation after the urgent relief is granted. This omission leaves room for potential misuse by parties seeking to delay the proceedings. To ensure the effectiveness of mandatory mediation, the provision must include a clear timeline for initiating the process once urgent relief is granted. This would prevent unnecessary delays while preserving the core objective of expeditious dispute resolution.

- **Execution Proceedings to be Wrapped up within a Year.**

Under Order XXI, addition of Section 10A has been proposed. It states that all proceedings, pursuant to the filing of an application for execution, shall be disposed of within twelve months of the filing of the application. Apeksha Lodha, Partner at Singhania & Co. aptly stated, “it should also be proposed that once an application for execution has been filed, the judgment debtor has to disclose a list of all the assets presently owned by the judgment debtor and also the list of assets that were available and owned by the judgment debtor at the time of institution of suit.” Moreover, it is recommended that provision for verification of such disclosure, accompanied with penalties for non-compliance be added. This would be a significant step toward ensuring the timely enforcement of judgements, addressing one the key bottlenecks in the dispute resolution process.

Conclusion

The proposed Commercial Courts (Amendment) Bill, 2024, is undoubtedly two steps forward for India’s commercial dispute resolution framework. According to the World Bank’s Doing Business report, India made remarkable progress between 2014 and 2019, climbing from 142nd to 63rd place, driven by reforms in areas such as insolvency resolution, cross-border trade, and construction permits. However, to further enhance its ranking, India must prioritize reforms in “enforcing contracts,” a key criterion that hinges on the efficiency of dispute resolution mechanisms.

The more detailed our laws are, the more efficient and assured their implementation will be. For instance, although the 2015 amendment to the Act mandated pre-litigation mediation, not many mediation cells have

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arbitration courts, this Act would become a complete package. This will significantly impact the rate of case disposal, ultimately reducing the judiciary's burden through time limits and successfully mediated cases. Moreover, it must also be kept in mind that without robust implementation mechanisms, even well-drafted provisions risk being ineffective, as illustrated by the Consumer Protection Act's example. Thus, these proposed changes with added clarity and proactive implementation will undoubtedly help the government realize the objectives of Viksit Bharat 2047.

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