RESOLUTION OF COMMERCIAL DISPUTES IN INDIA: A CRITICAL EXAMINATION OF THE COMMERCIAL COURTS ACT, 2015

A thesis submitted to the
UPES

For the award of
Doctor of Philosophy
in
Law

BY
Aratrika Deb

March 2024

SUPERVISOR
Dr. Shilpika Pandey

School of Law
UPES
Dehradun-248007: Uttarakhand

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Declaration

I, Aratrika Deb, Scholar, UPES School of Law, SAP ID: 500080029 hereby declare that this Ph.D. thesis entitled "Resolution of Commercial Disputes in India: A Critical Examination Of The Commercial Courts Act, 2015" under the guidance of Dr. Shilpika Pandey, Assistant Professor, UPES School of Law, UPES, is entirely the result of my own work except where otherwise acknowledged. This work has not been submitted in any form for another degree or diploma to any university or other institution. No part of this thesis has formed the basis for the award of any degree or fellowship previously.

All sources used or referred to have been duly acknowledged, and any assistance received in preparing this thesis has been acknowledged in the acknowledgement section. No part of this thesis has been previously published, except where appropriate reference has been made.

I further declare that the work described within this thesis has been conducted in accordance with the regulations of UPES and conforms to the standards and guidelines of academic integrity and ethics.

Aratrika Deb
[500080029] Date:10.07.2024

Certificate

I certify that Aratrika Deb has prepared her thesis entitled "Resolution of Commercial Disputesin India: A Critical Examination of The Commercial Courts Act, 2015**",** for the award of PhD degree of the University of Petroleum & Energy Studies, under my guidance. She has carried out the work at School of Law, University of Petroleum & Energy Studies.

I certify that Aratrika Deb has prepared her thesis entitled "Resolution of Commercial Disputes in India: A Critical Examination of The Commercial Courts Act, 2015**",** for the award of PhD degree of the University of Petroleum & Energy Studies, under my guidance. She has carried out the work at School of Law, University of Petroleum & Energy Studies.

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Abstract

In India, the resolution of commercial disputes is managed by the civil courts situated in each of the 719 districts. These courts base their jurisdiction on territorial and financial factors. An empirical examination of dispute resolution systems in two specific regions within the Indian federation, as reported in 2010, revealed a crucial insight about India's judicial system. It highlighted that the growing backlog of cases and resulting delays could erode litigants' confidence in pursuing legal action in the courts. The higher number of pending cases significantly affected the likelihood of individuals choosing to go to court. The allocation of resources to improve the workforce and infrastructure had a positive impact on the speed of case resolution. The study also indicated that an increase in case disposal rates led to a higher rate of new case filings, assuming other factors remained constant. The availability of an adequate number of judges played a crucial role in the efficiency of case resolution and in reducing the backlog of pending cases. Considering the similarity of the judicial system across the country, it is reasonable to assume that this situation is consistent in other provinces as well. According to the World Bank's 2016 edition of the 'Ease of Doing Business' report for India, it was reported that it took a total of 1,420 days to resolve civil disputes, including commercial disputes, because the civil courts in India handled commercial disputes too. This time frame was significantly longer than that of other BRICS countries, such as China, which had a resolution time of 452 days, and the Russian Federation, which had a resolution time of 307 days.

In 2015, the Indian government initiated a comprehensive effort to revamp the procedures for resolving commercial disputes, as part of its ambitious plan to encourage foreign direct investment. This initiative aimed at enhancing the business environment in India, and it involved separating commercial disputes from civil disputes and setting specific timeframes for their resolution. Specialized commercial courts were seen as a valuable tool for addressing broader developmental challenges, such as ensuring effective contract enforcement and fostering a more favourable investment climate. The increasing complexity of cases indicated that specialization brought advantages, including more efficient processes, a deeper understanding of the law, and a better grasp of the court's decisions' impact on the parties involved. While earlier models of commercial courts, both in England and elsewhere, focused on providing a court staffed with a single judge knowledgeable about commercial disputes and

efficient procedures for prompt resolution, contemporary examples of commercial courts are evolving to enhance institutional functionality. This evolution, particularly in light of the success of arbitration, has seen the English model, a domestic court structure, become a preferred choice for international commercial dispute resolution. Additionally, there are international commercial courts, like the Singapore-based International Commercial Court, the Dubai International Financial Centre (DIFC) Courts in Dubai, and commercial courts in countries such as China and France, among others, which have drawn inspiration from the English Commercial Courts. The Law Commission of India, in two reports, recommended the establishment of a commercial court to address concerns related to contract enforcement and, in particular, to reduce procedural delays. It led to the enactment of The Commercial Courts Act, 2015.

This research examines the said statute and its subsequent amendments, evaluating them and suggesting ways to enhance their effectiveness in promoting contract enforceability and, by extension, improving the ease of doing business in India. The study evaluates the performance of the commercial courts set up under the Commercial Courts Act, 2015 using quantitative and qualitative methods, nearly eight years after the 2015 Act was introduced. The performance of these courts can be deemed as successful, not only in terms of providing expeditious justice but also in generating a substantial body of legal precedents in the field of commercial law. It is evident that these courts have piqued the interest of legal professionals through the substantial caseload they have handled in recent years. Despite the fact that the Commercial Courts Act, 2015 is a statutory toddler, it is essential to ascertain whether the judicial rulings rendered by these courts are founded upon a consistent and principled interpretation of the Act.In pursuit of this objective, the author has analyzed all the major legal judgments made under the provisions of the Act. While we re-evaluate the utility of the commercial courts in terms ofwhether they have lived up to their expectations, using the commercial courts of Delhi, Bombay, Calcutta and Madras as live examples and through observations of lawyers practisingin these commercial courts, the author notes with concern that the objectives of speedy and effective justice for commercial matters has not been fully achieved. The study also traces the importance of commercial courts, as specialised tribunals, for dispute resolution and attempts to nuance its arguments from a comparative perspective of institutions in other jurisdictions.

To further enhance the effective implementation of the Commercial Courts Act, 2015, the Commercial Courts (Statistical Data) Rules of 2018 were introduced. These rules mandated that Commercial Courts, Commercial Appellate Courts, Commercial Divisions, or Commercial

Appellate Divisions regularly publish information regarding the status and backlog of each commercial lawsuit, as well as the time taken for their resolution, by the tenth day of every month. In 2020, these rules underwent amendment. The updated regulations now require the courts to disclose data related to the utilization of various virtual tools, including the number of electronically filed cases, online payment transactions, and the digital processing of summons. Additionally, they necessitate the recording of details about case management hearings and contested commercial cases by the High Courts. Unfortunately, the findings show that, out of the 24 High Courts in India, only a few, such as the High Courts of Mumbai, Delhi, Karnataka, Rajasthan, and Uttarakhand, have maintained data up to February 2023 in accordance with the format specified by the 2020 Amendment Rules. The rest have either not been publishing any data at all or continue to adhere to the 2018 rules (for instance, the High Courts of Calcutta, Hyderabad, Madras, and Patna). While these updated rules have the potential to create more comprehensive datasets and improve the efficiency of judicial statistics, their effective implementation and adherence to the Rules' intentions are essential to enhance the enforcement and monitoring of the Commercial Courts Act, 2015. In the United Kingdom, for example, the Commercial Court, a sub-division of the Queen's Bench Division of the High Court of Justice, produces an annual report. This report not only presents performance statistics but also provides detailed information about initiatives and projects aimed at improving services and making them more accessible to litigants. If something as fundamental as maintaining data is not being consistently carried out by the courts, achieving the broader goal of presenting performance statistics and detailed information about improvement initiatives appears challenging at this time. However, if India is genuinely committed to evidence-based law and policy development, it should be prepared to take similar measures to ensure that the Commercial Courts Act, 2015 is implemented in practice and does not remain merely a theoretical reform.

The primary goal of any reform in civil law is to ensure the prompt delivery of justice. In this regard, expediting the resolution of commercial disputes, especially those involving significant litigation, is crucial, given that commerce is a fundamental pillar of the economy. However, to establish Commercial Courts and Commercial Divisions as exemplary judicial bodies, the government needs to invest in additional infrastructure and appoint new judges exclusively for these courts. Assigning judges from regular civil courts to preside over Commercial Courts and expecting them to handle cases from the entire district is impractical. This is especially true considering the strict timelines outlined in the Commercial Courts Act, 2015, which is the

central focus of this legislation. Ideally, these commercial courts should have technical members, similar to the structure of the National Company Law Tribunal, to assist the judicial members. Ensuring the functionality of these Commercial Courts requires the mandatory incorporation of technology to mitigate procedural delays. The "National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary - 2005" introduced the E-Courts Project in 2005. However, more concerted efforts are needed to fully implement the judicial management information system. Judges presiding over Commercial Courts should undergo proper and regular training to develop the expertise needed for resolving commercial disputes within the specified timelines. To enhance the standing of these courts, it is essential to share the best practices they follow, aligning with jurisdictions that have successfully established commercial courts. Additionally, the oversight and supervision of these courts should fall under the purview of the High Courts rather than the Ministry.

Lastly, the author in her study concludes that, embracing the concept of 'ease of doing business' in India hinges on these Commercial Courts taking into account the economic implications of their decisions when adjudicating cases. As Chief Justice of India, Mr. CV Ramana emphasized during the Constitution Day celebrations, there is a pressing need for the legislature to conduct assessments and studies to evaluate the impact of the laws it enacts. Simply relabelling existing courts as commercial courts without creating dedicated infrastructure is unlikely to have a substantial impact on the backlog of cases. The initial purpose of the CCA of 2015 was to address high-value commercial cases, but over time, it expanded to encompass a wide range of civil litigation. To make a legal reform meaningful, it must be accompanied by significant investments in shaping the legal culture, including judges, lawyers, and clients, and a comprehensive re-evaluation of the administrative systems and dispute resolution processes. Without systematic changes in both administrative and cultural aspects, such efforts might be perceived as merely a repackaging of existing practices.

Acknowledgement

I extend my deepest gratitude to my supervisor, Dr. Shilpika Pandey, for her invaluable guidance, unwavering support, and insightful feedback throughout the entirety of this doctoral journey. Her expertise, encouragement, and patience have been instrumental in shaping this thesis.

I am also grateful to the members of the R&D Committee at the law school, for their constructive criticism, valuable suggestions, and scholarly insights that have significantly enriched this work.

I would like to acknowledge special guidance of Dr. Vijay Kumar Singh for providing me unwavering support, and invaluable mentorship throughout my doctoral journey. His expertise, dedication, and passion for commercial law have not only shaped my research but have also inspired me to strive for excellence.

Special thanks are due to my colleague and friend Ms. Latika Chowdhury who has provided encouragement, assistance, and camaraderie throughout this endeavor. Her intellectual exchanges, moral support, and friendship have been invaluable.

I am deeply indebted to the participants of this study whose contributions made this research possible. Their willingness to share their experiences, expertise, and perspectives has been crucial to the development and completion of this thesis.

Last but not least, I am profoundly grateful to my family for their unwavering love, encouragement, and understanding. Their patience, support, and belief in me have been the cornerstone of my academic pursuits.

This thesis is dedicated to all those who have supported and inspired me along the way.

Aratrika Deb
[500080029] Date:10.07.2024

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List of Abbreviation

1. ACA: The Arbitration and Conciliation Act, 1996
2. ACBCJ: American College of Business Court Judges
3. ANOVA: Analysis of Variance
4. CCA: The Commercial Courts Act, 2015
5. CICC: Chinese International Commercial Court
6. CPC: Civil Procedure Code, 1908
7. CPCF: The Civil Procedure Code of France
8. DBR: Doing Business Report
9. EODB: Ease of Doing Business
10. HC: High Court
11. ICT: Information and Communication Technology
12. IMF: International Monetary Fund
13. IPAB: Intellectual Property Appellate Board
14. IPR: Intellectual Property Rights
15. LL.P: Limited Liability Partnership
16. NCDRC: National Consumer Dispute Resolution Forum
17. NCLAT: National Company Law Appellate Tribunal
18. NCLT: National Company Law Tribunal
19. OECD: Organization for Economic Co-operation, and Development
20. PIMS: Pre-Institution Mediation and Settlement
21. SC: Supreme Court
22. SEBI: Securities and Exchange Board of India
23. SICC: Singapore International Commercial Court
24. TRAI: Telecom Regulatory Authority of India
25. UCC: Uniform Commercial Code
26. UK: United Kingdom
27. UKCPR: United Kingdom Civil Court Procedure Rules
28. UNCTAD: United Nations Conference on Trade and Development
29. USA: United States of America
30. WTO: World Trade Organisation

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CHAPTER I - INTRODUCTION

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SECTION A

1. Scope Of 'Commercial Law' and 'Commercial Disputes'

The academic discourse on the extent of 'commercial law' frequently precedes the legislative discussion on the scope of 'commercial disputes.' (Pound, 1912). Holland (1835 -1928), one of the first proponents of the analytical school of jurisprudence, divided law into two categories on the basis of their functions – public law and private law. (Pollock, 1894). A strong advocate of the positivist school of thought, Holland suggested that the presence of state and sanction are prerequisites to any legal system. (Willis, 1926). While distinguishing between public and private law, he stated that the former deals with the relationship between a person and state; on the other hand, private law deals primarily with the relationship between person and person, where the state only acts as an arbiter through its courts. (Salevao, 2005). Further, one of his contemporaries Salmond (1862 – 1924), while explaining the scope of civil law, had called it, the law of the land or any law that is enforced by the state. (Salmond, 1922).

Long before this, John Locke (1632 – 1704), in elucidating the role of the Rule of Law in development and nation-building, asserted that any modern state necessitates Rule of Law institutions—effective courts and commercial codes—to safeguard property rights and enforce contracts (Duguit, 1917). Traditionally, the legal landscape categorized law into two major branches—civil and criminal (Foulke, 1919). However, as we approach the nineteenth century, examining certain Western countries such as Great Britain, Italy, and some Scandinavian nations reveals a separation within civil law, giving rise to an independent body known as 'commercial law' (Hourwich, 1915).

In England, 'commercial law' was commonly referred to as 'lex mercatoria' or the 'law of merchants.' It was perceived as a distinct system of legal doctrine, comparable in status to civil law, and a form of immemorial custom recognized judicially as a set of rules aligned with mercantile practices (Burdick, 1902). Early modern Italian scholars like Benvenuto Stracca (1509–1578), Sigismundo Scaccia (1564–1634), and Casaregis (1670–1737) presented the body of commercial law for the first time, terming it the 'law merchant' (Pihlajamäki, 2020). Their theories, rooted in Romanist traditions and legal norms from the Middle Ages, argued that the autonomy of commercial law lies between being a 'special law' or an 'exceptional law' compared to civil law (Druey, 2009).

Commercial law's development did not stem from a specific source in jurisprudence but evolved from mercantile practices and transactions (Bruneau & Hulvey, 1931). The swift resolution of mercantile disputes, tailored to suit the mercantile community, gradually gave rise to the body of commercial law. Despite lacking a distinct system or principles different from ordinary civil courts of the time, commercial law can be considered a special private law based on civil law principles and linked to civil law doctrine (Linarelli, J. 2009).

In sixteenth-century England, specialized courts such as the borough and piepowder courts were established to address disputes arising from mercantile transactions (Kraus, J. S.,1997). Blackstone termed these as "the lowest and at the same time the most expeditious court of justice known to the law of England" (Morrison, 2001). Lord Chief Justice, Lord Mansfield, emphasized introducing certainty into mercantile transactions and incorporating commercial usage into English law (Mance, 2011). Despite the popularity of these specialized courts in the 1600s, their procedures were not significantly different from those in other courts (Chancellor, 2001).

Roy Goode, in his treatise on commercial law, questioned whether commercial law should be distinct from general civil law (Roy Goode, 1995). He noted that legal systems treating commercial law separately often consider the character of the transaction subjectively or objectively, and it is challenging to draft a code exclusively for civil or commercial transactions. While 'commercial law' cannot be entirely isolated from 'civil law,' it is evident that it comprises rules and norms regulating 'commerce,' hence the term 'law of merchants' (Cole, 1995).

Understanding the scope of 'commercial law' necessitates defining 'commerce.' In economics, 'commerce' encompasses the manufacturing and distributive industries, focusing on the production and sale of goods for profit (Davis, J., 2016). The legal significance of 'commerce' lies in the regulation of individuals engaged in manufacturing and distribution industries and their transactions, forming the basis of 'commercial law' (Llewellyn, K. N., 1949). Disputes arising in this realm are classified as 'commercial disputes.' Once we study the evolution of ‘commercial law and understand its scope, it becomes easier for us to determine how disputes arising in modern businesses can be efficiently solved and what form or structure of a resolution framework would be best suited for the purpose. The Introductory Chapter of this thesis is divided into three sections –

Section A – deals with describing the scope of 'commercial law' and 'commercial disputes' in jurisprudence and set the context of the author's study. It also states the research problem, the hypothesis and the justification of research.

Section B – deals with the review of literature, the scope of research along with the research questions and objectives.

Section C – deals with the research methodology and analysis of data. It also provides a brief description of the scheme of Chapters following Chapter I and the mode of citation used by the author.

1.2. Setting the Context

1.2.1. Justice Systems: 'Civil' and 'Criminal'

In India, there have traditionally been two recognized systems for dispensing justice – the civil courts and the criminal courts. The Civil Procedure Code of 1908 and the Criminal Procedure Code of 1973 distinctly delineate the functioning and hierarchy of these courts within our judicial system, shedding light on the clear differentiation between 'civil' and 'criminal' disputes that our legal framework was designed to address. Before delving further into this differentiation and exploring the role of these codified procedural laws in shaping the judicial hierarchy in our nation, it is essential to revisit how dispute resolution occurred in India before the enactment of these laws.

Before 1859, there was no uniform law governing the procedure for resolution of civil disputes in India. Civil disputes were primarily dealt by crown courts in presidency towns and provincial courts in mofussils. It was in 1859 when for the first time, a uniform code of civil procedure was introduced with the enactment of the Civil Procedure Code, 1859. 27. (Tupper, L., 1908) The primary objective of this code was to systematically consolidate the procedure of how civil courts would address and resolve civil disputes in India. The 1859 Code underwent several amendments, till 1908 when a completely new Civil Procedure Code was enacted overshadowing the defects of the previous codes. (Acharya, B., 1914) So roughly, from 1859 onwards, ordinary litigants or parties to civil disputes had well-structured and uniform judicial forums that they could approach to get their disputes resolved. These courts operated by a procedure where they implemented principles of substantive law and aimed at delivering fair justice by enforcing rights and liabilities of citizens. (Roy, 2008).

Similarly, prior to 1862, there was no uniform law governing criminal procedures in courts in India. There were separate acts, mostly rudimentary in their character, for the courts within and outside the presidency towns. (Jafri, 2010) Later on, the acts in force in the presidency towns were consolidated into the Criminal Procedure Supreme Court Act, 1852 (1852) which was subsequently replaced by the High Court Criminal Procedure Act, 1865. The numerous acts prevailing in the mofussils were all absorbed in the Criminal Procedure Code, 1861 (1861), which was again replaced by the Criminal Procedure Code of 1871. (Patra, A. C., 1961). The Criminal Procedure Code, 1882, gave a uniform law of procedure for the whole of India, both in the presidency towns and in the mofussils, and it was supplemented by the Criminal Procedure Code of 1898 (1898). The same Code was amended several times, with major amendments in 1923 (1923) and 1955 (1955). The Law Commission, set up in 1955, studied the old Code extensively, and made various recommendations and suggestions in its detailed report submitted in September 1969. (Report on Code of Criminal Procedure, September 1969 1969) These suggestions were incorporated in the Criminal Procedure Code, 1973, which came into force on 1st April 1974, and which has since been amended several times thereafter. The Criminal Procedure Codes too established a very clear hierarchy of how and where criminal trails and prosecutions take place in the judicial system of the country. (Committee on Reforms of Criminal Justice System Government of India, 2003).

After the Constitution of India was enacted in 1960, the Supreme Court of India as well as the High Courts were established that were conferred with original, advisory and writ jurisdiction along with appellate jurisdiction over the subordinate civil courts and criminal courts in different metropolitan towns and districts. The jurisdiction of these subordinate courts was founded on the basis of pecuniary value of a dispute, subject-matter, territoriality, cause of action etc. (Pandey, 2021). As India progressed forward as an economy, the range of disputes, particularly civil disputes that came before the civil courts also broadened. Developments took place in the industrial sector that saw more and more businesses to flourish and an inevitable consequence of the same were civil disputes that were ‘commercial’ in nature. (Manoj Singh and Nilanjana Bandopadhyay, 2020). The economic policy of liberalisation, privatisation and globalisation, 1991 opened India’s economy to private investment. The Indian government’s policy of disinvestment as well as providing easy access to foreign investors led to increasing commercial transactions taking place in the market. (Garimella & Ashraful, 2019).

1.2.2. Commercial Disputes: Sub-category of Civil Disputes

In 2003, Justice M. Jagannadha Rao, then Chairman of the Law Commission of India,expressed concerns to Mr. Arun Jaitley, the Minister of Law and Justice, regarding the resolution of high-value commercial disputes in the country. He emphasized the need to assureboth domestic and foreign investors of access to swift and effective forums for resolving any commercial dispute they are involved in, aiming to maintain and accelerate the economic growth sparked by the 1991 policy. Justice Rao advocated for the establishment of fast-track courts equipped with technological facilities and the training of judges to efficiently handle complex commercial disputes (Krishnaswamy et al., 2014).

In its 188th Report titled “Proposals for Constitution of Hi-tech Fast-Track Commercial Divisions in High Courts,” the Law Commission examined the practices in the USA, UK, and 12 other countries. The commission concluded that High Courts should have a dedicated 'Commercial Division' to handle high-value commercial cases and enforce related decrees. The report asserted that these specialized benches would alleviate delays faced by parties in lower courts, reducing the burden on these lower courts dealing with other cases (Law Commission of India, 2003). The overall benefits of establishing these courts, including increased investment in India, were estimated to be in hundreds of millions of dollars, with the associated expenses being a small fraction of that amount. The report introduced the term 'commercial disputes,' previously heard by ordinary civil courts, highlighting the need for special attention to this category to enhance India's global reputation for expeditious justice delivery in commercial circles.

The Law Commission's recommendations underscored the importance of updating the courts' exposure to global changes in commerce and enhancing their capacity to handle cases involving new branches of commercial law. Despite the intention to improve the judicial system's efficiency, the recommendations faced opposition, and the Commercial Division of High Courts Bill, 2009, proposing the establishment of commercial divisions in High Courts, encountered strong resistance in the Rajya Sabha. Critics argued that the bill reflected 'elitist' concerns and favored the corporate sector at the expense of ordinary litigants. Concerns about the existing burden on High Courts and inadequate judges further hindered the bill's passage (Standing Committee on Personnel, Public Grievances, Law and Justice, The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill 2015).

The 2009 Bill did not receive parliamentary approval, leading to the introduction of the revised Commercial Division of High Courts Bill, 2010, with substantial amendments. Meanwhile, commercial disputes continued to be handled by civil courts based on territorial and pecuniary jurisdiction due to the lack of implementation of the Law Commission's suggestions and the non-approval of the bill by both houses of Parliament.

Alongside commercial disputes addressed by ordinary civil courts, a significant portion was directed to various tribunals established since independence following the 42nd Amendment to the Indian constitution. The National Company Law Tribunal, the National Company Law Appellate Tribunal, the now-abolished Competition Law Appellate Tribunal, and the Securities Appellate Tribunal dealt with disputes related to the Companies Act, 1956, the then Companies Act, 2013, the Competition Act, 2002, and securities markets in India. Some of these disputes were inherently 'commercial' in nature. Committees evaluating the tribunalization framework in India consistently suggested that these tribunals were established to expedite adjudication compared to traditional courts and provide expertise on specific subject matters. They aimed to alleviate the judiciary's excessive burden and prevent inordinate delays in resolving cases (Ramasubramanian, 2015).

1.2.3. Ease of Doing Business in India: A priority

In 2014, India, under the leadership of Prime Minister Narendra Modi, participated in the World Bank's Ease of Doing Business (EODB) Ranking for the first time since the new government came into power. The World Bank's Doing Business project aims to objectively compare business regulations and their implementation in 190 economies worldwide. This project provides quantifiable indicators of business regulations, legal procedures, and business processes, facilitating comparison across countries. Since its inception in November 2001, the Doing Business project has become a prominent information source for the World Bank, influencing legislative reforms in developing countries. The project's methodology involves standardized case scenarios and specific assumptions for comparability across the 190 economies. In the case of India, data collection and examination were limited to Delhi and Mumbai for the purpose of studying ease of doing business reforms (Kumar & Kumar, 2020).

A crucial indicator in the World Bank's EODB rankings is the 'Enforcement of Contracts,' which assesses the time, cost, and quality of resolving commercial disputes through local first-

instance courts. It reflects the effectiveness of a country's judiciary in handling and settling commercial disputes. To evaluate this indicator, the World Bank employs a questionnaire focusing on court structure and proceedings, case management, court automation, and alternative dispute resolution (Mohando, L.F., 2009).

In 2014, the Indian government aimed to break into the top 50 countries from its rank of 142. Subsequent years witnessed a significant improvement in India's EODB rank, reaching 63rd in 2020. The World Bank acknowledged India's reforms in its EODB Report for 2020, placing the country among the top 10 improvers for the third consecutive time. This progress reflects the government's commitment to enhancing the business environment and its global image (Madhavan, 2021). Many regulatory developments post-2014 were driven by the ambition to perform well in the EODB ranking (Garimella & Ashraful, 2019).

In 2015, the 253rd Law Commission Report recommended the Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill. This bill, enacted in 2016, aimed to establish specialized courts for efficient resolution of complex business disputes, aligning with the government's goal to improve India's position on the 'Enforcement of Contracts' indicator. Despite being considered a significant reform, the Economic Surveys of India in 2017-2018 questioned the utility of commercial courts in meeting expectations for resolving commercial matters (Chandrachud, 2018). The surveys emphasized the need for an efficient contract enforcement regime, linking it to the ease of doing business in India (Minutes of the first meeting of the taskforce for improving India’s ranking in World Bank report on Doing Business for the indicator of enforcing contracts 2017).

The Commercial Courts Act, 2015, established Commercial Divisions in High Courts with original civil jurisdictions and Commercial Courts at the district level where High Courts lacked original civil jurisdiction. Appeals from these courts would go to Commercial Appellate Divisions in High Courts. The 2018 Amendment to the Act introduced changes, expanding the scope of Commercial Courts. Commercial Courts were established at the district level, and appeals would now lie to Commercial Appellate Divisions of High Courts. The State government determined pecuniary limits for these courts, and the pecuniary value of a commercial dispute was reduced. These changes brought Delhi and Mumbai within the scope of the World Bank's study, leading to an improvement in India's EODB ranking from 186th in 2015 to 163rd in 2020 (Khaitan et al., 2020).

1.2.4. Pre-institution Mediation of ‘commercial’ disputes

In addition to decreasing the monetary threshold for a 'commercial dispute,' the 2018 Amendment Act introduced the concept of 'Pre-Institution Mediation' under Section 12A. This provision mandates that parties involved in a commercial dispute must undergo mediation before they are eligible to have their case heard by the commercial court. Consequently, the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 (PIMS Rules) were introduced, granting authorization to the District and State Legal Services Authorities to conduct these mediations (Balakrishnan & Mohan, 2021). The establishment of Commercial Courts was primarily intended to expedite the resolution of disputes efficiently. The aim was to encourage mediation as a preferred method for settling commercial disputes. Furthermore, the government anticipated that even if a small percentage of disputes were resolved at this pre-institution stage, it would help alleviate the overall litigation burden on these Commercial Courts and Commercial Divisions (Singh, 2018).

1.2.5. Which forum will have jurisdiction over commercial disputes?

Now, if we look at the definition of a ‘commercial dispute’ under Section 2(c) of the Act, it includes any dispute arising out of ordinary transactions of merchants, bankers, financiers, shareholders agreements, joint venture agreements etc. (2015). Until ‘commercial dispute’ was given a statutory status in 2015, a chunk of these disputes went to arbitration, if there was any specific arbitration clause in a shareholder’s agreement or joint venture agreement, and also to the National Company Law Tribunal, if the later was exclusively relating to a case ofoppression and mismanagement. Some commercial disputes were also handled by the district,state and national consumer forums, if the party to such a dispute came within the purview of a ‘consumer’ under The Consumer Protection Act, 1986. (Obhan, 2019).

Aside from the jurisdiction over ‘commercial disputes’ these courts also have jurisdiction in respect of arbitration matters under Section 10. The provision states that if the subject matter of an arbitration is a commercial dispute, then all applications and appeals arising out of such arbitration will be heard by the Commercial Courts or Commercial Divisions of High Courts, as the case may be. Arbitration disputes often end up with significant delays once they enter the clogged up judicial system—be it at the pre-arbitral stage or at the stage of challenge to arbitral awards. Since ‘alternative dispute resolution’ is an important criterion for assessing the World Bank’s ‘enforcement of contract’ indicator, the research shall also be focusing on

examining the reforms made in alternative dispute resolution regime, concentrating primarily on challenges faced by commercial courts in handling arbitral disputes that come to courts at the time of enforcement or interim relief. (Gahlot & Bhat, 2019).

1.3. Statement Of Problem

In order to understand the existing gaps in literature and the current legislative framework, the author has highlighted the problem statement under four specific heads:

1.3.1. Shift in Policy Change and Policy Decision

1.3.2. Definition of 'commercial dispute'

1.3.3. 'Ease of Doing Business' concerns

1.3.4. Ease of access

1.3.1. Shift in Policy Change and Policy Decision

In 2003, the 188th Law Commission Report introduced the concept of Commercial Divisions of High Courts, addressing the perceived collapse of the Indian judicial system due to significant delays. The primary objective was to expedite the resolution of high-value commercial cases, fostering confidence among local and foreign investors and enhancing India's global reputation as an attractive business destination. Aligned with economic policies post-1991, the initial policy goal was to establish a fast-track court system equipped with modern technological features such as online filing and video conferencing. The 2009 Bill proposed by the Law Commission faced criticism in the Rajya Sabha Select Committee for allegedly favoring commercial disputes over ordinary civil disputes without a thorough analysis of commercial case pendency in district courts. The concept of fast-track commercialcourts persisted in the 253rd Law Commission Report, maintaining the same policy perspective. The Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015, ultimately approved by both houses of Parliament, revised the structure of Commercial Courts suggested in the 2009 Bill. According to the 2015 Act, both Commercial Courts and Commercial Divisions of High Courts were to be established. The rationale behind this enactment was to create commercial courts as dedicated forums for a stable, certain, and efficient dispute resolution mechanism crucial for India's economic development. The government envisioned these Commercial Courts as "Model Courts," setting

new norms in commercial litigation practice and addressing complex legal questions. Over time, the reforms introduced in commercial litigation could potentially be extended to all civil litigation in India. However, the 2018 Amendment to the 2015 Act significantly reduced the pecuniary value threshold for a commercial dispute to three lakh from one crore, emphasizing the need for fast commercial dispute resolution even at the lowest level of commercial courts. Consequently, post-2018, Commercial Courts were established in every district, including below the level of the district judge. What was initially introduced as a minor reform through Commercial High Court Divisions evolved into a structural transformation of the subordinate court system on the civil side. Unfortunately, there was no corresponding budgetary allocation for this substantial cultural transformation of the new lower courts. In light of these changes, it is crucial to evaluate whether the new Commercial Courts and Commercial Divisions, operational in the last four years, are contributing to transforming the commercial and civil litigation culture in the country.

1.3.2. Definition of 'commercial dispute'

Secondly, it is crucial to observe that when the definition of 'commercial disputes' was initially proposed in the 188th Law Commission Report, it encompassed all conflicts arising from banking and insurance transactions, contracts involving the sale and supply of goods or services, disputes related to building contracts, partnership agreements, business property, and more. Consequently, a residual clause was added to the definition, granting High Courts the authority to specify additional disputes falling under this definition. The report provided detailed explanations of matters falling within the scope of a commercial dispute. In the subsequent 2009 Bill, an attempt was made to present an exhaustive list of commercial disputes within the definition clause, suggesting that the jurisdiction of a Commercial Division over a commercial dispute hinged on the specified pecuniary value of the suit. The 253rd Report expanded the ambit of a 'commercial dispute' by including disputes arising from 22 categories of documents. This expansion persisted in the 2015 Act, disregarding the caution from the Rajya Sabha Select Committee that a broad definition might lead to extensive litigation. The 2015 Act categorized 'commercial disputes' into three main groups – trade/mercantile disputes, infrastructure/construction disputes, and business/financial disputes. The 2018 Amendment to the 2015 Act retained the broad definition and reduced the pecuniary value to expand the jurisdiction of a commercial court. Consequently, there is a potential risk that 'commercial' disputes are being treated akin to ordinary civil disputes with a high pecuniary value. There has

been no legislative debate on how to distinguish 'commercial' disputes from civil disputes, with the only criterion for differentiation being the pecuniary value, which has undergone changes over the years. It is crucial to recognize that any expansive definition is not only redundant but can also undermine a thorough assessment of the subject matter when determining whether a dispute qualifies as a 'commercial dispute.'

1.3.3. 'Ease of Doing Business' concerns

When Shri Sadananda Gowda, the Union Law Minister, introduced The Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill in 2015, he explicitly stated, "So, this is an attempt to take our country forward so that our ranking goes up in the Ease of Doing Business Index of the world. This Bill has been brought only with that aim in mind." As previously mentioned, the World Bank's methodology collected data related to disputes worth 200% of income per capita or $5,000 and did not include the Commercial Courts and Commercial Divisions established by the 2015 Act within its scope. This focus on performing well in the World Bank rankings persisted until 2018 when the first amendment to the 2015 Act was introduced. The obsession with achieving a high ranking essentially drove the 2018 Amendment. A greater number of Commercial Courts were established in the country after 2018, extending below the level of a district judge, at the district level, in High Courts (already in place under the 2015 Act), and their corresponding Appellate Courts and Appellate Divisions. Their pecuniary jurisdiction was also reduced specifically to come within the purview of the World Bank study. Unfortunately, on September 16, 2021, the World Bank issued an official statement acknowledging major data irregularities in the Ease of Doing Business Reports of 2018 and 2020. Subsequently, they initiated a series of reviews and audits of the reports and their methodology, leading to the discontinuation of the Doing Business Report. However, three months later, on December 16, 2021, they issued another statement stating that the World Bank had systematically reviewed all data irregularities previously reported, conducted an independent external verification of their methodology, and would be publishing the Ease of Doing Business Rankings and Reports of 2021. It is crucial to note that any global index, regardless of its contribution to improving India's image worldwide, cannot be entirely relied upon. Therefore, it is absolutely imperative to assess and critically evaluate legislative policies, one of whose essential aims was to merit inclusion in a foreign index. In

that context, a detailed critical impact evaluation of the Commercial Courts established under the 2015 Act is necessary.

1.3.4. Ease of access

Before the 2018 Amendment, Commercial Divisions existed in High Courts (where original civil jurisdiction was present) and Commercial Courts were established in other districts (where High Courts lacked original civil jurisdiction). However, post-2018, additional Commercial Courts below the level of a district judge and Commercial Appellate Courts were introduced (in districts without High Court original civil jurisdiction). New Commercial Courts were also set up at the district level, even in districts where High Courts had original civil jurisdiction, and their pecuniary jurisdiction was reduced from 1 crore to 3 lakhs under the 2015 Act.

Take West Bengal as an example. The Calcutta High Court, with original civil jurisdiction, previously had Commercial Divisions and Commercial Appellate Divisions under the 2015 Act. After 2018, Commercial Courts were established in four more districts – Asansol, Rajarhat (part of Kolkata), Siliguri, and Alipore (part of Kolkata). On March 20, 2020, the West Bengal government issued a gazette notification specifying the pecuniary jurisdiction of these Commercial Courts. The notification stated that the pecuniary jurisdiction for the Commercial Courts in Asansol, Rajarhat (part of Kolkata), Siliguri, and Alipore (part of Kolkata) was 30 lakhs. However, for the Commercial Court in the City Civil Court of Kolkata, the pecuniary jurisdiction was set at 3 lakhs to 10 lakhs exclusively and 10 lakhs to 1 crore concurrently with the Commercial Division of the High Court. Additionally, the Commercial Division of the High Court of Kolkata exclusively had a pecuniary jurisdiction of 10 lakhs.

Interestingly, the Commercial Court within the territorial jurisdiction of the City Civil Court has not been established even four years after the 2018 amendment. Consequently, commercial disputes with a value ranging from 3 lakhs to 10 lakhs are still being heard and disposed of by ordinary civil courts, or at best by civil court judges functioning as commercial court judges. A similar review is needed for other states as well. Therefore, it is crucial for us to conduct an unbiased study on the performance of the commercial courts established under the Commercial Courts Act, 2015, and assess their effectiveness in delivering justice to litigants.

- **Hypothesis**

Considering the issues that have been raised in the previous sections, the possible hypothesis to be tested in the study can be that:

H1. The Commercial Courts Act, 2015 has failed to satisfy the preliminary objective of functioning as specialised forums for resolving commercial disputes in the country in a timely and effective manner.

H2. Delay in resolution of commercial disputes by these courts also affects the effectivenessof alternative dispute resolution as awards or settlements arising out of arbitration or mediation need to ultimately get enforced by Commercial Courts or Commercial Divisions of High Courts under The Commercial Courts Act, 2015.

1.4. Justification of Research

In the context of the above, the primary focus of this research would be to assess the contribution of commercial courts in India, to a more efficient contract enforcement regime. The author would start her research by exploring the legislative history of the 188th and 253rd Law Commission Reports and analysing if their recommendations were incorporated in the Commercial Courts Act, 2015 and implemented in spirit. In order to understand such implementation better, the author would like to delve upon the following issues:

i) The vast ambit of the definition of 'commercial disputes' under Section 2(c).

ii) Challenges in adjudication of disputes faced by Commercial Courts due to reduction in the pecuniary value of a 'commercial dispute' from 1 crore to 3 lakhs in light of the 2018 Amendment Act.

iii) Challenges faced by Commercial Courts while giving a summary judgement under Order XIII-A.

iv) Challenges faced by Commercial Courts with respect to case management hearings.

v) Challenges faced by Commercial Courts with respect to acceptance of written statements within the prescribed time.

vi) Challenges to Pre-institution Mediation under Section 12-A of the Commercial Courts Act, 2015.

The author is of the opinion that a thorough assessment of the Commercial Courts Act, 2015 is an absolute need of the hour to review the performance of the Commercial Courts that are set

up in the country. Such an assessment will help us understand if the reforms in the commercial dispute resolution arena have at all resulted in quicker case disposals or simply created more delays in the justice delivery system.

SECTION B

1.5. Literature Review

1.5.1. Articles:

1. **Prof. (Dr.) Sudhir Krishnaswamy & Varsha Mahadeva Aithala, Commercial Courts in India: Three Puzzles for Legal System Reform, National Law School of India Law Review**

In this article, the author attempts to answer the question by reviewing the performance of the Commercial Courts set up under the Commercial Courts Act, 2015 using quantitative and qualitative methods, nearly four years after the 2015 Act was introduced. He states that when he evaluated the utility of these courts in terms of whether they have lived up to their expectations, using the Delhi High Court as a live example and through court observations of the commercial court in Bengaluru, he noted with concern that the objective of speedy and effective justice for commercial matters has not been achieved. On the contrary, the article concludes that justice delivery for commercial matters has slowed down since the 2015 Act came into force. The author very minutely describes how the commercial court structure developed in our country by tracking all legislative reforms that took place till the enactment of the 2015 Act. He develops a theory from his conclusion of the study that judicial reforms to improve the commercial litigation scenario in the country bore an effect opposite to what was desired. The article talks elaborately about issues relating to overcrowding of Commercial Courts owing to a drastic reduction in value of 'commercial dispute', and how the government should address the same. However, the article does not examine if civil courts in Delhi and Mumbai are still entertaining a section of 'commercial disputes' because the Commercial Court fit to handle those have still not been set up. The author has not addressed the major concern that Commercial Courts need to be more in number and all Commercial Courts established should be made fully operational, if the value of a 'commercial dispute' gets reduced; it would be the only way to prevent any pendency or overcrowding in these forums. In that sense, specifically, the concluding remarks of the author are not particularly suggestive and no solution has been put forward by the author to deal with this issue.

2. **Gahlot, Vikas and Bhat, Sairam, Road Map to Strengthen Contractual Enforcement and Ease of Doing Business in India, National Law School Journal (2019)**

The author has attempted to draw a short and concise roadmap for strengthening contractual enforcement in India and improving the Ease of Doing Business rankings. He has described the series of reforms like enactment of the Commercial Courts Act, 2015, amendments to the Arbitration and Conciliation Act, 1996, amendments to the Specific Relief Act, 1963 that have been brought to improve the country's grim contract enforcement regime. However, the study does not throw much light on the qualitative impact that these reforms had on improving the justice delivery system. The findings by the author are merely suggestive without any appropriate guidance on how the same can be implemented in practice.

3. **Jenifer Varzaly, Towards a Unified Approach to Economic Assessment in International Commercial Law Reform, Research Paper Series, University of Cambridge, Faculty of Law Legal Studies.**

In this article the author talks about the importance of economic assessment of international commercial law reform and how the same needs to be done to ensure law reform efforts are evidence-based and result in economic benefit. He further points out that such assessment is seldom undertaken and, when done so, it is not uniform in its scope or methodology, nor is it subject to any systematic review. The author proposes a series of guidelines for such economic assessment including a choice amongst alternative regulatory options, the identification and quantification of impacts, a process of data collection and assessment, transparency and accountability, effectiveness and policy coherence, the use of a threshold test, the application of a risk assessment metric etc. which in turn will help countries determine the economic benefit or efficiency of regulatory reforms introduced and the kind of changes it requires to achieve its economic and policy goals. The author mentions that even though political and technical challenges to law reform efforts vary across countries, there needs to be a unified approach or guidelines that countries all over the world can adhere to for ensuring that the lawreform efforts result in a net economic benefit capable of justifying the costs incurred by governments in promoting such reform. The literature put forward by the author helps the researcher in identifying criterion to assess if the Commercial Courts Act 2015 which is lookedat as one of the most significant commercial law reforms in the country has at all provided anyeconomic benefit to the commercial dispute resolution framework in the country. The

guidelines provided by the author will help the researcher particularly during the proposed empirical research and analyze the data collected therein. The paper shall also help the researcher compare the commercial dispute resolution frameworks across the selected jurisdictions and understand how these countries have been economically assessing their regulatory reforms. Such comparison will ultimately help the researcher in identifying and formulating any systematic assessment index that India needs to adopt in its National Litigation Policy by which it will appraise any commercial law reform that it introduces.

4. **Michael Hwang, Commercial Courts and International Arbitration — Competitors or Partners? 31(2) ARBS. INT'L 193, 201 (2015)**

In this article, the author talks about the role played by commercial courts in arbitration related litigation and how the effectiveness of the former in enforcing of awards and settlement ultimately decided the success of the later regime. The author throughout the essay has pointed out that commercial courts need to adopt an arbitration friendly attitude and should not delay enforcement unless there is an actual finding of patent illegality; in other words courts should read awards generously and not look assiduously for defects in process, unless really serious violations of due process have occurred which have caused real prejudice. Furthermore, courts should intervene quickly in support of arbitration by issuing court orders enforcing tribunal decisions where judicial assistance is needed. In short, courts should supervise with a light touch but assist with a strong hand. The author has suggested that even in commercial disputes where violations of 'right in rem' are involved, like intellectual property issues involving registration, disputes involving family law, criminal law, succession etc. governments should encourage that those be allowed to be resolved by arbitration tribunals in presence of arbitration agreements. Even though the enforcement of such awards will eventually have to be executed by a national commercial court, but the dispute will essentially be settled by arbitration, leaving the national commercial court only an enforcement role. The author has taken examples of how Dubai International Financial Centre (DIFC), Singapore International Commercial Court (SICC), Singapore International Arbitration Centre (SIAC) work hand in hand as partners to improve the overall litigation as well as alternative dispute resolution scenario in the country. In India, commercial courts and commercial divisions of High Courts face a significant number of arbitration relation litigation under the Commercial Courts Act 2015. Only where the subject matter of an arbitration is a commercial dispute of a specified value, can it come within the purview of the 2015 Act. In an attempt to reduce or do away with the intervention of courts in arbitral matters, any order passed by commercial courts in applications arising out of arbitration

cannot be appealed against, even though in case of all other commercial disputes, right of appeal exists to the Commercial Appellate Courts or Commercial Appellate Divisions. Thus the 2015 Act clearly treats ordinary commercial disputes and arbitration related commercial disputes differently. Further, for those arbitrations, where the subject matter is a commercial dispute of value lower than the specified value, there is no jurisdiction of commercial courts involved, and for the enforcement of those awards, ordinary civil courts still act as the forum. The Act doesn't specify any requirement to have a specific bench in commercial courts that fastracks enforcement of arbitral awards either. In that scenario, it is uncertain how CommercialCourts Act 2015 has helped speed up arbitration related litigation and actually acted as a partnerto arbitral tribunals. The paper as a whole has failed to capture such possibilities.

5. **Ameen Jauhar & Vaidehi Misra, Commercial Courts Act, 2015: An Empirical Impact Evaluation, Report of Vidhi Centre for Legal Policy.**

This study is one of the most significant contributions towards the researcher's primary research objective to find out if the Commercial Courts Act, 2015 has at all improved the litigation culture in the country or is a plain and simple cosmetic reform aimed at improving India's global reputation on the World Bank Ease of Doing Business Index. The study has started with chartering out the legislative history of the Commercial Courts Act 2015 in order to understand the rationale offered by different authorities for enacting this legislation. The author points that even though the 2015 Act was introduced to target high stake commercial litigation in the country, and there was a categorical emphases in the 253rd Law Commission Report on scoring a better rank in the Ease of Doing Business index, published annually by theWorld Bank by improving the speed with which contracts could be enforced by the Indian judicial system, this idea of high-stake commercial litigation was diluted when the 2015 Act was amended in 2018 to reduce the minimum pecuniary value (specified value) of commercialsuits from one crore to three lakhs. The author therefore puts forward an observation that the 2018 amendment was brought only so that commercial courts of Delhi and Bombay and Commercial Divisions of their High Courts could be studied for World Bank's evaluation. Theauthor points out that the government diverted from one its primary concerns identified in the 253rd Law Commission Reports - identifying or tackling systemic issues of poor litigation culture affecting the Indian judicial system. Instead, it concentrated on enacting and designingits national policies and legislations to pursue a global ranking. While this paper helps the researcher in comprehending the effectiveness of the 2015 Act, as well as its 2018 amendment,the study does not identify reasons as to why India moved only 1.3 in score in the 'judicial

process index' and from 2018 onwards, India is at the same rank of 163rd out of 190 countries till 2020 in the Ease of Doing Business Index which is still very poor. The study also does not throw much light on issues involving pre institution mediation and arbitration related commercial dispute litigation.

6. **Sai Ramani Garimella & M.Z. Ashraful, The Emergence of International Commercial Courts in India: A Narrative for Ease of Doing Business? (2019) 12(1) Erasmus Law Review 111.**

The author in this article talks about the evolution of commercial dispute resolution in India, specifically the difference that the Commercial Courts Act 2015 has brought to the country. He further goes on to emphasize the importance of specialized dispute resolution in the economic prosperity of nations and suggests that the commercial courts across all jurisdictions should work together to uphold the rule of law and further international economic cooperation and prosperity. The author also mentions how International Commercial Courts are developing in prominent jurisdictions like Dubai, European Union, Singapore etc. and those courts are based on a unique hybrid model that is neither arbitration nor litigation but aims to combine the benefits of both and the author also refers to studies showing that international commercial courts are very sought after forums especially for handling cross border commercial disputes. The author further states that although the Indian government has made solid initial efforts to give a preliminary push to improving the justice delivery system in the country in the context of commercial disputes, it still has not evolved in their content and procedures before they could position themselves on the international dispute resolution hub. The author has critiquedthe 2015 Act, rather its interpretation by the judiciary from a series of precedents, and suggestedthat it is important we look at the practice of International Commercial Courts to adopt mechanisms domestically for expeditious disposal of commercial disputes in the country, however the paper fails to identify systemic issues in the legislation itself which act as an impediment to resolution of cross border disputes by commercial courts in India.

7. **Li Huanzhi, China's International Commercial Court: A Strong Competitor to Arbitration? Kluwer Arbitration Blog**

The article discusses significant efforts on the part of the Chinese government to launch its first International Commercial Court (CICC). This was the government's long-standing ambition to upgrade the judicial system by transplanting the advanced international practices to resolve construction disputes arising out of China's "Belt-and-Road" initiative. The author mentions

that creating a fully internationalized commercial court is not an isolated event and that requires the participation of reputable foreign judges and highly-professional international lawyers. While pointing out the challenges that the Chinese International Court might face as a dispute resolution forum, the author mentions that the Judges Law of the People's Republic of China prohibits foreign experts from acting as sitting judges because a judge must possess Chinese nationality to be empaneled on the CICC. Irrespective of limitations for institutional innovation, it is undeniable that the CICC shall be an attraction for international commercial cross border disputes and will have an immense contribution towards making China and the Chinese judicial environment more open and desirable to foreign investors. This paper helps the researcher to draw a comparison of the regulatory reforms introduced in India and China and identify the drawbacks in our regulatory systems and laws that makes China a more desirable destination for 'enforcing contracts' and for doing business. The article shall also assist the researcher in comprehending how China has managed to tackle the systematic issues involved in the commercial resolution framework in the Chinese judicial system and predict if there is a viable future of establishing an International Commercial Court in India that can satisfy its ease of doing business concerns.

8. **M. Yip, 'The Resolution of Disputes Before the Singapore International Commercial Court', 65 International and Comparative Law Quarterly, at 439-73 (2016)**

The article discusses the jurisdictional framework of Singapore International Commercial Court (SICC). SICC is a domestic specialist court established to deal with international commercial litigation. Adapted from the arbitral model but underpinned by judicial control, central to the SICC framework are party autonomy and flexible procedural rules. The author discusses the significance of SICC to promote the Singapore as an international dispute resolution hub. The article has very articulately reviewed the Singapore government's efforts to evaluate the jurisdictional regime that applies to the SICC and the internal allocation of jurisdiction as between the SICC and the Singapore High Court. The parties to a commercial dispute in Singapore need to make a conscious decision whether to submit these disputes to the SICC or to the High Court of Singapore, therefore they decide upon an exclusive or a non-exclusive jurisdiction clause. Although an International Commercial Court in India looks like a farfetched initiative, the paper nonetheless helps the researcher in understanding how the SICC framework is handling the very complexity of international commercial transactions and how India can draw inspiration from those reforms to improve the commercial dispute

resolution framework in the country. It is noteworthy that Singapore has consistently scored high on the 'enforcement of contracts' indicator as well as Ease of Doing Business Rankings, thus looking at its governments regulatory efforts will only help the researcher in identifying exactly where we are lacking.

9. **Koster, Harold and Obe, Mark Beer, The Dubai International Financial Centre (DIFC) Courts: A Specialised Commercial Court in the Middle East (January 22, 2018).**

In this article the author talks about development of Dubai International Financial Centre Courts and how the same has been exceedingly successful as judicial forums in attracting highstake commercial and contractual disputes and improved Dubai's reputation as a hub for easy contract enforcement and made it an attractive global destination for easy business. The DIFC Courts' jurisdiction lies over matters which are referred to the DIFC Courts by private parties on a consensual basis, whether or not such parties are DIFC-domiciled entities, in addition to all matters pertaining to the parent companies of DIFC registered branches. The practical effect of these changes is to enable non-DIFC persons to opt in to the jurisdiction of the DIFC courts, including through the inclusion of forum selection clauses in ordinary commercial contracts and finance documents, irrespective of a nexus to the DIFC. The author also mentions the Protocol of Enforcement between the Dubai Courts and the DIFC Courts (the Protocol of Enforcement), whereby all judgments, orders and awards issued or certified by the DIFC courts will be enforced by the Dubai Courts provided that the relevant judgment or order has been translated into Arabic and constitutes a final judgment. Crucially, the judge recognizing and executing the judgment at the Dubai Courts has no authority to review the merits of an order or judgment during any enforcement proceeding. The impact assessment of the DIFC Framework in this article helps the researcher perceive and get to the bottom of enforcement challenges that the arbitral awards face in front of commercial courts in the country. The researcher would like to draw a comparison between the workings of the DIFC and that of thecommercial courts in India, to evaluate if similar reforms to our procedural rules can be broughtabout and how as a country, we can also manage to improve our justice delivery especially in the context of commercial disputes.

10. **Luis Felipe Mohando, The World Bank Doing Business Ranking of Quality of Justice: Critical Analysis, Juridica International Law Review, University Of Tartu, Volume 16, Pages 203-215.**

In this article the author criticizes the philosophy behind World Bank's Ease of Doing Business Ranking and puts forward concerns over efforts made by national governments all over the world to bring about changes in their national policies to satisfy such index. The World Bank's study focusses on business legislation around the world, purporting to objectively measure, compare, and report on the quality of laws and regulations affecting businesses in different countries in attempts to understand the effect of such laws and regulations in the economic development of a given society. The author mentions that through these rankings, the World Bank wants to motivate and incentivize global economic development and in course of that, if 'good laws' and 'good institutions' somehow cause economic development in one particular country, it encourages that the same be replicated elsewhere. The author also critiques the very idea of what an ideal court should look like as per World Bank's Report. The author further states that according to the Report, it seems an ideal court uses few procedures and specializes in commercial matters; procedures do not require writing, lawyers, or legal argumentation; the judge is a layperson who does not need to give legal justification for the decision rendered; going to court is free or very cheap, with no court or attorney fees; there are few rules of evidence; and there are no appeals. Thus, the fewer procedures necessary to enforce the model contractual dispute under study, the better the court. The author is however of the opinion that the most efficient procedural rules (in the sense of reducing the costs for society as a whole) are the ones that establish a court system that elicits the optimal number of lawsuits, minimizes the probability and cost of issuing a wrong judgment, and also minimizes the administrative cost of resolving the disputes — by promoting out-of-court settlements. Such a system requires a procedure completely different from, and practically the antithesis to, the Reports' ideal. This article helps the researcher in understanding why it is completely wrong on the part of the Indian government to launch commercial courts in the country and design the resolution framework, with a primary aim to score a high rank on World Bank Rankings. It is pertinent that national laws must understand and appreciate nationwide considerations instead of targeting the political optics of raising India's rank in the Ease of Doing Business index, and improving the country's image as an investment destination. Such reforms will solely achieve short-term objectives (of boosting India's rank), but fail to target the real, systemic issues prevailing in the country's litigation culture.

11. **Prof. (Dr.) Vijay Kumar Singh, Resolving Commercial Disputes In India: Focus On 'Mediation' As An Effective Alternative 'Towards Ease Of Doing Business', RGNUL Financial and Mercantile Law Review, Volume 5 Issue 2 (Part 1) 2018.**

In this article, the author has very articulately discussed the importance of alternative dispute resolution mechanisms available to parties in a commercial dispute. While it is undeniable that arbitration is the most obvious and sought-after mechanism for such resolution as litigation still suffers from the inherent lacunae of delay and costs, other methods of dispute resolution like mediation are evolving. The author has spoken about the utility of mediation as a process and how it has proven itself to be unique and quite successful settlement process when conducted by a skilled mediator. He also mentions that in some instances mediation can turn out to be more useful compared to arbitration because of its principle of parties themselves coming to a settlement and 'without prejudice' process. The paper highlights the efforts put in by the countries in promoting mediation as a method of settlement of commercial disputes and whether the same should be explored as an important alternative to the dispute settlement mechanism for settling commercial disputes. The author has explored the terminology of 'mediation' by citing various case laws and talked about the present and proposed opportunities of mediating disputes under various laws of the country, namely Insolvency and Bankruptcy Code 2016, Companies Act 2013, Consumer Protection Bill 2018, Civil Procedure Code 1908 and lastly, the Commercial Courts Act 2015. While the paper has provided insight to the researcher in understanding why mediation is a mechanism that essentially needs to grow to reduce burden and pendency of commercial disputes in court and also contributes towards India's Ease of Doing Business Rankings, the author has not identified one very specific concern of Pre-Institution Mediation under the Commercial Courts Act 2015. While the intent of the government must have been to ensure that disputes get resolved by mediation before they come to courts, the Act states that every settlement agreement reached in mediation is anaward under Arbitration and Conciliation Act 1996 and need to be enforced and converted to adecree. Thus, the whole process has a probability of getting delayed if the commercial courts take time to enforce such settlement. The Commercial Courts Act 2015 does not prescribe anyfast tract procedure for converting such settlement into a decree, and therefore there is a chancethat the contribution of mediation towards faster resolution of commercial disputes can be limited.

12. Sanjay Saraf, Demystifying the Commercial Court Act, 2015 And Commercial Court Rules: Empowering Business Litigation

In this article, the author discusses the Commercial Court Act and Rules are highlighted, emphasizing their ability to streamline dispute resolution, foster specialized expertise, ensure consistent outcomes, and bolster investor confidence. Conversely, the drawbacks, such as

potential procedural intricacies, implementation hurdles, case backlog, and limited access to justice for small enterprises, are acknowledged. The article presents case studies from various jurisdictions to underscore successful implementations and cites notable commercial disputes resolved through these legal frameworks. It concludes by advocating for ongoing enhancements, such as simplifying procedures, offering training and assistance, improving accessibility, leveraging technology, and conducting regular assessments. These measures aim to optimize the Act and Rules, addressing challenges and adapting to the changing landscape of commercial litigation. The article also highlights the substantial influence of the Commercial Court Act and Rules on commercial litigation, stressing their role in offering specialized procedures and expertise. They underscore the significance of weighing both advantages and disadvantages, implementing enhancements, and consistently improving the Act and Rules to cultivate a commercial court system that is efficient, equitable, and accessible. In his assessment, the author has not pointed how the training of judges too is a contributing factor of improving the commercial dispute resolution framework of India.

13. **Georgios Dimitropoulos, International Commercial Courts in the 'Modern Law of Nature': Adjudicatory Unilateralism in Special Economic Zones, Journal of International Economic Law, Volume 24, Issue 2, June 2021**

The article highlights that the expansion of special economic zones from the Gulf region to encompass Asia and Europe reflects a broader trend in the emergence of international commercial courts, marking a new phase in international economic law and dispute resolution. These zone courts, coupled with the evolving role of arbitration within special economic zones, represent a response to the trend towards unilateralism in international economic law. The aim is to transition cases from the international arena to domestic jurisdictions, thereby domesticating international economic law and adjudication overall. This unilateral approach involves establishing new courts that operate between national and international realms and are rooted in English (common) law. However, this new system does not mandate the transfer of cases. The unilateralism in adjudication driven by special economic zones serves to enhance states' attractiveness for investment and provides parties with additional options. Consequently, adjudicatory unilateralism is inherently diverse. The establishment and proliferation of English (common) law-based special economic zones and international commercial courts signify a significant transformation with far-reaching implications for the framework of international economic law and dispute resolution.

14. **Sean David Yates, New international commercial courts: a delocalized approach, Journal of International Dispute Settlement, 2023**

The article suggests that analyzing international commercial courts involves comparing their characteristics with those of both domestic courts and international commercial arbitration, a method referred to as delocalization. Varied degrees of differences in features, or delocalization, can impact how a new court is received, the participation of local actors, and its relationship with domestic courts. These factors affect the pace and extent of the new court's assimilation into the legal framework as an institutional transplant. Delocalization analysis also aids in monitoring the ongoing influence between new and domestic courts and the evolution of feature adoption, sharing, or abandonment over time. As a jurisdiction that is new to the commercial court framework, the article helps in author in analysing the lessons we ought to learn from the well-established international courts across other jurisdictions.

15. **Juan Carlos Urquidi Herrera, International Commercial Courts: Similarities and Disparities**

In recent years, there has been a proliferation of international commercial courts worldwide. This article examines the commonalities and differences among these courts to ascertain whether they represent a unified approach to resolving transnational commercial disputes or if they are distinct entities. To achieve this goal, various essential aspects of these courts are explored, including their international or domestic character, the level of confidentiality in proceedings, the inclusion of foreign judges, the availability of foreign representation, the presence of an appellate process, and the enforcement mechanisms for court judgments. At present, the diverse nature of international commercial courts prevents them from functioning as a unified means of resolving transnational commercial disputes. However, it will be intriguing to observe the development of each court and determine which ones prove most successful. Understanding the factors influencing parties' choices of specific courts will be crucial. Courts must remain attentive to these factors to continually enhance their effectiveness as a viable method for resolving transnational commercial disputes.

16. **Mansi Sood, From The Ghost of Khimji to The Flaws of Kandla: Deciphering Section 13 of The Commercial Courts Act, National Law School of India Review**

The article discusses how The Code of Civil Procedure, 1908 outlines numerous scenarios for filing first appeals against judgments or orders of regular civil courts. However, Section 13 of the Commercial Courts Act, 2015 diverges from this approach to enhance efficiency, restricting

first appeals in commercial matters, including arbitration cases, to a narrow scope. Despite the commendable legislative intention, the imprecise language has led to conflicting interpretations in various court rulings. This essay contends that the appealability of interlocutory orders and appeals under Section 50 of the Arbitration and Conciliation Act, 1996 remains ambiguous under Section 13. Advocating for their exclusion, it proposes a restrictive interpretation to expedite the resolution of commercial disputes. The analysis of judicial decisions in this essay demonstrates the uncertainty surrounding the interpretation of Section 13, largely due to its ambiguous wording. If the aim was to curb endless appeals from interlocutory orders, clarity could have been achieved by using "decree" instead of "judgment," as proposed in the Law Commission of India's bill. Similarly, if appeals under Section 50 were intended to be excluded, the proviso to Section 13(1A) should have been explicitly formulated in negative terms. Conversely, if Section 50 appeals were not meant to be excluded, their explicit inclusion in the proviso would have resolved the issue. However, by not aligning with either of these approaches, the legislature has not only created uncertainty regarding Section 50 but has also provided courts with the discretion to expand the scope of Section 13 beyond its intended application to Section 50. However, the author has failed to highlight that the best way forward to resolve the confusion and give effect to the real intent behind CCA, is through a legislative mandate.

17. Sobandi, The Issue of the Commercial Court Limited Competency in Settling the Commercial Disputes, Srivijawa Law Review

The author highlights that the demand for justice through specialized courts, such as the Commercial Court, is often perceived as urgent. However, the establishment of ad-hoc courts like the Commercial Court has impacted the jurisdiction of existing permanent courts. This paper aims to address the various functions of the Commercial Court and explore potential solutions to its broad jurisdiction. Specifically, it seeks to investigate the feasibility of implementing specific regulations to limit the jurisdiction and procedural authority of ad-hoc courts like the Commercial Court. Currently, the Commercial Court handles a wide range of cases, including bankruptcy disputes, Intellectual Property Rights (IPR) disputes that could potentially involve criminal matters, Islamic financing issues, and other business-related disputes that might fall within the purview of permanent judicial institutions. Implementing regulations to restrict the jurisdiction of the Commercial Court could help streamline the judicial process and reduce overlap among Indonesian judicial institutions, thereby better

fulfilling the judiciary's needs. Unfortunately, the article provides little empirical evidence to assess its claim that commercial courts indeed have an impact on other permanent courts.

18. **Yip M. The Battle for Jurisdiction through Jurisdictional Requirements: Comparing the Commercial Court of England and Wales, the Singapore International Commercial Court and the Chinese International Commercial Court. In: Brekoulakis S, Dimitropoulos G, eds. International Commercial Courts: The Future of Transnational Adjudication. Studies on International Courts and Tribunals. Cambridge University Press**

The article highlights that the emergence of international commercial courts in the past decade and a half has significantly reshaped dispute resolution dynamics. The notable success of the Commercial Court of England and Wales has served as a model for the design and operation of several international commercial courts. However, while it is often suggested that these courts compete for valuable judicial business, this aspect has not been thoroughly analyzed. Are these courts vying for similar types of cases? Have their frameworks been strategically crafted to further their goals? This chapter delves into the jurisdictional frameworks of three prominent international commercial courts: the Chinese International Commercial Court, the Commercial Court of England and Wales, and the Singapore International Commercial Court. By examining the jurisdictional rules of these courts, the discussion sheds light on their respective strategic objectives and competitive advantages. This article has majorly helped the author in his comparative study among the commercial courts of various jurisdictions and helped in identifying the different ways in which we can improve our framework.

19. **Shahar Avraham & Giller Rabeea Assy, How Can International Commercial Courts Become an Attractive Option for the Resolution of International Commercial Disputes? Journal of Dispute Resolution**

Over the past fifteen years, there has been a notable increase in the establishment of new commercial courts across various countries, aiming to attract international commercial disputes, traditionally dominated by arbitration. However, this article argues that despite these efforts, adjudication is unlikely to become a compelling alternative to arbitration. To realize the full potential of these new international commercial courts and create a sustainable market for adjudication, mechanisms are needed to ensure the enforceability of jurisdiction clauses and court judgments across different jurisdictions. While the 2005 Hague Convention on Choice of Court Agreements offers such a mechanism, it has struggled to gain widespread

international support, despite its adoption of principles similar to those that contributed to the success of the 1958 New York Arbitration Convention. This article delves into the reasons for the Hague Convention's lack of acceptance, comparing the political and legal contexts surrounding its inception with those of the New York Arbitration Convention. By analyzing the recent ratification of the Hague Convention by the UK, the article highlights the influential role of the legal community in the ratification process. Interestingly, the UK's decision to leave the EU in pursuit of national sovereignty played a significant role in its ratification of the Hague Convention, despite contradicting fundamental principles of common law that had previously granted English courts broad discretion in enforcing jurisdiction clauses.

20. **Feehily, R. (2015). Commercial mediation: commercial conflict panacea or an affront to due process and the justice ideal? The Comparative and International Law Journal of Southern Africa**

The article examines the possible adverse effects of commercial mediation, drawing insights from experiences in other countries, to understand how these issues can be avoided asmediation evolves as a viable alternative to judicial adjudication and arbitration in South Africa. It evaluates the limitations of mediation and the necessity of court adjudication, both for cases that warrant it and for establishing the legal framework within which commercial mediation operates. It discusses the impact of mediation on court backlogs, the reduction of trial rates, potential costs to lawyers, clients, and the justice system, as well as the risks posed by power imbalances in commercial mediation. Additionally, the article evaluates the legislative approach in South Africa to defining mediation across various statutes and identifiescriticism stemming from the broad classification of various processes as mediation. Ultimately,the article emphasizes the importance of accurately describing the mediation process, noting that the issues discussed do not undermine the rationale for promoting commercial mediation but rather play a crucial role in defining its appropriate boundaries. Although there are significant differences in the backdrop against which commercial courts were set up in India and South Africa, the article helps the author in understanding what essentially led to the framework being a successful one in the former and lessons for India to be learnt.

21. **Nachiketa Mittal, Business Courts and Private Tribunals: Is India Ready for Global Commerce?**

The article discussed how since the liberalization of 1991, the Indian economy has flourished, undergoing significant transformation over the past three decades. Expanding trade and

commerce have brought foreign investors into partnership with Indian agencies for infrastructure development, prompting a modernization of India's legal framework with the adoption of UNCITRAL Model Laws for arbitration. As India's global trade grows, there is a need for a more sophisticated legal order to protect the interests of foreign investors. The "Make in India" initiative aims to create a legal system that is both investor-friendly and rooted in local dispute resolution customs. Legislative actions such as the Commercial Courts Act and amendments to arbitration laws reflect this objective, positioning India as a key player in international commerce with effective contract enforcement and dispute resolution mechanisms. However, a critical assessment of these laws is essential to gauge their efficacy in promoting public good and social welfare. Nonetheless, the progressive provisions in these statutes signify India's readiness for global commerce, demonstrating that its legal institutions are prepared to support foreign investment and provide a favorable environment for business. The author has critically assessed the commercial courts and tribunals in India to draw his conclusion, however there is no comparative study with respect to business courts in other jurisdictions which could help understand better, how well India is doing as a jurisdiction.

22. **Tao, Jingzhou, and Mariana Zhong, Resolving Disputes in China: New and Sometimes Unpredictable Developments. International Organizations and the Promotion of Effective Dispute Resolution: AIIB Yearbook of International Law 2019**

The author has discussed China’s ground breaking innovation of the judiciary system – the Chinese International Commercial Court. The China International Commercial Court (CICC) operates similarly to the circuit courts of the Supreme Court, situated outside Beijing but fully integrated into the Supreme Court system. CICC rulings are conclusive and not subject to appeal, though they may be reconsidered by another tribunal within the same institution. Only Supreme Court justices with expertise in international treaties, customs, and practices of international trade and investment can serve on CICC benches, which consist of three or more judges proficient in Mandarin Chinese and English. While proceedings are conducted solely in Mandarin Chinese, parties can present English-language documentary evidence without translation if mutually agreed, streamlining proceedings and reducing costs. CICC differs from conventional Chinese judicial practices by allowing dissenting opinions to be included in decisions, aiming to enhance judicial transparency and international confidence in the Chinese legal system. Remote evidence gathering, testimony, and hearings are facilitated through telecommunications and other technologies. Although CICC judges must be Chinese nationals,

an International Commercial Expert Committee, comprising both Chinese and foreign legal experts, aids in interpreting foreign laws, mediating disputes, and advising on judicial interpretations. This article helps the author in understanding how India can learn from China in implementing similar reforms.

23. Renck, Richard L., and Carmen H. Thomas. Recent Developments in Business Commercial Courts in the United States and Abroad. Business Law Today, 2014

The article describes the business courts and their various models in the USA. Commercial courts were the first to develop in the various states of USA. The author in this article argues that creating a specialized business court prioritizes certain types of cases over others, with the aim of enhancing the quality and efficiency of the judicial system. This objective was successfully achieved with the creation of criminal, probate, family law, and juvenile divisions within the courts. Business courts require no additional expenses and utilize existing physical and personnel resources, except for a dedicated staff with expertise in specialization. Moreover, these courts do not detrimentally impact the functioning of the rest of the civil court system. Taking such a stance would lead to dismissing beneficial changes in the judiciary that are not universally adopted, ranging from specialized family courts to extended operating hours for traffic courts to accelerated calendars for specific circumstances. It is unreasonable to oppose the establishment of business courts for this reason and insist on a uniform standard of performance across the judicial system. If other areas of litigation could also benefit from judicial specialization, the solution is straightforward: recognize the need, establish specialized courts accordingly, and thereby enhance overall judicial effectiveness.

24. Lance Ang, International Commercial Courts and The Interplay Between Realism And Institutionalism – A Look At China And Singapore

The article discusses how international commercial courts embody the state's role in managing both public and private interests on an international and domestic scale, reflecting a balance between realism and institutionalism in cross-border economic interactions. Historically rooted in realist principles within the Westphalian system, where states vie for market dominance, disputes between private entities have typically been settled by state courts or commercial arbitration. However, with increasing economic globalization and regionalism, competition among legal systems has intensified, necessitating global governance standards. This has led to the emergence of international commercial courts, established by individual states to addressthe absence of a genuinely international court. These courts aim to streamline dispute resolution

and reduce transaction costs in international commerce, aligning with institutionalist goals of facilitating cross-border cooperation and enhancing trade and investment. Yet, the provision of such infrastructure raises questions about the balance of private and public interests, as it primarily benefits private traders but requires state investment in a public good. The article does not elaborate on the differences between the international commercial courts in China and Singapore, which would help us understand the development of these specialist courts better.

25. **Priya Misra, Commercial Courts: Fast Track or Off the Track, Economic and Political Weekly**

The author points out that the implementation of CCA, 2015 will remain a challenge unless adequate judicial infrastructure is provided by the state, it would be very difficult to adhere to the strict timelines in the statute. The notion of commercial courts was conceived with the aim of enhancing the reputation of the Indian judiciary. The intention was for these courts to swiftly resolve commercial disputes. However, the current situation reveals that these courts are being established without increasing the existing judge capacity, contrary to the original objective. Unless these courts are promptly established in all districts by all states, or in clusters where feasible, and unless an adequate number of judges are appointed, along with the provision of suitable infrastructure and increased salaries to reflect their workload, there is a risk that the intended objectives of the initiative may not be realized. Furthermore, it is crucial to attract and select more talented, trained, and competent individuals to lead these courts based on merit. Additionally, there needs to be a shift in mindset among lawyers and judges. Without a specific timeline to adhere to, state governments lack the necessary impetus to ensure the establishment of these institutions. Consequently, only a few states have thus far demonstrated the motivation to take the required actions. While the article points the loopholes in the current regime, it does not suggest any concrete solutions to address the same.

1.5.2. Books:

1. **Dr. Arun Mohan, Access to Justice: Preventing Court Delays, Judicial Reforms – Recent Global Trends, India International Law Foundation**

The author in this book lays down the importance of an accessible civil justice system and how it is pertinent that the same should be able to uphold citizen's right and effectively resolve disputes. He further goes on to state that the economic growth of a country depends on the quality of justice delivery systems and it is a fundamental component of a democratic society.

The author has reviewed the recommendations of various committees over the last 85 years which have suggested reasons behind this increase in the backlog of pending cases every year. The author suggests that instead of only looking at the judicial infrastructure that leads to inevitable obstacles in speedy adjudication, we also need to look at societal causes such as litigation explosion, population explosion and most importantly radical changes in the pattern of litigation. Most importantly he points out that litigants, after waiting for a few years, despite being in the right, often give up even before coming to courts. The author throughout the book has studied the empirical data in context on pendency of civil cases across all courts and suggested reforms in the court structure and system based on the analysis of such data. This study helps the researcher understand the judicial process reforms that are required especially in context of commercial disputes and the suggestions and recommendations put forward by the author helps the researcher in pointing out lessons to be learnt by the commercial court of our country.

2. **Sharath Chandran, Commentary on The Commercial Courts Act, 2015 (2nd Edition)**

The book is a critical analysis of the provisions of CCA, 2015 which is aimed at ushering reforms for the disposal of commercial cases in the civil justice system. Beginning with a historical survey of the origins of the commercial court in England and India, the Act and the relevant decisions of the Supreme Court and High Court have been critically analyzed. The book also undertakes a comparative study of in-pari materia provisions and cases under the United Kingdom Civil Procedure Rules, 1998. The explosion is intended to enable the reader to acquire a sound grasp of the working of the Act. The book is intended for use by the members of the Bench and the Bar as well as academics and students, who wish to gain a theoretical and practical understanding of the provisions of the Act. One possible drawback of the commentary is its concentration primarily on legal facets, overlooking broader socio-economic ramifications or criticisms of the Act. Although the author meticulously scrutinizes the Act's clauses, adopting an interdisciplinary approach to assess its effects on businesses, accessibilityto justice, and the effectiveness of dispute resolution mechanisms could enrich the commentary's depth and scope.

3. **S.S. Wagh, Commentary on The Commercial Courts Act, 2015**

The author in this book describes the CCA, 2015 as an extremely forward-looking step to curtail delay in justice. The author makes the proposition that if the same amendments to the

civil procedure code are done for all kinds of civil litigations, similar to the procedure adopted for commercial disputes, then it will instill confidence of the citizens in the country's courts again. One of the notable strengths of this commentary lies in its thorough examination of case law and court interpretations pertaining to the Commercial Courts Act. By citing pertinent precedents and judicial rulings, the author enriches his analysis with depth and context, aiding readers in comprehending how the Act has been implemented and understood in real-world scenarios. Furthermore, the book offers practical insights beneficial for legal practitioners, judges, and policymakers navigating the complexities of commercial litigation in India. However, considering the dynamic nature of commercial law and legal precedents, it would be advantageous for the author to periodically update his commentary to incorporate new developments, amendments to the Act, and emerging trends in commercial litigation. This would ensure the ongoing relevance and authority of the commentary for practitioners and scholars within the field.

4. **M.V. Durgaprasad, Commentary on The Commercial Courts Act, 2015 (6th Edition)**

The book describes the CCA, 2015 as an excellent effort to not only establish commercial courts as a special court but a specialist court to adjudicate commercial disputes. The author points out that like legislations pertaining to Debt Recovery Tribunal, Railway Claims Tribunal etc., it gives cynical signals that the ordinary courts are incompetent to deal with certain cases and only certain privileged litigants are entitled for a speedy and qualitative disposal. The ordinary civil courts will lose, whatever important cases still left out with them and the common man who, has easy access to these courts will have to travel longer distances and will have greater disadvantage in prosecuting or defending the cases. The judges and the lawyers working in ordinary civil courts will be deprived of experience and exposure and this will ultimately affect the availability of the experienced judges to man these new generation courts. The author states that it is better to rehaul and improve the quality of justice machinery instead of creating circles within circles. The author has expressed concern over the experience of these courts being similar to that of family courts. While the author's concerns are justified, he has missed noting that to create a specialised forum, it is important to have limited and classified set of litigants in a forum so that the latter can function efficiently.

1.5.3. Reports

1. **FINAL REPORT under the Project titled 'Strengthening Legal Provisions for the Enforcement of Contracts: Reassessing the quality and the efficiency of the Dispute Resolution of Commercial Matters in India' published by Centre for Environmental Law Education, Research & Advocacy (CEERA), National Law School of India University, Bengaluru in collaboration with Department of Justice, Ministry of Law and Justice, Government of India (2015)**

The report recommended that enhancing contract enforcement in India and improving the ease of doing business necessitate reforms in both substantive and procedural law. Substantive law reforms would indirectly enhance the ease of doing business by establishing a robust legal framework, instilling confidence in investors and other stakeholders that their rights are safeguarded. Procedural law reforms, on the other hand, would directly impact ease of doing business rankings since the contract enforcement parameter evaluates only the procedural aspects of the law. Consequently, all the reforms proposed by this report, particularly addressing challenges in implementing the Commercial Courts Act, 2015, were aimed at elevating India's rankings on these parameters. However, the recommendations and findings failed to recognize the potential challenges that the entire justice system might encounter when a significant central legislation primarily focuses on achieving high scores on an external index.

1.6. Scope Of Research and Limitations

The primary aim of this research is to examine the legislative and regulatory framework of commercial dispute resolution in India. Commercial disputes in India are resolved through ordinary litigation in civil and Commercial Courts, arbitration through arbitral tribunals as well as through various other forums like National Company Law Tribunal, Consumer forums etc. However, for the purposes of this study, the researcher will solely be focussing on Commercial Courts and Commercial Divisions in High Courts set up under the Commercial Courts Act, 2015 and their contribution to improving the overall commercial litigation scenario in the country. The state of 'commercial disputes' as handled by forums other than Commercial Courts is outside the purview of the author's study.

The research, more specifically, focusses on evaluating the performance of these Commercial Courts and Commercial Divisions in High Courts. Department of Justice has dedicated an entire page on their website that highlights various legislative and policy reforms introduced by the Indian government to do well in the 'enforcement of contracts' regime. Establishing

Commercial Courts was one those important reforms. To assess whether these Commercial Courts have contributed to a more efficient enforcement of contracts in the country, and to further streamline the scope of study, the research would be looking at data collected from the dedicated Commercial Courts established in Delhi, Mumbai, Calcutta and Chennai as well as Commercial Divisions established in their High Courts. For the purposes of collecting data, the Commercial Courts and Commercial Divisions of High Courts in other states will be outside the scope of study.

The starting point of the thesis would examine the series of reforms brought by the government to ameliorate the commercial litigation scenario in India and discuss the impact they made towards establishing an easier contract enforcement regime in the country. The thesis shall also discuss various challenges faced by the government in their attempt to improve the justice delivery system, especially its effectiveness in resolution of commercial disputes, in the quest of bringing the reforms.

The researcher shall further delve into discussing ambiguities surrounding the definition of 'commercial disputes' and 'specified value' by referring various case laws and Law Commission Reports. Additionally, the researcher shall examine the intention of the government behind the amendment to the Commercial Courts Act, 2015 in 2018 as well amendments brought to the Arbitration and Conciliation Act, 1996 in 2019 and 2020 and attempt to understand if the same were at all effective in bringing about a real change in the litigation scenario in the country.

Finally, the researcher shall further look at the 'ease of business' reforms in the countries across the world to understand why these economies are a more desirable destination of contract enforcement and consequently, of investment, compared to India. This comparison shall help the researcher in suggesting measures and reforms that can help in overcoming difficulties faced in contract enforcement and shift goal posts of commercial litigation in the country.

The primary data for this study is limited to an examination of the aforementioned Commercial Courts. For any reference and comparison with a foreign jurisdiction, the researcher has relied on secondary sources. The study has considered reforms historically recommended by the Law Commission. However, Law Commission's suggestions were not based on empirical analysis, and this study may support or refute the recommendation made by it.

The statistical data collected for the commercial courts of four cities are between the period of January 2023 and November 2023. The monthly reports of these courts have been referred to,

for drawing the findings of the study. The mandate for uploading this data is came only in the year 2020, with the Commercial Court (Statistical Data) Rules. 2020. Most of the data from 2020 till 2023 was missing on the website, therefore the author has relied on the mentioned months' data for the analysis. Additionally, the 13 commercial courts of Delhi, Bombay, Calcutta, Madras have been chosen for the purpose of empirical study, as these four cities are the major centres of commerce in the country, which generates the maximum number of commercial disputes. The stakeholders have been chosen keeping in mind, those who attend or access these courts and are fit to evaluate the performance thereof. The data regarding enforcement of arbitral awards has also been accessed from these statistical reports uploaded during the prescribed time period.

1.7. Research Objectives: Aims and Significance of The Study

1. The study aims to evaluate the performance of the Commercial Courts and Commercial Divisions of High Courts in enforcing contracts in India.
2. Based on the evaluation, the study also aims to develop theoretical statements explaining the status of contract enforcement and the contribution of Commercial Courts towards the same, based on empirical data.
3. The study further, aims to identify and analyze the challenges faced by commercial courts, while handling arbitration related litigation.
4. The study contributes by suggesting improvements and efficient reforms to the Commercial Courts Act, 2015 to create a better litigation scenario in India. This will assist future research in the field, either in method or content.
5. The study will also include a comparative analysis of various models of Commercial Courts and their operation in different jurisdictions and suggest how India can learn from the same.

1.8. Research Questions

For achieving the above objectives, the study is conducted through the jurisprudential and legislative developments in the context of Commercial Courts from 2015 by drawing findings upon the following questions:

1. What are the key challenges faced in 'enforcement of contracts' in India that comes in the way of its 'ease of doing business' goals?
2. How far has the Commercial Courts Act 2015 been successful in solving inefficacies in

enforcement of contracts and resolution of commercial disputes?

3. How effective are the commercial courts in India in dealing with the arbitration related litigation?
4. As compared to other jurisdictions, why is India lagging behind in rankings with respect to 'enforcement of contracts' in the World Bank rankings and lessons which can be emulated?

SECTION C

1.9. Research Methodology

The research utilizes a variety of approaches to meet its goal. It will primarily involve analytical methods, beginning with a descriptive qualitative analysis as an initial step. However, to substantiate the qualitative findings with empirical evidence, a qualitative study was also conducted. The methodology for this study combines doctrinal and empirical elements, drawing on critical analysis of both primary and secondary sources.

1.9.1. Primary Data Collection:

1.9.1.1. Universe – For the purpose of the study, the researcher shall select India as the universe.

1.9.1.2. Sample – For this study, the researcher has chosen Delhi, Bombay, Kolkata, and Chennai as the focal cities. The selection is based on the World Bank's 'enforcement of contracts' indicator, which evaluates the efficiency of city civil courts in Delhi and Bombay regarding commercial dispute resolution. Thus, these cities are chosen to examine their performance in handling such disputes. Additionally, Calcutta and Chennai are vital business centers in north and east India, with their Commercial Courts also dealing with a significant volume of commercial disputes. The research will involve 50 stakeholders, including civil lawyers, litigants, and regulatory agencies experienced in commercial litigation within the Commercial Courts/Divisions of Delhi, Maharashtra, West Bengal, and Karnataka. The sampling methods employed will be purposive and snowball sampling.

1.9.1.3. Data Collection Method – The researcher shall interview the selected sample on the basis of a questionnaire designed to capture their experience and overall challenges they faced while handing commercial disputes under the Commercial Courts Act, 2015.

1.9.1.4. Data Analysis – The qualitative data gathered from questionnaire responses, sorted

according to each stakeholder's responses, will undergo analysis by the researcher. This examination aims to grasp the challenges encountered by various stakeholder groups affected by the legislation under scrutiny. Through this analysis, the researcher aims to evaluate the efficacy of commercial courts' operations and regulatory reforms implemented in the country, with the objective of enhancing the commercial litigation landscape.

1.9.2. Secondary Data Collection:

In the doctrinal section of the thesis, the researcher will refer to secondary sources such as pertinent national laws and their interpretations in case law and administrative rulings, reports from the Law Commission, statistics regarding case backlogs in the Commercial Divisions and Commercial Appellate Divisions of the High Courts in Delhi, Bombay, and Calcutta, as well as other data from commercial court websites regarding pending commercial disputes. Additionally, secondary materials will encompass books, scholarly articles, and commentaries from diverse journals, with a particular focus on recent legal advancements whenever feasible.

1.10. Chapters

As highlighted above, the issue of 'contract enforcement' through Commercial Courts does not have merely one perspective. Instead, it is collection of issues that collectively assess the performance and operation of these courts. Keeping in view the above objectives, the study will broadly be divided into five parts dealing with the specific theme under the research and answering each research question in a separate chapter with backward linkages.

1. Chapter I - Introduction

This Chapter will set a context of commercial dispute resolution in India. The researcher has reviewed major literature in the field of commercial dispute resolution in articles, books and various reports of the Law Commission. On reviewing the existing literature, the author has identified gaps in literature and highlighted the problem that needs to be examined. In that endeavour, the author has defined the scope of his work and the limitations of his study. Finally, the author specifically states the methodology she will use to conduct her study and the tools using which the research is designed.

2. Chapter II – Historical Evolution of The Commercial Courts Act, 2015

This Chapter will discuss the evolution of 'commercial' disputes in the Indian economy, highlighting why it became necessary to recognise this category of disputes as a sub-category

of civil disputes. It will also discuss major legislative and academic debates surrounding the major tenets of the term 'commercial'. The author further traces the legislative history of 'commercial disputes' set out in the 188th and 253rd Reports of the Law Commission of India. Once the researcher explores this legislative history, she would attempt to uncover howthe primary policy reform behind the Commercial Courts Act, 2015 was chosen and shaped.

3. Chapter IIIA – Commercial Courts Act, 2015: An Assessment

This Chapter will be devoted to an impact evaluation of the Commercial Courts and Commercial Divisions of High Courts, mentioned within the scope of the research study. The author will first start by enquiring whether reforms suggested by Law Commission and various committees established before the Commercial Courts Act, 2015 were incorporated and implemented in spirit while enacting the said Act. The author will further examine the various loopholes existing in the current framework, discuss major cases pronounced by the Commercial Courts, 7 years post its enactment and conclude whether the Commercial Courts have caused delays in the commercial disputes disposals or helped solve them better and quicker.

4. Chapter IIIB - The Effectiveness of Commercial Courts: An Empirical Analysis

An empirical analysis of the effectiveness of commercial courts is a multifaceted endeavour that involves a range of quantitative and qualitative assessments. The objective of this Chapter is to provide an evidence-based understanding of how these courts function and their impact on commercial dispute resolution, economic activity, and overall legal system efficiency. Such analyses can inform policy decisions and improvements to ensure that commercial courts are more efficient, accessible, and responsive to the needs of the business community and the public.

5. Chapter IV – Comparative Overview Of Commercial Dispute Resolution Framework: An International Perspective

In this Chapter, the author looks at other countries that have commercial courts established as an integral part of their justice delivery systems. The author will primarily look the France and United Kingdom where commercial courts were established. The models and operation of commercial courts established in various countries will help understand how our structure can be improved and we can better the rate of dispute resolution in our country through these courts. This Chapter shall also discuss other regulatory efforts taken by countries across the world to combat delays in commercial dispute resolution and create a welcoming litigation culture in

their justice system.

6. Chapter V – Conclusion and Suggestions

This chapter will be the final and summation of the study. The study will attempt to respond to the research problem and suggest few measures for improving enforcement. Mode of Citation

Uniform method of citation is followed throughout this thesis per The American Psychological Association (APA).

A reader must read this study and the citations, as most relevant orders connected with the findings are introduced in the footnotes with the appropriate connector and explanation.

CHAPTER II – HISTORICAL EVOLUTION OF COMMERCIAL DISPUTE RESOLUTION IN INDIA

CHAPTER II – HISTORICAL EVOLUTION OF COMMERCIAL DISPUTE RESOLUTION IN INDIA

2.1. Introduction and objective of the Chapter

The Commercial Courts Act, 2015 is the first of many reforms to improve the civil justice system in the country, more particularly that in the commercial space. Creating a place for high-tech, fast-track specialised courts within the civil court structure in the country has been a vision of the Law Commission since 2003. Before this idea was formulised, most commercial disputes in India went either to ordinary courts or specialised tribunals under a statute; some were resolved through alternative dispute resolution. Since the enactment of Finance Act, 2017 and now in 2021, with the enactment of the Tribunals Act, 2021, the Parliament has abolished and merged many tribunals based on similar functionality or inefficiency in delivering justice. Tribunals were created in the 1980s to take care of the problem of arrears in courts, especially high value commercial disputes, that often discouraged foreign litigants to choose India as a forum for getting their disputes resolved. A lot of studies and assessments done by the Law Commission, particularly in the 2000s concluded that these tribunals themselves were dealing with pendency and lack of infrastructure etc. The Parliament gradually lost confidence in them, which ultimately led to the enactment of the Tribunals Act, 2021, where seven different tribunals were abolished. While from 2003 onwards, attempts were made to create exclusive 'commercial courts' which can resolve 'commercial disputes' of a 'specified value'. A lot of deliberations and policy consideration went into the enactment of the Commercial Courts Act in 2015, over a period of almost ten years.

It has been seven years since then; and although the statute is a statutory toddler, it has majorly kindred the interest of the Bar and Bench. In this study, the author has limited its scope to studying how commercial disputes were resolved through civil courts in the country, including those awards passed by an arbitral tribunal that required to be enforced by courts. The objective of this Chapter was to trace the evolution of commercial dispute resolution till the enactment of the Commercial Courts Act, 2015 and its 2018 amendment. In pursuance of that, the author has investigated how commercial disputes were resolved in the United Kingdom where the commercial courts were established in the 1990s. It is of particular importance to us since the 2015 Act has largely drawn from the commercial law jurisprudence that developed in United Kingdom over the past two decades. While studying the evolution of these courts, the author has identified major reasons why commercial dispute resolution and enforcing contracts in

India were major challenges that the country's judicial machinery was facing and how the same impacted India's economic development. The author has also highlighted how it is important for every economy in the world to have a strong machinery for commercial justice, and that being a major factor for the establishment of the first commercial courts in the country.

2.2. Evolution of Commercial Law

2.2.1. Overview

Jeremy Bentham asserted that property and state-made law are intrinsically linked—they come into existence and perish together (Alfange Jr., 1969). The absence of law in society leads to the cessation of all property and related interests (Hart, 1973). In historical contexts, there likely existed some form of a market system where property rights and rules governing exchange (contracts) were safeguarded and enforced (Basedow, 2008). Commerce, being a dynamic process of interaction and reciprocity, both relies on and contributes to the development of an evolving system of commercial law (Laquan, E et al.). Notably, economists such as Adam Smith and Carl Menger contend that the merchant community played a pivotal role in the genesis of commercial law, suggesting that merchants were adept at creating and enforcing their own legal norms (Druzin, 2012). According to these economists, market systems evolved through a trial-and-error mechanism, where more effective institutional arrangements prevailed over less effective ones (Uniform commercial law in the 21st century: proceedings of the Congress of the United Nations Commission on International Trade Law 1992). Thus, customs, practices, and traditions within the merchant community have significantly contributed to the development of a legal order (Kadens, 2012). Analogous to the price system in a market economy, economists believed that commercial law evolved organically without significant interference from nation states, serving as a deliberate design to enhance interaction and streamline exchanges (Hurrelmann et al., 2007; Fazio, 2007).

Even though economists have given credit to the mercantile community and its practices for the evolution and development of commercial law, we cannot completely forego the contributions of a legal positivist like Austin; (Caldwell, 2012) how he defined law as the command of the sovereign. (Stumpff Morrison, 2016). Much later when Lon Fuller tries to explain the scope of law, he states that *'Law is the enterprise of subjecting human conduct to the governance of rules*. (Tucker, 1965). Thus, it is not only the existence of the 'social mores' that define rules of conduct, but it is the enterprise of law that generates the mechanisms of

recognition and enforcement, legal change, and dispute resolution. (Duguit, 1917) Therefore, when it comes to commercial law specially, it is not only the formal mechanisms of government and nation states that act as prerequisites of law, but also the merchant community's "enterprise" of accomplishing the subjection of commercial conduct to control naturally generated mechanisms for recognition, adjudication, and change. (Llewellyn, 1925).

2.2.2. Sources

In the fifth or sixth century BC, Athens was known for its trading activities, importing grain from countries like Egypt, Russia, Sicily, Spain etc. Even though it had visible trading activities, 95% per cent of its household necessities were satisfied by the labour of its members and only about 5% were met with purchases from the market. (Trackman, 1981). Its upper class enjoyed the luxuries of imported food, textiles from all over Mediterranean, but the prevailing trading activities were primitive, slow and limited to supply of household necessities. (Issacs, 1981). Therefore, the rules governing those trading activities were also primitive, general and scarce. These were known as the 'emporial laws' in Athens that mainly dealt with import-export, international supply of goods etc. (Kerr, 1928-1929). Litigation in emporial laws mainly involved foreigners before special courts called Nautodikai and Thesmothetai. It was the dominance of foreign litigants in these courts that led to the development of commercial law or rules. (Duffy et. al.)

Unlike in Athens, in the old Roman empire, trade and commerce were not only protected by commercial codes but also by commercial treaties signed between the empire and rest of Europe. (Penades, 2015). Since the Roman merchants established commercial relations with foreigners, their interests ought to be protected outside of Rome. Therefore, it was these commercial treaties that helped resolve conflicts of commercial interests between themselves and the foreigners. (Lefroy, 1906-1907).

Apart from the above, there were several regionally accepted commercial codes that governed international trade and maritime activities in each European state. (Menon, 2013). Although because of establishing international commercial relations between different European countries, there was a rise in demand for uniform commercial codes; however, the commercial law back then was largely based on local law and customs. Therefore, it varied from city to city and country to country across Europe. (Moens & Trone, 2010).

Unlike other European nations, England was left commercial and industrially behind till the thirteenth century. The European sea-borne trades of the Middle Ages had hardly any influence on English markets. It was only between 1475 and 1550 when the first wave of expansion of English overseas trade took place. (Ashley, 1899). The long familiar markets of central Europe grew prosperous with time abundant with huge volume of sales of well-known commodities and by the nineteenth century, the English merchants dominated not only European markets but also went ahead to the Persian Gulf, East Africa, China, Japan, South Asia and Australia. (Adler, 1916). Thus, the commercial law that developed in England during this time comprised not only of local commercial codes, but also treaties and commercial contracts entered into with foreign merchants contributed substantially to the growth of commercial law.

2.3. Commercial Justice as the backbone of economy

In the last fifty years, the world has seen an exponential increase in the globalisation of commerce. (Salikhova et al., 2021). Businesses are no longer limited to national borders and markets, they have expanded and transformed into multinational corporations withinternational networks of suppliers, customers, employees, and shareholders. (Abdelal & Tedlow, 2003). Strategic alliances, ventures, partnering relationships between business acrossjurisdictions, both private as well as state owned entities, have led to this exploding pace of international business. (Lynch, 1997). International markets and associations like European Union, North American Free Trade Agreement (NAFTA) etc. to name a few have often joinedhands along with governments in respective countries to create efficient conditions for international trade; so that capital, technology, management, materials, and human resources can easily flow across borders in the global market. (Tomasic & Xiong, 2016). But with such rapid increase in transnational trade, business arrangements also grew more complex. Naturally, the businesses were exposed to uncertainties inherent in long term, cross-cultural, transnational matters. The biggest risk amongst those was submission to the jurisdiction of foreign courts, and reliance on an alien legal system. (Mclean, 2008).

When the historian Charles A Beard was asked if he could summarise the lessons one can learn from history, he said that the history of mankind has shown us that different things can assume power at different points in time. (da Silva, 1964). Initially it was the monarchies that were led by the power of the sword, slowly with the rise in democratic systems, the power of the sword was replaced by the power of the ballot. (Kennedy, 1963). Today, we have come to an age,

where the power of currency has displaced everything else. (Goldring, 1998). The reputation of a country and its system depends on the economic power it possesses as much as on the military power. (Ramasubramanian, 2015). This is fortified by the fact that at the behest of several nations, organisations like World Trade Organisation (WTO), International Monetary Fund (IMF) were established in the 1990s to take care of commercial interests of nations. (Beckley, 2018).

When a court of law adjudicates a dispute, it offers an alternative based on carefully assessed facts and conduct of the parties involved. Courts are the sole medium to resolve disputes justly. It is this justice that forms the bias of a social order. (Isidro, 2019). Thus, the legal and judicial system of any country must necessarily provide a method for determining and reviewing the actions of private agents and state. (Endicott, 2021). Its primary responsibility is to ensure social peace. The evolution of legal system has been a reflection of a society's development. (Hughes, 1960). When societies used to be close-knit colonies, informal means of state intervention was enough to resolve disputes. (Payne, 1976). But with the expansion of commercial and increasing complexities of business transactions, more formal mediums of intervention was required. This pattern was exemplified by the rapid growth of commercial litigation in modern society. (Coale, 2015). This not only became prevalent in developed economies, but even in developing and transition economy like ours, policy makers realised that it was extremely essential to create an institutional environment conducive to robust private sector activity. (Heinsz, 2000) The most important role in this regard is played by the judicial system in a country. (Etsy, 1995).

The prosperity of a nation is often measured by international indices like Gross Domestic Product, Human Development Index, Ease of Doing Business Index, Rule of Law index etc. Most of the time, these indicators independently aim to assess a nation's economic strength, its ability to produce, to trade, to consume, and to market. (Dillon, 2002). In any long-term commercial relation, conflict is a natural and unavoidable component. With the increase in trade and commerce, there were obvious increases in the number of commercial contracts of various kinds; these contracts were not immune to non-compliance of contractual terms in one form or another. (Kee et al., 2006). Therefore, economic prosperity of countries brought with it a vast array of disputes, mostly 'commercial' in nature and along with that, the need to come up with a resolution framework for disposing these disputes. (Almond, 1979). Thus, we have seen countries, from developing nations to developed nations invest largely in framing an efficient, cost effective, procedurally hassle free and speedy judicial system that could support

the economic boom. A robust judicial system not only proves itself to be critical for the State in winning confidence of foreign entities but also provides several domestic advantages to a home-based entrepreneur who is probably caught in litigation hassle for years. (Ferguson, 1980).

While history has shown us that commercial dispute resolution frameworks have developed in the world to cater to the needs of the business or merchant community; it is nonetheless equally important for even the low earning members of the society. (Ignatieff et al., 1983). For any key policy measure associated with eradicating poverty and reducing income inequalities in a society, access to justice becomes a key component. (MacDowell, 2015). The World Bank has defined it as *"access by the people, particularly the poorest and most disadvantaged, to fair, effective and accountable mechanisms for the protection of rights, control of abuse of power and resolution of conflicts"*. (Maru, 2009). Further, access to justice is guaranteed as a right under human rights treaties, such as Universal Declaration of Human Rights. (Universal Declaration of Human Rights, 1948). More notably, in the Indian constitution, the very Preamble swore to provide economic justice to all. (G.S., 2019). In 1976, the 42nd Amendment to the Indian constitution added Article 39A whereby, it is the fundamental duty of the state to ensure formation of a legal system that promotes justice and free legal aid for every citizen. (The Constitution of India 1950). If one attempts to conceptualise 'access to justice', then we see that it ranges from access to formal justice mechanisms for dispute resolution such as the courts, to substantive conceptions of social justice like access to health care, education and social services. Thus, if we need to understand the impact of protection accorded by any legal system, we should be observing how the machineries of justice in that system treat the poor or the lower income groups. (G. Kumar, 2011).

2.4. History of Commercial Dispute Resolution

2.4.1. The Early Commercial Courts in England

Due to the presence of a large number of foreign merchants in England, Piepowder courts were established which exercised jurisdiction over commercial disputes, the parties to which were mostly merchants that travelled from country to country. (Gross, 1906). These courts were set up in fairs and market towns so it could provide speedy justice to the travellers. (Ewart, 1903). These courts were mostly manned by merchants who acted as judges in the thirteenth and fourteenth centuries. (Baker, 1979). They operated under the belief that any merchant who has

incurred losses in business and has come before the court, should be given immediate relief to recover the same. Thus, speedy justice and case disposal were the most essential features of these courts. (Steckley, 1978). The word 'piepowder' was derived from the French phrase 'pied puldreax' that meant an old peddler. (Chapter IV: Of Public courts of Common Law and Equity). Therefore, it signified that these courts were meant as a resort to a petty chapman in fairs and markets. (Oldham, 1983). Years later, Justice Shaw of Massachusetts Supreme Court observed that *'if a pie-powder court was instantly called to resolve a dispute, the true rule of justice for the public would be, to pay the compensation with one hand, while they apply the axe with the other'*. (***Old Dominion Land Co. v. United States***). In a seminar article titled Law and Common Law before 1700, Sir John Baker observed that the procedure followed in the piepowder courts by the law merchants was not entirely different from the procedure of the King's courts. In fact, he noted that law merchant hardly developed on the corpus of mercantile practice for commercial law, it was more of imbibing expeditious procedure to suit the needs of merchants who did not find the remedies available in the common law to be accurate. Apart from these, the English maritime courts in sea port towns, the Court of Admiralty further contributed to the development of English commercial law. (Goddard et al., 2010).

Gradually after the sixteenth century however, once the law merchant was incorporated in the common law of England, the influence of these courts died down. (Scrutton, 1921). Between 1450 and 1550, the common law in England was strengthened by introducing the action of assumpsit. (Ochi, 2020). It relieved common law from the procedural wrangles of debt and covenant so it could offer the kind of justice that these early piepowder or mercantile courts have been offering. (Lord Chief Justice Speech: The Bailii Lecture, 2016). Although these piepowder courts became vague after sixteen hundreds, a lot of the mercantile cases that coming in front of common law courts involved mercantile customs, which were essentially, questions of fact. (Burset, 2016). Since these cases were mostly proof of facts, they hardly evermade to reports in law books. Therefore, the piepowder courts became popular no doubt, but had little to no contribution when it came to creating precedents. (Bane, 1953). Even the common law judges in those times did not take too kindly to the idea that a group of merchantswould suggest reforming the law of England. (Ollikainen-Read, 2022). A prominent exceptionto that was the observation of Lord Mansfield. (***Vallejo v. Wheeler***, 1774). He said that it is absolutely essential that commercial usage be introduced in the body of English law without sacrificing its elasticity and only then can mercantile disputes be resolved with certainty. (POSER, 2013; Sutherland, 1934).

2.4.2. The long-drawn battle for a commercial list in England

Although a lot of jurists and legal scholars in and around the seventeenth century suggested that the common law courts in England lacked expediency and procedural swiftness, expedition could not become a principal feature of a common law court until the 1890s. Between 1869 and 1874, the Judicature Commission inquired into the operation and practice of existing common law courts in England. (Polden, 2002). The Commission found evidence that it was impossible for the businessmen to get a cheap and speedy settlement of their mercantile disputes at these courts. (Jones, 1958). They even found out that businessmen preferred going to a private arbitrator to have their disputes settled than to invite the opinion of the courts of the land; and the sole reason for that was no other apparent benefit but expedition. (Lord Hamblen, 2020). In 1871, the Select Committee of the House of Commons submitted its Report proposing the establishment of Tribunal of Commerce, comprising of one lawyer and two members from the mercantile community. To consider whether this proposal was at all feasible, a Royal Commission was constituted. However, the proposal was outrightly rejected by the Royal Commission in 1874. Unfortunately, only three commissioners namely Lord Penzance, Sir Sidner Waterlow and Mr. Ayrton out of 27 of them had spoken in favour of the Select Committee proposal. Faced with such odds, the establishment of the Tribunal of Commerce did not see the light of the day. (1873). A series of reforms were brought in the following years. The Judicature Acts of 1873 (1873) and 1875 (1875) merged the Courts of Chancery and common law courts into one Supreme Court of Judicature of England. It was then split into the High Court of Justice and Court of Appeal. (Lobban, 2019). The High Court was vested with the powers of the Queen's Bench and other divisions like Chancery, probate, divorce, court of common pleas, exchequer etc. In 1854, the Common Law Procedure Act was enacted with the objective of introducing procedural tools in the common law court system. (1874). Almost 20 years later, in 1891, the Parliament enacted the Supreme Court of Judicature (London Causes) Act, 1891 for the purpose of enabling commercial causes in London. (1891). This was done also to restore the faith of the commercial community at London. The rules of the Supreme Court were amended in a way that gave opportunity to the plaintiff to apply to the High Court to get his case transferred to the new court. A year later, a Joint Committee gave its report titled 'The Trail of Commercial Actions'. (Bach et. Al., 2004). It stated that to restore the faith of the mercantile community, a separate 'Commercial List' should be established for the entry of commercial actions. (Lieberman, 1989). Finally, on 1st March 1895, Justice Mathew assumed

charge as the first judge of the commercial list in the Queen's Bench. He stated that the new commercial list was not a newly fashioned court but rather a method suggested to a judge to deal with commercial cases more expeditiously. (Patterson, 1999). Following his words, T.E Scruton while delivering an address to the Cambridge University Law Society described the commercial court system as *'Let the plaintiff tell us what he says the dispute is, and the defendant tell us what he says the answer is. Without binding ourselves with any rules, make an order suited to the case so as to dispose it off as quickly as possible and as cheaply'*, ***Lickbarrow v. Mason*** (1788). Later on, Lord Esher in ***Barry v. The Peruvian Corporation Limited*** carefully pointed out that the commercial list was simply a mechanism by which judges out to deal with commercial cases and can hardly be called a newly fashioned court. (1896). Last but most importantly, the biggest challenge faced by the judicial community wasto decide what constituted a commercial cause for it to go into the commercial list. Lord Chancellor, Earl of Halsbury specifically pointed out in ***Sea Insurance Company Limited v. Carr*** that there can be no hard and fast definition of a 'commercial cause'; only the particular circumstances of a case or a collection of facts can tell us whether the cause is 'commercial' innature or not. (1901).

2.5. Commercial Dispute Resolution in India prior to the enactment of the Commercial Courts Act, 2015

2.5.1. The long-drawn battle for a Commercial List in India

The success that the Commercial Court found in England, slowly transferred itself to other parts of the then British Empire. In India, the three Chartered High Courts of Bombay, Calcutta,and Madras enjoyed power akin to that of King's Bench in England. (1829 SCC Online PC 1)Each of these High Courts introduced a 'commercial cause list' under their original side rules,that provided for an expedited resolution procedure for commercial cases. The Delhi High Court Original Side Rules 1967 added a Chapter titled "Appeals from decrees in commercial matters". (1967). The Rules defined 'Commercial Causes' as *"causes arising out of ordinary transactions of merchants, bankers arising out of the ordinary transactions of merchants, bankers and traders, such as those relating to the construction of mercantile documents, export or import of merchandize, affreightment, carriage of goods by land, insurance, banking and mercantile documents, mercantile agency, mercantile usage and infringementsof trademarks and passing off actions. and traders, such as those relating to the construction of mercantile documents, export or import of merchandize, affreightment, carriage of goods by*

land, insurance, banking and mercantile documents, mercantile agency, mercantile usage and infringements of trademarks and passing off action". Similarly, Calcutta High Court, Bombay High Court and Madras High Court added the definition of a 'commercial cause' to their respective Original Side Rules. (1914). These Rules further stated that all cases arising out Companies Act, 1956 as well as cases affecting the responsibility of a Railway Administration as carriers, will be treated as "Commercial causes".

Aside from above, Section 34 of Civil Procedure Code, 1908 (CPC) described a transaction as a commercial transaction, if it was connected with the industry, trade or business of the party incurring the liability. (1908).

Even after incorporating a chapter dedicated to commercial causes in the Original Rules, not much changed when it came to expediting court procedures and case disposals. This is because the rules did not prescribe any shorter timelines and easier enforcement mechanisms, they simply gave the judges, discretion to dispose of matters within the existing drill of the same provisions for ordinary suits. This meant that 'commercial suits' suffered the same fate as ordinary suits on the general list, thus defeating the entire purpose of engrafting these provisions.

2.5.1.1. Continuing concerns over judicial delays in civil justice system

In 1924, the Madras Civil Justice Committee Report made an observation about the status of civil litigation in the country. It noted that when it comes to submitting documents timely in court, both the litigants and the court itself have time and again shown a lackadaisical attitude. (Ramachandran, 1979). The litigants mostly do not give much attention to the case after filing the plaint and written statement till the time comes for trial. Unfortunately, even after issues are framed, the court takes out an additional list of material documents. This delays the entire process of justice and clogs up the judicial system unnecessarily. (1925).

A few years later in 1958, the Law Commission observed in its 14th Report that the delays caused in procuring civil justice in the country are not due to faulty and inefficient laws and prescribed procedures but due to the incapacitated application of such laws. It further noted that if judges diligently follow the procedures laid down by the Civil Procedure Code, then it would expediate all case disposals and not delay it, as it was designed to. (1973). The Commission's observations were in a way aligned with what Justice Scrutton said about the commercial list in England back in 1921. He specifically said that the success of an effective

commercial list or any form of commercial dispute resolution framework largely depended on the judges administering it. (Meeks, 1975).

By 1973, the Commission however was convinced that efficient judges alone cannot bring about a reform in the justice system. (Sastry et. al., 2013). They noted that an efficient, speedy, fair and progressive procedure is required to gain public respect and confidence in the court system. At the same time, the judges presiding over these courts would have to consciously take responsibility to remove the widely spread delay, costs and unpredictability from the administration of justice. (Das, 2011). It is only then, when the problem of accumulating arrears in the courts that had taken alarming proportions would be solved. The Commission reminded the judiciary that it was their responsibility to ensure that the litigation environment in the country needed to constantly be interrupted by the wise and judicious interventions of judges from time to time. (Zuckerman, 1995). If the learned judges are enthusiastically involved in improving the civil justice system, India as a country can live up to the hopes and aspiration of changing times and of ordinary litigants. (Habscheid, 1984).

The subsequent reforms that followed did not however provide any concrete solutions. Based on the above recommendations of the Law Commission, the Code of Civil Procedure (Amendment Act), 1976 was enacted. (1976). Additionally, the problem of arrears was also studied by the committee headed by Justice V.S. Malimath of the Kerala High Court. Around 177 odd recommendations were suggested and circulated to various state ministries. (Committee on reforms of Criminal Justice System - Ministry of Home Affairs 1989). Following those recommendations, an honest attempt was made to introduce procedural reforms through the enactments of The Code of Civil Procedure (Amendment) Acts, 1999 (1999) and 2002. (2002). Surprisingly the judiciary did not take too kindly to these changes. (Alva, 2021). The constitutional validity of both these amendments were challenged in ***Salem Bar Association v. Union of India (Salem I)*** (2003). Their essence was however diluted in spirit by the Supreme Court in ***Salem Bar Association v. Union of India (Salem II)*** (2005). The court observed that the timelines prescribed under the amended Code were simplydirectory in nature, as the later did not prescribe any penal consequence in the event of not adhering to the prescribed time. Thus, for most judges as well as practitioners, the amendmentswere mere reforms on paper.

2.5.2. The 1991 Economic Policy and its impact on commercial litigation

The 1991 Policy of liberalisation, globalisation and privatisation was a complete game changer for the Indian economy and by an extension, for the justice system in the country. (Vats, 2019). The Indian legal infrastructure needed reforms even before 1991; however, the cycle of reforms that started post 1991 gave it an additional trigger. (Shankar & Bindal, 2020). The need for these legal reforms were primarily felt in three spheres – firstly, statutory legal reforms that required doing away with the dysfunctional elements of legislation and bringing state intervention to a minimum; secondly, administrative law reforms for eliminating constraints to effective decision making and finally, judicial reforms for faster dispute resolution and easier enforcement of contracts. (Mate, 2016). The need for these originated from the vast array of commercial disputes that landed in front of our courts, due to the increased investment and commercial transactions in the market. (Nair, 2021).

The delay in judicial administration however, was not taken note of by the Parliament only in the nineties. Initially, to overcome the pendency of cases in various courts, tribunals were set up under different statutes. (Bhardwaj et al., 2017). These tribunals were meant to work as administrative agencies that could regulate the professional conduct, discipline among the members by exercising investigatory and adjudicatory powers. (Vibhute, 1987). A series of suggestions and recommendations, by the Law Commission as well as the Supreme Court judges have led to the tribunalization in India in the last eighty years. In 1969, the High Court Arrears Committee set up under the chairmanship of Justice J. C. Shah suggested that establishing a tribunal would ameliorate the burden of the judiciary. (1969). Similarly, the Law Commission of India in its 14th Report (1958) titled ‘Reform of Judicial Administration’ (The 14th Report of the Law Commission on the Reform of Judicial Administration 1958) and later, in its 58th Report (1974) titled ‘Structure and Jurisdiction of the Higher Judiciary’ suggested that tribunals should be the first choice of litigants to solve any service dispute and approaching courts should be their last resort. (Structure and jurisdiction of the higher judiciary: 58th Law commission of India Reports 1974). Finally, based on the recommendations of the Swaraj Singh Committee (1976), Constitution (Forty-second Amendment) Act, 1976 added Article 323A and 323B that gave power to the government to establish administrative tribunals in India. Since then, different sector specific tribunals were established between 1980s and 2010.These tribunals not only catered to the growing commercial ventures and activities in differentsectors but also provided services in specialised fields for effective and speedier dispensation of justice. The traditional mode of justice administration in courts was often found to be

unequipped with expertise to deal with complex issues in the changing scenario. (Sankaran, 1999). Tribunals took care of that problem.

What is interesting to note here, although tribunals were created to reduce the working of High Court and Supreme Court judges, the later did not take kindly to their status or place in the justice system in our country in a lot of instances. (Datar, 2017) Tribunals are essentially administrative agencies within the executive branch of the government and comprised of both technical and judicial members who exercised quasi-judicial powers. (2017). While some stated that they should be given status of High Courts (1997), few other decisions often questioned their independence and their power to exercise judicial functions. (1987). Many Supreme Court decisions, especially those advocated by the Madras Bar Association, also wenton to hold that tribunals cannot decide any substantial question of law. (2014). Therefore, we saw matters ultimately come to the High Courts and Supreme Court in appeal against the tribunal order. By the 21st century, the Parliament was somewhat convinced that tribunals couldnot effectively solve the judicial delays and pendency clogging the justice system. In fact, theywere themselves dealing with delays, inefficiency in administration, lack of staff, lack of infrastructure etc. (Moog, 1992).

Meanwhile, to better commercial dispute resolution in the country, alternative dispute resolution was slowing gaining popularity. The Arbitration and Conciliation Act was enacted in 1996 that opened alternative means and forums to commercial litigants to get their disputes resolved through a fast-track process. (1996). A proposal for 'fast track arbitration' was suggested in the 176th Law Commission Report on 'Arbitration and Conciliation(Amendment) Bill, 2001'. (2001). However, the Indian government continued to feel that unless there are structural changes brought to civil courts of the country in a way that they themselves are equipped to solve all high value commercial matters in a timely manner, it would be impossible to convince the world that the Indian justice system could be desirable forum for disposal of commercial matters. (Reerink et al., 2019).

In ***Modi Enterprises v. ESPN Inc.*** (2004), a New York Supreme Court judge retained a suit against Indian defendants in the US, stating that it would take decades to get a dispute resolved in a civil court in India. The same judge quoted in a subsequent matter, ***Shin-Etsu Chemical Company Limited v. ICICI Bank*** (2004), that any action pursued in an Indian court would take fifteen to twenty years to be resolved. Both of these above cases were commercial disputes and these observations immediately triggered the attention of the Law Commission.

2.5.3. Simultaneous Reforms in the United Kingdom: Civil Procedure and Commercial Court

The Commercial Court in the United Kingdom that started in 1895 could not successfully employ procedures that were swift, concise and cost efficient. (Ferguson, 1980). By 1956, it was in decline. A study showed that Justice Patrick Devlin told the then Lord Chancellor that the Commercial Court was on its death bed. (Colman et al., 2020). To remedy this, a committee under the leadership of Cyril Miller and Justice Pearson was formed to inquire into the causes of its decline. (Roscoe, 1911). The committee released a report called The Commercial User's Conference Report in 1961 (Commercial Court user group meeting - courts and tribunals judiciary 2020) where it noted that the initial promise of swift and inexpensive litigation has over time become sclerotic and expensive; and its driving commercial litigants to take recourse to arbitration. It further recommended that the Commercial Court judges should allow and encourage statements of facts to be used and avoid pleadings as much as possible. (Lord Thomas, 2017). Following these suggestions in 1970, the Administration of Justice Act made the Commercial Court a separate division of the Queen's Bench. (1970). It was suggested to be manned by the requisite number of judges as Lord Chancellor would nominate.

By 1990s the civil justice in England had worsened. Delay and high costs created an overall unfavorable litigation environment in England and Wales. (Ghosh, 1999). Since the justice system in these jurisdictions was adversarial in nature, the responsibility of enforcing substantive and procedural laws during proceedings depended largely on the litigants. (Clarke, 1999). Without effective judicial control, the adversarial process encouraged adversarialculture to degenerate into an environment in which the litigation process became a battlefield where no rules applied. (Plotnikoff, 1988). The unfortunate state of affairs led the former chairman of the UK Bar Council to *state 'procedural rules have moved from servant to master,due to cost, length and uncertainty'.* (Woolf, 1997).

In 1994, in order to review the rules and procedures of civil courts in England, the then Lord Chancellor had appointed Lord Harry Wolf, a member of the House of Lords to set an agenda for reform. After a thorough study of the status of justice delivery in the country, he submitted his final report in July 1996. Titled 'Access to Justice', his report encapsulated some major principles that any civil justice system should follow and incorporate in order to ensure access to justice: (Zuckerman, 1996).

i. A justice system should be just and fair in the results or pronouncements it delivers

ii. *Offer procedures at a reasonable cost and speed*
iii. *Should be easily understandable to the litigants*
iv. *Should be responsive to the needs of the litigants*
v. *Should provide certainty as to nature of a particular case*
vi. *Should be effective, adequately resourced and organised* (Zander, 1998).

More popularly called The Woolf Committee Report, it led to the passing of the Civil Procedure Act, 1997 (1997) and the Civil Procedure Rules, 1998 (1998). It superseded the existing system of civil procedure (existing rules of the Supreme Court). Part 58 of the new Act established the first Commercial Court of United Kingdom. (Part 58 - Commercial Court 2023). For the first time, a specialised forum was created to deal solely with commercial matters and an honest attempt was made to make proportionate and proper use of the court's time and resources which was now considered a part of substantive justice itself. (Mittal, 2018). To provide a clear guidance about the manner of proceedings Lord Chief Justice and judges of the Commercial Court released a Commercial Court Guide. (The Hon. Mr Justice Knowles, 2018). The overriding objective of the Commercial Court over the existing civil procedure was explained by Justice Brett in ***Carlapede and Co. v. Commercial Union Association*** (1883); *'However, negligent or careless may have been the first omission, and however late the proposed amendment, the amendment should be allowed if it can be without injustice to the other side'*. Appreciating the new Commercial Court in ***Arbuthnot Latham Bank v. Trafalgar Holdings Limited*** (1998); Justice Woolf further added that inordinate delay in a proceeding should be a major consideration for litigants as well as for courts. Any delay that occurs needed to be carefully assessed not only because it is prejudicial to litigants but because also to the administration of civil justice. Thus, all rules that prescribed a designated timeline needed to be respected and observed. In ***Grovitt v. Doctor*** (1997), the Court observed that if litigation continues without an intention of bringing it to an end, it would lead to abuse of process.

The evolution of commercial law and the Commercial Court is extremely critical for us to understand how the Commercial Courts Act, 2015 in India came into being.

2.6. The judicial environment to create 'commercial courts': An overview of challenges in commercial dispute resolution in Indian courts

Post 1991, the Indian economy had opened up to private sector investment, both domestic as well as foreign investors. The Indian market suddenly saw a boom of commercial transactions

which inevitably gave rise to increased number of commercial disputes in the country. To present itself as a modern-day economy to the world, the Indian government had to not only reduce or do away with restrictions on inflow and outflow of foreign capital but create an approachable and swift justice system, that can solve any issues that these foreign investors face. For a long time, the Indian justice system was one that was looked upon as an expensive time taking, complicated set of procedures that let any form of civil litigation hang for years. (Tewari & Saxena, 2017). Thus, even if the market after 1991 was openly inviting foreigners to invest, the lack of appropriate remedy available to them, in situations when they faced disputes, often acted as a huge barrier to progress. (Anand, 1999). Developed jurisdictions like the United Kingdom, United States of America had dedicated commercial courts by the 1990s. In fact, the Commercial Court in the United Kingdom had been in place since 1895. Even other developed countries like Singapore, China, UAE, Hongkong etc. had started initiating efforts to create commercial courts.

The creation of commercial courts had been in discussion for quite some time. A very peculiar trend initiated by the UK and USA courts was observed by the Indian government. In cases, where there was a foreign plaintiff, the courts of that plaintiff country often took up the matter on the ground of delay that occurs in Indian courts, even if the cause of action has arisen in India. (Wilson, 1953). They acted on those matters on the ground on 'foreign non-conveniens' and in a way discouraged foreign parties to come before Indian courts for relief. (Strong, 2021). Repeated instances like these acted detrimental to the interests of the Indian economy. Any foreign investor with a pre-conceived notion that the country they are looking to invest in, does not have the requisite dispute resolution framework that can give them a quick and timely resolution; will automatically alienate himself from making such proposed investment. Additionally, when foreigners sue foreigners in the United States, the latter's government glorifies the court systems of the foreigner country; however, if a US resident sues a foreigner, the courts apply the doctrine of 'foreign non-conveniens' to stop the litigants from approaching the courts of the foreign country, on the ground of delays and lack of expertise of presiding judges. One deviated incident to note is however the observation of Judge Keenam in the case of Bhopal Gas Tragedy. (1986). He stated; *'To deprive the Indian judiciary of this opportunity to stand tall before the world and to pass judgment on behalf of its own people, would be to revive a history of subservience and subjugation from which India has emerged. India and its people can and must vindicate their claims before the independent and legitimate Independence of 1947'.* (Davis, 1987).

The environment during this time had in a way pushed the Indian government to take steps to in the least create an atmosphere and attitude amongst the judiciary as well as the litigants that the justice system in the country can be trusted to make space for adequate commercial dispute resolution machinery. (Gadbois, 1970). The Arbitration and Conciliation Act, 1996 which was enacted to make arbitration easy and accessible to foreigners went through major amendments in 2002, and was too a significant step in improving the commercial dispute resolution framework in the country. A lot of commercial transactions had specified arbitration clauses that they had to resort to in the event of a dispute, therefore, providing a strong arbitration framework was then the need of the hour. (Wolaver, 1934). But all awards passed in arbitrations or even settlements in mediations had to be enforced in the court, which is when it got delayed all over again. Thus, substantial improvements in the court system were required to make any real change in the state of affairs. (Sondhi, 2007).

2.6.1. Highlighting Key Challenges in Contract Enforcement

Milton Friedman stated that the three primary functions of the government, were defense, law and order and contract enforcement. (Blackwell, 2014). An efficient contract enforcement regime not only provides relief to aggrieved parties whose contractual obligations have been violated but also ensures that parties try their best to adhere to contractual obligations in fear of court fees and fines. (Nandan, 2018). Thus, overall, it reduces the flouting of laws and contracts. This leads to an increase in business confidence, reduces uncertainty and promotes fair play in economy. (MacLeod, 2007). The Economic Survey of India, in 2018-2019 noted that the costs of stalled projects, high legal fees and tenacious litigation were directly in the way of establishing a strong contract enforcement regime in India. (Vaishnav, 2019). While one might think that delay in procuring commercial justice may be the only outcome of the problem, we cannot ignore that true extent of it also includes indirect costs. The ultimate objective of every business is maximizing expected returns. However, it is equally important for growth, that a business engages in healthy risk-taking behaviour, and not simply rely on low return, risk free alternatives. (Dixit, 2003). A poor contract enforcement regime not only establishes an inefficient legal system but also adversely impacts the overall risk to return ratio; due to increased legal costs and disposal time. (Trebilcock et. Al., 2006). Consequently, due to a poor legal infrastructure, businesses are not interested in innovation and banks or all lenders bear a great risk in procuring repayment of loan they give to any business; since there is an automatic

assumption that legal machineries will fail to guarantee loan repayment. The result of that is the reluctance of banks to lend to socially beneficial sectors like agriculture. (Huang, 2013).

An inefficient contract enforcement regime also promotes excessive vertical integration of companies. When contracts are ineffective and difficult to enforce, business prefer not to deal with other companies by resorting to acquisitions and mergers. For example, a power plant that cannot guarantee the quality of coal it receives from its supplier through a contract, would be more interested to acquire the mine or the supplier to guarantee its quality. (Dijkmann, 2011). Similarly, if we look at the e-commerce market in India, Flipkart and Amazon and the likes have dominated, while Snapdeal and E-bay have gradually waded out. This is because the former integrates with other sellers in terms of logistics, procurement and delivery to sell products, while the later simply provides a platform to facilitate purchase between various sellers and buyers. (Hubermann et. al., 1988). A poor contract enforcement regime has prevented them from ensuring good quality of products that sellers sell on their platform and cost them the consumer trust. If an efficient legal system was in place, then smaller firms and businesses would get a good opportunity to grow and prosper. Instead, a poor legal system or infrastructure pushes business to establish forward and backward linkages and tends to centralise industries. (Falk et al., 2015). As a result, there is accumulation of wealth in the hands of few businesses as consumers prefer capital-intensive large firms over smaller labour-intensive rivals. It also affects employment and creates income inequality in the process. (Clague, et. al. 1999).

Most importantly, a poor contract enforcement mechanism encourages informal channels of dispute resolution that often utilises under table dealings and local leaders to settle disputes. Apart from the poor quality of decisions we arrive at in such cases, it also lands middle men and facilitators with undue power and influence. As a result, corruption increases overall in the economy and the rule of law is undermined. These indirect problems along with market inefficiencies would only be rooted out through extensive cooperation between the organs of the government – 'cooperative separation of powers'. (Koeppl, 2014).

The term 'contract enforcement' was not used by the Law Commission when it first suggested the creation of Commercial Divisions in High Courts; however, all of the above factors along with the new economic environment pushed the regulators to look for alternatives so that contracts can be easily enforced in the country with the help of reformed judicial machineries. (Quintin, 2008).

2.6.2. The 188th Law Commission Report, 2003

In 2003, the Law Commission of India took notice of the clogged justice system of our country, and suggested that India needed fast track, high tech courts, manned by judges specialized in dealing with commercial disputes. The Law Commission noted that the 1991 policy not only changed how Indian economy were to be viewed by the world at large, but it also required systematic changes in the legal infrastructure of the country. Up until then, commercial disputes were handled either by civil courts, or High Courts or arbitral tribunals. They were treated at par with all other civil disputes. The Commission studied the Commercial Courts functioning in USA, UK and twelve other countries. They noted that creating separate bodies for handling commercial disputes made enforcing contracts easier in those jurisdictions and worked extremely favorably for both domestic and foreign investors. India was already facing an upscale of commercial litigation post 1991. These disputes needed fast and timely disposal, so that the confidence of domestic as well as foreign litigants in the country's justice system can be firmly instilled. Further, prominent USA judges had quoted that Indian courts were incapacitated to act as faster justice disposal systems. The Indian government was well aware of the drawbacks of pending cases and elongated timelines required to resolve a dispute, that clubbed the country's courts for decades. Previous attempts at reforming procedural laws and introducing stricter timelines in civil courts could hardly bring any real change. Therefore, they felt that creating completely separate courts or benches solely for the purpose of handling commercial disputes was the need of the hour. The Commission noted that these benches or divisions were meant to function as high tech, fast track courts that could exclusively cater to the needs of the investors.

The 188th Report suggested that for quick disposal of high value commercial matters, the cases would go directly to a separate Division Bench of the High Court as opposed to an ordinary civil Court or Single Judge Bench, and it would be a preliminary step towards promote India's global image as a desirable business destination. The idea was to transform the judicial system of the country by ICT enablement of courts. Thus, if commercial courts were technologically equipped, it would help in the timely disposal of cases and since, a lot of these litigants were foreign entities/individuals, it would make the overall justice delivery system a lot more accessible and cost effective. It was also suggested that fast track courts would be able to solve high value complex commercial matters strictly within the prescribed time, not exceeding a couple of years. The government was of the opinion that if Commercial Courts can be set up

as ‘Model Courts’ that would establish new norms of practice in commercial litigation and address ‘complex facts and question of law’, then gradually over time these reforms could be scaled up and extended to all civil litigation in India. (Krishnaswamy & Aithala, 2020). Accordingly, the 188th Report titled “Proposals for Constitution of Hi-tech Fast-Track Commercial Divisions in High Courts” presented The Commercial Division of High Courts Bill, 2009 that provided for establishing commercial divisions in the High Courts for adjudicating commercial disputes. (2009).

The next point of assessment for the Commission was the allocation of the right cases to these Commercial Divisions. The Report looked at the definition of the word ‘commercial’ in UK and USA laws and also the previous Delhi High Court (Original) Rules and finally came up with two very important recommendations – one with respect to the pecuniary limit of one crore and the other regarding the definition of ‘commercial disputes. The Report examined various classes of disputes like those arising out of immovable property, rent control, insurance policies etc. to name a few. The 2009 Bill finally remodified the definition under the Delhi High Court (Original Side) Rules and suggested as follows:

“Commercial disputes mean disputes arising out of transactions of trade or commerce and, in particular, disputes arising out of ordinary transactions of merchants, bankers and traders such as those relating to: enforcement and interpretation of mercantile documents, export or import of merchandise, affreightment, carriage of goods, franchising, distribution and licensing agreements, mercantile agency and mercantile usage, partnership, technology development, maintenance and consultancy agreements, software, hardware, networks, internet, website and intellectual property such as trademark, copyright, patent, design, domain names and brands, and such other commercial disputes which the High Court may notify.

Explanation I: A dispute which is commercial shall not cease to be a commercial dispute merely because it also involves action: for recovery of immovable property or for realization of monies out of immovable property given as security or for taking other action given as security or for taking other action against immovable property.

Explanation II: A dispute which is not a commercial dispute shall be deemed to be acommercial dispute if the immovable property involved in the dispute is used in trade or put tocommercial use.”

Additionally, the Report gave suggestions on how to value a commercial suit and time and again suggested that the most distinguishable feature of these divisions or benches would be

the fast-track procedure to be followed in these courts. The Commission thereafter suggested strict timelines for case disposals that judges manning these courts as well as advocates and litigants should firmly adhere to. Although there was no express mention of how budgetary allocation would be done in order to establish these courts and run them by experienced personnel in full pace; the Commission did point out that the expense involved in establishment of the Commercial Division will only be a small fraction of the overall benefits that India would get; if these specialized courts are able to solve the problem of undue prolonged litigation.

2.6.3. Opposition of Rajya Sabha to The Commercial Division of High Courts Bill, 2009

The Commercial Division of High Courts Bill, 2009 as passed by Lok Sabha, was referred to the Select Committee comprising of 12 members of Rajya Sabha on 22nd December 2009. The Committee headed by Professor P.J. Kurien went through a total of 13 seating and put forward two distinctive notes of dissent. The Committee pointed out that the Bill nowhere talks about increasing judicial capacity or allocating judges specialized in handling commercial matters to these benches. In a situation like that, the High Courts would become overburdened and since, an appeal lies only to the Supreme Court, against the decision of the Commercial Bench of the High Court, it may similarly increase the burden of the Supreme Court. As a result, the availability of judges for hearing ordinary litigation would reduce. (Dutta, 2009). The Report further stated that the Bill has fixed the monetary value of a commercial dispute to 5 crores. The Committee suggested that the same be reduced to 1 crore, so that a greater number of litigants can get access to these benches. It also noted that, no statistical study on the pendency of commercial cases was undertaken by the Commission, hence fixating the monetary value of 5 crore was without any rationalization. (2010). The most important criticism to the Bill was the allegation that it violates the principles of equality before the law and equal protection of the law under Article 14 of the Constitution and also against the Directive Principles of State Policy which provide that the State shall secure equal access to material resources and provide a legal system that promotes justice, on the basis of equal opportunity. (Rao, 2009). The committee was of the firm opinion that creating specialised commercial benches would create a distinctive divide between litigants – those whose disputes are of higher value would get access to a court and special judges while other matters of lower pecuniary value would be deprived of these benches and the strict timely justice that the former intends to provide. (Govindarajan, 2010). The Committee noted that this Bill unknowingly proposed creating judicial machineries in the form of these commercial benches that solely catered to elite high

value cases and treated those differently or preferably as compared to ordinary matters. It was as if only parties to high value commercial matters deserved access to timely justice while others were meant to remain clogged in the same judicial delays. (2012). The Committee also observed that the model of commercial benches or courts were significantly based on the UK model, although the later did not fix financial cut-off limit upon the Commercial Division for hearing cases. Thus, the Committee concluded that although this was an innovative step towards a new direction of improving the judicial machinery in our country, a lot more work and rationalization needs to go into the workings of these benches. Thereafter, it suggested significant changes especially those provisions regarding the scope of the definition of "commercial dispute," needed reconsideration and a fresh study.

2.6.4. Enactment of Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015

Because of the concerns raised by the Rajya Sabha members, the Committee withdrew the Bill and seeked advice from the Twentieth Law Commission. The Commission issued the First Discussion Paper exploring the defects of the 2009 Bill and proposed changes the basis which amendments can be made. After receiving feedback from the Expert Committee comprising of sitting judges and specialized legal professionals, the Second Discussion Paper was issued and circulated. Based on further recommendation on the Second Discussion Paper, the Law Commission released the Two Hundred and Fifty Third Report titled 'Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015' (2015 Bill). For the first time, the Bill proposed to set up Commercial Divisions and Commercial Appellate Divisions in Delhi, Mumbai, Kolkata and Madras in states where High Court enjoyed original civil jurisdiction. In other states where High Courts did not enjoy original civil jurisdiction, Commercial Courts were to be set up at the district level by the State government. Further, the Law Commission recommended a more time bound procedure to be followed in these Benches and Courts that would be substantially different from that of CPC, State amendments to CPC and other High Court rules. Aside from that, the Report also prescribed stricter timelines for filing new pleadings and time bound delivery of judgements, separate procedures for summary judgements and case management hearings, efficient disclosure and inspection norms, a new regime for costs etc. among many others.

2.6.5. Ease of Doing Business (EODB): An important contributor to establishing Commercial Courts

In 2002, the World Bank published a paper titled 'The Regulation of Entry' in the Quarterly Journal of Economics. The paper studied the regulatory environment in 85 countries, specifically the procedural compliances, time, and cost that a startup must bear before it can legally begin its operations. (Djankov, 2016). It concluded that countries with heavy regulatory compliances are more prone to corruption and have lower quality of public goods as compared to countries with democratic governments and lighter regulation of entry. This paper became popular as it provided for the first time, quantitative evidence of how politicians and bureaucrats benefit from entry regulations without adding value to the private sector or granting any additional protection. (Besley, 2015).

From the above paper, the World Bank started the Doing Business Report in 2003, as a benchmark study of regulation. The Report indicated a nation's ranking based on ten parameters:

- Starting a business – Procedures, time, cost, and minimum capital to open a new business
- Dealing with construction permits – Procedures, time, and cost to build a warehouse
- Getting electricity – procedures, time, and cost required for a business to obtain a permanent electricity connection for a newly constructed warehouse
- Registering property – Procedures, time, and cost to register commercial real estate
- Getting credit – Strength of legal rights index, depth of credit information index
- Protecting investors – Indices on the extent of disclosure, the extent of director liability, and ease of shareholder suits
- Paying taxes – Number of taxes paid, hours per year spent preparing tax returns, and total tax payable as a share of gross profit
- Trading across borders – Number of documents, cost, and time necessary to export and import
- Enforcing contracts – Procedures, time, and cost to enforce a debt contract
- Resolving insolvency – The time, cost, and recovery rate under a bankruptcy proceeding

The ranking on the index was arrived at after doing an extensive survey of each of the participating economies or countries. Considering the compatibility of economies over time, a questionnaire was prepared centering around a simple business case. The team members visited the countries and conducted data surveys of expert contributors like lawyers, accountants etc. who deal with business regulations on a day-to-day basis. The survey also based assumptions on the legal form of the business, size, location, and nature of its operations. Respondents filled out written surveys and provided references to the relevant laws, regulations, and fees based on standardized case scenarios with specific assumptions, such as the business being in the largest business city of the economy. The objective was to measure how regulations impact business's growth and development. To be more precise, the ranking aimed to observe how theregulatory environment in a country is conducive to the starting and operation of a business.

One of the most important indicators of the World Bank's EODB rankings is 'Enforcement of Contracts'. This indicator measures the time and cost for resolving a commercial dispute through a local first-instance court, and the quality of judicial processes index, evaluating whether each economy has adopted a series of good practices that promote quality and efficiency in the court system. In other words, it is a direct reflection of the effectiveness of a country's judiciary in handling of and settlement of commercial disputes. To assess the 'Enforcement of Contracts' indicator, the World Bank prepares a questionnaire to assess the quality of judicial processes which focused on four primary areas – Court structure and proceedings, case management, court automation, alternative dispute resolution. (Ferguson, 1982).

In 2014, Indian government launched Make in India campaign. Its primary objective was to encourage businesses to develop, manufacture and assemble products made in India and incentivize dedicated investments into manufacturing. The aim was to create a conducive environment for investments, develop a modern and efficient infrastructure, and open new sectors for foreign capital. One of the key initiatives in this regard was to improve India's score in World Bank's EODB Index. It was only through that high ranking could India's global image be improved as an international business hub. India' EODB Ranking in 2014 was 142 out of 190 participating economies and 186th in 'Enforcement of Contracts' indicator. A series of successive reforms were brought to improve the situation. (Asher & Chhabra, 2020).

2.6.6. Report of the Standing Committee and enactment of The Commercial Courts Act, 2015

The 2015 Bill before its issuance was already pending with the Expert Committee for recommendations. The EODB ranking becoming a priority for the government gave it an additional push. In the 253rd Report, the Law Commission identified a variety of drawbacks – like difficulties in implementation of the Bill, existing complexities in procedural provisions, the resistance of the litigation environment in the country to any form of change and lastly, the lack of emphasis on specialization in the Commercial Division. However, the Commission affirmed that Commercial Divisions and Courts were essential to the country's economic development, as it would send a clear signal to the foreign investors about the scale of reforms India is undertaking to make business smooth and easy for them; so that all commercial contracts can easily be enforced without getting caught up in the slow inefficient judicial system. Additionally, since these Benches and Courts were an end it itself, it would serve as a pilot project to reform civil litigation across the country and the procedure followed in such Commercial Courts could be the basis for larger reforms in the Civil Procedure Code, 1908 for the common man.

The 2015 Bill was then referred to the Standing Committee on Personnel, Public Grievances, and Law and Justice for its review and recommendations. In December, 2015 the Standing Committee gave its Report that revisions that were needed to be made to the definition of 'commercial disputes'. The Report suggested that the definition should include a list of legislations which deal with commercial transactions. Further, the Committee proposed that the pecuniary value of a commercial dispute should be two crores and litigants should be givena choice as to whether they want to move to a commercial court if pending dispute is of a commercial nature. The most important recommendation, however, of the Committee was that it asked the Central and State governments that they should establish the commercial courts/divisions on a pilot basis for obtaining relevant data before implementation of the 2015 Bill. They also firmly insisted that the vacancies in the various High Courts of the country need to be filled up on a priority basis before these Commercial courts/divisions start functioning.

Unfortunately, none of the recommendations of the Standing Committee were adopted and on 31st December, 2015, The Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Act, 2015 was enacted.

2.6.7. The 2018 Amendment to The Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Act, 2015

India's ranking in the World Bank's EODB Index improved from 142nd in 2014 to 100th in 2018; however, its score in the 'Enforcement of contracts' indicator remained at its lowest. The indicator primarily assessed how easily commercial contracts are enforced in an economy and whether the judicial system of a country allows for a smooth, efficient, and swift enforcement. Any country, where ordinary litigants get immediate and quick relief from courts in case of the breach of their contractual obligations, would automatically be a very desirable environment for an investor. And that itself, makes it easy to do business in such economy. The Commercial Courts Act, 2015 was designed and enacted with that vision in mind. (2021).

Unfortunately, for the purpose its survey, the World Bank only assessed the rate at which commercial cases are disposed off in the lower courts of Delhi and Bombay – the two busiest and biggest cities of our country. The Commercial Divisions established the by The Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Act, 2015, in both the cities were separate benches in the High Courts, which fell outside the scope of such survey. Therefore, for the purpose of participating in such study, the Indian government felt that commercial courts needed to be established at every district, even where High Courts enjoyed original civil jurisdiction. Even the need was felt to broaden the ambit of commercial disputes that could come to these courts, therefore more commercial courts needed to be set up.

In the backdrop of this, the 2018 Amendment to The Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Act, 2015 was brought. To start with, it shortened the name of the Act to The Commercial Courts Act, 2015. It made two other significant changes – one, it reduced the value of a commercial dispute to three lakhs. Secondly, it created Commercial Courts at the district level in states where High Courts enjoyed original civil jurisdiction along with the existing Commercial Divisions. The State government was given the responsibility to decide the pecuniary limits of each of these. Appeals from them went to Commercial Appellate Divisions. Additionally, in places where High Courts did not enjoy original civil jurisdiction, Commercial Courts were established below the district level along with Commercial Appellate Courts that entertained appeals from the former. Appeals from both went to Commercial Appellate Divisions in the High Courts. (2018).

Another significant change brought by the 2018 amendment was the introduction of mandatory pre-institution mediation. Section 12A was introduced via this amendment, under which all commercial disputes must mandatorily undergo mediation within a specified time period of three months before the parties can come to these commercial courts. (2018).

The Commercial Courts Act, 2015 today stands as it is after 2018. Although triggered by India's willingness to perform better in the World Bank survey, this is the first legislation that can be said to have been brought to bring significant reforms in the litigation landscape in our country, particularly with respect to commercial disputes. It opened us to the idea that an alternative dispute resolution mechanism like mediation, if mandated by courts, can effectively reduce the time for disposal of a commercial suit and work extremely favorably to the parties. In the subsequent chapters, we see how well the Commercial Courts Act 2015 has performed in the last 5 years since its amendment and whether it has lived up to the expectations.

2. 2.7. Conclusion

From the above, we can identify two very concentrate challenges to quick contract enforcement in our country – one, the existing machineries of justice, specifically the civil courts that were in equipped to deal with commercial disputes due to inadequate procedural swiftness, lack of judicial resources and poor litigation attitude persisting amongst litigants and judges; second – an inefficient business environment in the country that barely contributed to improving the civil justice scenario and the slow state of affairs in courts. Looking at how the Commercial Courts, 2015 Act was brought into shape, we can safely conclude that it was meant to not only bring systemic reforms in the existing judicial structure but also introduce a significant policy change and change in attitude of how commercial disputes were perceived in the country; as also how Indian government wanted to make it easier for entrepreneurs to thrive in its economy. A careful examination of the history of commercial dispute resolution helps us understand this policy reform and to answer the first research question. Once, the author has identified the key challenges in enforcing contracts and resolving commercial disputes in the country, it would subsequently help us in our understanding of how well the Commercial Courts, 2015 Act has performed to overcome these challenges.

CHAPTER – III A– THE COMMERCIAL COURTS ACT, 2015: AN ASSESSMENT

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3.1. Introduction and objective of the Chapter

In the previous Chapter, the author discussed the historical evolution of the CCA, 2015. In the course of discussing the same, the author elaborated upon major challenges that India is facing in the sphere of 'contract enforcement' and how that goes on to impact the quality of commercial justice in the country. The Law Commission took into account the loopholes existing in civil courts structure and operations which were not able to solve commercial disputes as efficiently as the economy demanded, and accordingly designed the framework of the Commercial Courts and Commercial Divisions of the country. It has been close to 8 years since the CCA, 2015 has been enacted. State governments have been given time to set up adequate infrastructure facilities which could help these courts perform efficiently and serve swift justice. Therefore, it has become a need of the hour to assess how these courts are performing and by extension, whether the CCA, 2015 has been implemented in spirit. The objective of this Chapter is to dissect the CCA, 2015 and point out areas of improvement that could help better the framework and assist India is achieving its 'ease of doing business' goals. We can call the functioning of a certain court successful, not only if they deliver fast justice, but also if they produce a rich body of precedents in commercial law. We have already seen that these Commercial courts have kindred an interest in the bar and bench through the copious volume of cases in the past few years. Although the CCA, 2015 is a statutory toddler, yet we need to see whether the judicial decisions that these courts have delivered, are based on a coherent and principled analysis of the Act. Thus, the author further aims to study the judicial impact that the commercial courts have had on the civil justice system in our country.

3.2. Jurisdiction of Commercial Courts and Commercial Divisions under The Commercial Courts Act, 2015

Section 6 of the CCA, 2015 stipulates the territorial jurisdiction of commercial courts. All applications and petitions of commercial disputes that arise out of the full territory of the state over which it has been conferred territorial jurisdiction are resolved by the commercial courts. The provisions of the Civil Procedure Code, 1908 from Section 16 to Section 20 also apply to commercial disputes. The jurisdiction of the Commercial Court was discussed in detail in ***Daimler Financial Services India Private Limited v. Vikas Kumar and Ors***. (2020). Here, the

dispute was about recovery of money by a non-banking financial company from which a party obtained loan but failed to pay them off. The presiding officer of the Commercial Court at Dhanbad dismissed the matter stating that the commercial court can only entertain suits of value one crore and above; and no amendment from the state government was released. The petitioner went to the High Court under Article 227 of the Constitution. In 2018, when the amendment came to the CCA, 2015, the specified value of a commercial suit was lowered down to three lakhs retrospectively from 3rd May 2018. Thus, the High Court quashed the order of the commercial court at Dhanbad and asked it to proceed with the case. Not only that, even execution of a decree passed by the Commercial court will lie only in the commercial court and not in any other ordinary civil court that entertains suits on non-commercial nature. (Ogra, 2022). To uphold the primary objective of expediency and speed of the CCA, 2015, a decree needs to be swiftly executed and the benefits underneath must be reaped, laid down in ***Bayer Intellectual Property GMBH and Another v. Symed Laboratories Limited***. (2019).

In 2019, four commercial courts were set up in West Bengal, where 2 of such courts were set in greater Kolkata – Alipore and Rajarhat. A notification dated 20th March 2020 stated that the pecuniary jurisdiction of any commercial court set up within the territorial jurisdiction of the City Civil Court would be between three to ten lakhs. The same notification set the pecuniary jurisdiction of the Commercial Division of the High Court from 10 lakhs to 1 crore. (2020). In ***SREI Equipment Finance Limited v. Seirra Infraventure Private Limited***, (2023) the court held that if the Commercial Division of the High Court shares concurrent jurisdiction with the Commercial Court within the jurisdiction of the City Civil Court in terms of specified value, then the party must be given the option of approaching either of these courts.

In states where High Courts do not enjoy original civil jurisdiction, commercial courts are established below the level of a district judge which is superseded by commercial appellate courts at the district level. Commercial courts are also established at the district level with a higher pecuniary jurisdiction. Appeals from this go to Commercial Appellate Division. Under Section 19 of Bengal, Assam and Assam Civil Courts Act, 1887 it is stated that a suit up to a certain value should be heard by Munsif and above that value be heard by District Judge or sub-ordinate district judge. (1887). After CCA was enacted in 2015, all suits of commercial nature can only be heard by commercial courts at district level or otherwise, set up under the statute. In ***Vidya Industries v. State of Jharkhand*** (2019), the respondent contended that the Jharkhand High Court does not have any jurisdiction to decide a suit of the nature and therefore in this case the commercial division has not been constituted in the High Court under the

provisions of CCA, 2015. The petitioner on the other hand stated High Court can exercise original civil jurisdiction under Article 227 and Section 27 of Bihar Reorganization Act, 2000 to entertain any civil suit at the first instance. The court however held that the State Civil Courts Act does not make their High Court as one of the classes of the Civil Court and further does not vest ordinary original civil jurisdiction to it to try suits of the nature of commercial dispute. Except for some cases of succession, the High Court does not have original civil jurisdiction and cannot admit commercial disputes at the first instance. These suits need to go to the appropriate Commercial Court at the district level. In ***Fine Footwear Private Limited v. Skechers USA*** (2019), the court held that a dispute arising out a trade dress infringement is a commercial dispute under Section 2(1)I of CCA, 2015. The court went on to describe a trade mark as the genus and trade dress as its species. Therefore, trade dress deserves the same protection under The Trademarks Act, 1999 statutes as a trademark. However, in the instant case, the plaint showed that its essentially an injunctive relief and the subject matter of the dispute was valued at Rs. 2000. There was also nothing mentioned in the plaint about the specified value of the commercial dispute. Thus, the court concluded that the Commercial Courts have jurisdiction only in such matters which pass the Twin Test i.e., existence of a 'commercial dispute' as defined under Section 2(1)I(xvii) and the 'specified value' as defined under Section 2I(i) read with Section 12 of the CCA,2015. (Dewan, 2022). This judgement was pronounced in 2019, before the Delhi High Court in ***Vishal Limited v. Bhavya Pipe*** (2022), Industry held that IPR disputes should go to commercial courts irrespective of specified value, and the latter is assumed to be below three lakhs after looking at heavy evidentiary proof placed by plaintiff. Thus, how far the law in Fine Footwear holds true is a question for us to examine. (George, 2022).

Section 7 states that all states where High Courts have original civil jurisdiction, commercial disputes of a specified value can be filed in the Commercial Division. Those states however also have Commercial Courts established at the district level under Proviso one of Section 3. The first proviso contemplates that there should be a statutory bar to instituting a suit under Section 134 of the Trademarks Act, 1999 and Section 62 of the Copyright Act, 1957, in a court inferior to that of a district judge. Thus all suits arising out of these IPR statutes which are filed or pending in the High Court, would be handled by the Commercial Division, in states where courts have original civil jurisdiction. In places where the High Court does not enjoy original civil jurisdiction, it would go to the Commercial Court at the District level. (2015). In ***Bharat Bhogilal Patel v. Leitz Tooling Systems India (P) Ltd*** (2019), it was held that CCA, 2015 and

the amendments it brought to the Civil Procedure Code, 1908 only applies to commercial disputes having a specified value. However, if the commercial dispute does not have the specified value and continues to be instituted at the Commercial Division of the High Court under first proviso of Section 7, then the amendments under Section 16 do not apply to them. A similar interpretation for these IPR disputes was held in by the court in 2016 in ***Guiness World Record Limited v. Sababbi Mangal*** (2016). The court looked into the expression 'filed or pending' to mean that all cases which were pending on the day CCA, 2015 came into force will continue to be tried by the Commercial Division, even if their value is below the specified value mentioned in the Act. (Jacob & Rana, 2022). In ***Kamal Sharma v. Blue Coast Infrastructure Development Private Limited*** (2018), the court held that the first proviso to Section 7 can be invoked, provided the commercial dispute in question has a statutory stipulation to only lie in a court not inferior to a district court. The author would again like to quote the judgement of ***Vishal Pipes Limited v. Bhavya Pipe***, where the Delhi High Court took a fresh stance regarding institution of IPR disputes and their classification as a dispute of commercial nature. (L, 2020). The judgement is discussed in detail in Section 3.3.3.

The second proviso to Section 7 states that all cases Ih are transferred under Section 22(4) of the Designs Act, 2000 and Section 104 of the Patents Act, 1970 to the High Court will be heard by the Commercial Division. However, such transfer is not limited to High Courts that exercise original civil jurisdictions, which solely has Commercial Divisions. Before the CCA, 2015 came, all these matters were dealt with by the High Courts across the country even those which did not enjoy original civil jurisdiction. It is clear from the proviso that irrespective of what the pecuniary value of the suit is, if its transferred to the High Court, the corresponding Commercial Division will adjudicate upon it, laid down in ***Novartis AG v. Cipla Limited***. (2015). Similarly, for suits that are transferred to High Courts not enjoying original civil jurisdiction, the Commercial Division does not exist and the Commercial Appellate Division has only jurisdiction to entertain appeals and not decide suits and counterclaims. Therefore, in***SPC Lifesciences Private Limited v. Ameya Laboratories Limited***, the court held that a transferred suit under the Patents Act, 1970 will be decided by the Hyderabad High Court in the same manner, as it did before the CCA, 2015 came. (2017).

This confusion was somewhat addressed by the Supreme Court in ***S.D Containers Indore v. Mold Tek Packaging Limited*** (2020). The court was faced with a question of whether a transferred suit can be admitted by the Madhya Pradesh High Court since the latter does not have original civil jurisdiction. It was contended that for the purposes of Section 7 second

proviso, transferred suits can only lie before a Commercial Division and it would defeat the objective of the CCA, 2015, if the same is not followed. It was also pointed out that Section 21 of the CCA, 2015 should override Section 22(4) the Designs Act, 2000 and the suit be admitted in a commercial court at a district level. Refuting both contentions, the Supreme Court upheld that such overriding is not permitted and the Madhya Pradesh High Court should proceed with the suit. Thus, it conferred original civil jurisdiction on a High Court which had no original civil jurisdiction. This was in violation of the principle that no court can be conferred jurisdiction by a judicial order if it did not possess so, laid down in ***A.R. Antulay v. R.S. Nayak***. (1988). In this case, to save grace, the Division Bench of the Madhya Pradesh High Court exercised its extraordinary original jurisdiction under Section 9 of its Letters Patent. (Raza & Alam, 2023).

A very Important aspect of jurisdiction exercised by the Commercial Courts and Commercial Divisions is that any order or decree of the commercial court cannot be challenged except in an appeal under Section 13 to the Commercial Appellate Division. Section 8 of the CCA, 2015bars revisions, applications and petitions against any interlocutory order passed by the commercial court including the order of jurisdiction. In ***Blue Cube Germany Assets GmbH and Co. KG v. Vivimed Labs Limited***, (2018) it was clarified that the scope of Section 8 only bars the revisional jurisdiction of the High Court, but the power of superintendence of the HighCourt under Article 103 of the Constitution continues to vest in it.

In ***Black Diamond Trackparts v. Black Diamond Motors Private Limited*** (2021), the Division Bench of the Delhi High Court held that the power of the High Court to admit a petition against a degree passed by the commercial court under Article 227 cannot be taken away merely by a provision Section 8 of the CCA, 2015. A similar ratio came up in ***Pari Agro Exports v. Soufflet Alementaire and Another*** (2019), where it was observed that the non-obstante clause at the starting of Section 8 makes the provision mandatory but due to the scope of supervisory jurisdiction of the High Court under Article 227, the latter can decide the suit on merits instead of maintainability of the revision petition; and accordingly, the party cannot be stripped off his right to constitutional remedies. However, in ***Bhilwara – Jaipur Toll Road Limited v. State of Rajasthan*** (2020), it was suggested that even when the High Court exercises its power under Article 227, it would be circumspect in interfering with the orders passed by the commercial court. Thus, even though the remedy under Article 227 is technically permissible, the emerging judicial trend should be in favour of non-interference, held in ***Agriculture Produce Market Committee v. Jeevan S/o Vinayak Jaghirdar*** (2016). The High Court should restrict its power

under Article 227 to such cases of grave dereliction of duty and abuse of fundamental rights and principles of law and justice, unless the High Court interferes in the matter, laid down in ***Himachal Construction Company Limited v. State of Jharkhand***. (2019)

The provision under Section 8 was challenged by the party in ***Diyora and Bhandari Corporation v. Sarine Technologies*** (2020) where the High Court held that while exercising power under Article 227, *'the High Court will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character'.* Since the party challenging it made no submissions regarding validity of Section 8, the High Court did not find it necessary to go into examining the validity of the provision.

Another important aspect relates to exercising jurisdiction by Commercial Courts and Commercial Divisions in arbitration matters. The author has discussed and addressed the same in Section 3.6.

3.3. Scope of Commercial Disputes under The Commercial Courts Act, 2015

The scope of any law assists the judges in ascertaining the primary intent of the legislation. The scope of 'commercial disputes' under the CCA, 2015 is extremely vital since it determines the limits within which the Commercial Courts are supposed to work. This scope was one of the biggest challenges in front of the Law Commission in 2003, since the latter had to define the ambit of 'commercial disputes' in a manner, which ensures that these disputes can be exclusively handled by the Commercial Courts. Further, defining the scope was a very vital assessment since through the CCA, 2015, a huge chunk of disputes would be moved away from the jurisdiction of the ordinary civil courts. The scope of commercial disputes needed to be specific and clear, so that litigants can utilise these commercial courts and the swift timelines and remedies made available to them, to their advantage. The author has attempted to look upon how the scope of 'commercial disputes' under the CCA, 2015 has evolved since 2003 andtaken its current form. Though the series of developments and evolution of CCA, 2015 was discussed by the author in Chapter II, in this section, the author has revisited the history to particularly identify how the scope of 'commercial disputes' has been determined historically.

In 2003, the 188th Report for Proposals for Constitution of Hi-Tech Fast - Track Commercial Divisions In High Courts, when the Law Commission first came up with the idea of creating Commercial Divisions in High Courts to handle commercial disputes exclusively, they

dedicated an entire Chapter IV titled Commercial Division - What Cases Have Been Assigned In UK, USA And Delhi High Court where the Commission discussed how different jurisdictions have chosen to define the scope of 'commercial disputes'. The Chapter concluded with noting four major points which would go on to assist defining 'commercial disputes' under CCA, 2015:

i) Setting a minimum pecuniary limit of a dispute for it to be allocated to the Commercial Division.
ii) Preparing a list of cases, which can be called as 'commercial' and the same can then be allocated to the Commercial Division.
iii) While allocating commercial cases to the Commercial Divisions, excluding certain categories of commercial disputes for which a separate and exclusive Court,tribunal or authority to exercise jurisdiction was provided by the statute. (For example, Telecom Regulatory Authority of India Act, 1997 or Securities ExchangeBoard of India Act, 1993, Debt Recovery Tribunals dealing with debts due to Banks and Financial Institutions, Rent Tribunals, Motor Accident Claims Tribunals deal with specific subject matter disputes.
iv) All of the above allocated commercial cases would be resolved at the original side of the High Court under a 'fast track' procedure with e-filing and other high-tech facilities.

At the end, the Commission borrowed the definition from the Delhi High Court (Original Side) Rules. However, the Commission noted that they would like to modify the same and add some specific type of cases.

The first one, the Commission considered was that arising out of a commercial property like a partnership property, or mortgage or charge or lien created on the same as collateral security for performance of obligations under a commercial contract. It was concluded, that such disputes will come under the umbrella of 'commercial disputes', if the main transaction is a commercial one. (Chandran, 2022).

The second specific category of dispute was eviction disputes. The Commission stated that there are two categories of the same – eviction suits coming under the Transfer of Property, which will go to Commercial Divisions and eviction suits which fall within the purview of rent-control legislation will go to the Rent Control Tribunal or plain Civil Court who deal with the matter under the rent control legislation and not as a Civil Court dealing with a normal eviction

suits relating to immovable property governed by the Transfer of Property Act. Thus, some eviction disputes only can seek remedy from the Commercial Division. (Chandran, 2022).

The Commission clarified that the disputes arising out of insurance policies - life insurance or general insurance will lie to the Commercial Division, irrespective of whether the policy holder is a businessman or not. However, motor accident disputes will exclusively go to Motor Accident Claims Tribunal, even if those disputes pertain to claims against insurance companies. (Chandran, 2022).

The fourth category of disputes considered by the Commission were the trademark arising out of the Trade Marks Act, 1999, for which there is an exclusive Appellate Board constructed under Section 83. Appellate Board's jurisdiction was sought only if a litigant was unhappy with the order of the Registrar and Civil Court's jurisdiction was specifically barred. The Registrar handled disputes and passed orders relating to registration of trademarks; thus disputes arising out of passing off and infringement as well as suits for injunction would go to civil courts. The Commission suggested that these should now go to the Commercial Division. (Chandran, 2022).

The Commission further decided that a residuary provision should be included in the definition of 'commercial disputes.' This would ensure that the High Court of a state has the right to decide whether a subject matter of a case falls within the definition of 'commercial', and the same can be handled by the Commercial Division, even if it doesn't fall into the specific categories.

Therefore, after a robust consultation, the Law Commission proposed to add two explanations to the Delhi High Court (Original Side) Rules and concluded the definition of 'commercial disputes.'

"Explanation I: A dispute which is commercial shall not cease to be a commercial dispute merely because it also involves action: for recovery of immovable property or for realization of monies out of immovable property given as security or for taking other action against immovable property.

Explanation II: A dispute which is not a commercial dispute shall be deemed to be acommercial dispute if the immovable property involved in the dispute is used in trade or put tocommercial use."

Following the above definition, the Commercial Division Bill, 2009 was introduced in the Parliament. Unfortunately, the Bill was not accepted by the Rajya Sabha in its original form and several suggestions were made. The author has discussed the critique in detail, while stating the evolution of CCA, 2015 in Chapter II. The most important issue that most commercial experts deliberated and specifically emphasised upon from 2009 up till the enactment of the CCA, 2015 is the definition of 'commercial dispute'. In 2010, some additions to the specific types of commercial disputes were proposed by the Select Committee. These included joint venture agreements, shareholders' agreements, subscription, and investment agreements, and pertaining to the service industry, including outsourcing of services, business process outsourcing, banking and finance, financial services, and the like. (Wagh et al., 2023)

Thereafter two Discussion Papers were circulated by the Law Commission that elaborately discussed the scope of these commercial disputes. Popular practitioners and members, jurists and retired judges with commercial experience from the Bar were consulted before finally proposing the definition in the 'Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015.' The definition in the Draft Bill, 2015 added as an annexure to the 253rd Law Commission Report is a verbatim precursor of the present Section 2(1)(c), CCA 2015. (Chandran, 2022). It is interesting to note that the Expert Committee suggestions or recommendations put forward by the Discussion Papers do not find any specific mention in the 253rd Report. Thus, if we compare the definition that was mostly on the lines of or borrowed from the Delhi High Court (Original Side) Rules in 2009 and the one that features in CCA, 2015, there is significant difference between the two. However, the 253rd Report does not clarify anywhere as to how that definition has been recast to its present form. (Wagh et al., 2023).

When the 2015 Bill was referred to a Department Related Standing Committee on Personnel, Public Grievances, Law and Justice, the latter it its 78th Report presented to the Rajya Sabha noted that the definition as proposed in the present Bill is much wider in scope as compared to the Part 58(1) of the Civil Procedure Rules, United Kingdom. They further noted that the definition in the Draft Bill, 2015 is likely to create confusion, as most of these disputes have been separately defined in their parent Acts. Thus, they proposed that instead of including a list of all disputes that have a commercial angle, the Bill should consider including a Schedule consisting of a list of statutes which deal with commercial transaction. This Schedule can be amended by the Union or State government as and when they feel that an additional statute which has within its scope any commercial transaction, requires to be added to the Schedule.

Unfortunately, by the time the Standing Committee Report was presented to the Houses on 10th December, 2015, the Commercial Courts Ordinance has already come into force (23rd November 2015). This Ordinance had the exact same definition of 'commercial disputes' as proposed in the Draft 2015 Bill. Thus, in reality, the suggestions of the Standing Committee did not elicit any fruitful response. (Wagh et al., 2023).

Before going into detailed dissection of the different types of commercial disputes that the current CCA, 2015 covers, the author would like to assess how High Courts and the Supreme Court of India dealt with commercial disputes before the enactment of the CCA, 2015. The following section will be dedicated to those cases which were considered 'commercial' and treated with efficiency and swiftness before their scope was streamlined under the 2015 Act.

3.3.1. Role of Supreme Court and High Courts in handling commercial disputes before The Commercial Courts Act, 2015

Prior to the enactment of CCA, 2015, there were no dedicated forums to address the commercial disputes in the country. The Supreme Court of India dealt with commercial disputes only in appeals from High Courts or as part of any writ jurisdiction. Similarly, the High Courts either entertained certain categories of disputes in its original side jurisdiction or as appeals from the lower district judge. Other disputes arising out of Companies Act, 2013 mostly went to the NCLT, some went to Consumer Forums, whereas competition law disputes went to the Competition Commission of India. While most disputes that involved infringing the right in rem, went to specialised tribunals created under the statute, those involving violation of right in personam went to ordinary civil courts, with the exception of oppression and mismanagement cases, consumer disputes etc. (Prasad, 2021)

One of the core principles and objectives behind introducing the 2015 Bill was to improve the legal culture in the country. That being said, we must acknowledge that commercial dispute resolution in India through the mechanism of courts was not a priority in the country. In the famous case of ***LIC v. Escorts India Private Limited*** (1985) in 1985, we can sense this aversive attitude of the Supreme Court towards disputes having a commercial angle. (Wagh et al., 2023). The Supreme Court quotes that matters of fiscal policy especially those involving political processes of corporate democracy should not become the concern of the court. It went on to state that the variegated problems of the world of finance cannot be treated as litigable public-right-questions, if the same is encouraged, large corporate giants will knock the doors of the

country's apex court under the attractive banners of justice, fair-play and the public interest. (Wagh et al., 2023). The court clearly held that it would prefer providing aid to the lilliputian farm labourer or pavement dweller over any corporate giants since disputes involving the latter rarely brought forward any worthwhile legal principles. The Supreme Court further held that all proceedings in business disputes are generally followed by lengthy arguments and discussions which is often at the cost of lesser men who have more serious issues. Thus, for the first time, the Apex Court stated that a time-limit on the length of submissions and page- limit on the length of judgments must be imposed whenever any court is dealing with commercial disputes so to say. (Chandran, 2022). It added that in commercial disputes which are often between big financial giants, the latter do not take the proceedings seriously, and if they are a foreign national, which is also a very probable case, choose to stay absent from court. This leads to a lot of wastage of time and judicial resources; and therefore, the Supreme Court concluded that commercial disputes hardly involve questions of public interest and administration of administrative justice in the public interest. (Prasad, 2021)

The above judgement was one of the most celebrated judgements in the pre 1990s, which clearly expressed that India as an economy did not care much for resolving business disputes or those having a commercial angle. It largely believed that the primary responsibility of the courts were to attend to the needy helpless litigants who need immediate judicial assistance and not to cater to the needs of the business community. (Chandran, 2022)

Thereafter in the 1990s, with the new economic policy of liberalisation, globalisation and privatisation of 1991, the Parliament as well as the judiciary gradually realised that a dispute resolution system can rightly be called successful if it has the confidence of investors and businessmen from shores afar. Creating a specialisation within the courts for commercial disputes to address broader developmental constraints like effective access to contract enforcement and improvements in the investment climate will ensure businesses that they will always have the assurance of the prevalence of rule of law in the Indian market and disputes that they face on a day-to-day basis will be resolved efficiently by the courts of the country on a priority basis. (Kolte & Simonetti, 2018)

Similarly, in ***Miheer H Mafatlal v. Mafatlal Industries Ltd*** (1996), the Supreme Court adopted a somewhat similar attitude where it said that disappointment of shareholders over the valuation of shares is a matter of business judgement and outside the scope of judicial scrutiny; therefore, courts should not interfere with the 'commercial wisdom' of a scheme, as long as statutory

formalities are met. While some would say that this attitude of the Supreme Court is applaudable where businesses are given free will and judgement to resolve disputes through NCLT, we may also like to note the Apex Court did not seem too keen on developing commercial legal principle in cases like these. (Chandra, 2023).

Even though commercial disputes were not given any special treatment or treated with urgency and swiftness before 2015, it would not be correct to say that the Supreme Court of India did little to develop commercial law jurisprudence in the country. Whether it is contractual disputes that came knocking the doors of the Supreme Court or cases of oppression or mismanagement that were not happy with orders of NCLT or NCLAT, the Supreme Court ruled upon a vast array of cases which have developed our corporate law jurisprudence. Even in competition law matters, Supreme Court has gone ahead and confirmed penalties imposed by the Competition Commission of India, on major corporates like Google, Amazon etc. To speak of a recent case, the Supreme Court released an elaborate judgement with respect to removal of ***Cyrus Mistry*** (Kaushik, 2020) in Tata Sons and deliberated upon whether or not such removal amounted to oppression of one of the largest shareholder groups of the company. In many such cases, the Supreme Court has given equal importance to commercial or contractual disputes and treated them at par with public law questions, when it sits upon adjudicating them. Questions of contractual enforceability have been decided by the High Courts of Delhi and Bombay ***in NTT Docomo v. Tata Sons Ltd.*** (2017) and ***Banyan Tree Growth Capital, LLC v. Axiom Cordages Ltd***. (2020) Additionally, a lot of acquisitions and mergers which gave rise to disputes came asking for assistance of the High Courts and Supreme Court that required solving significant questions of commercial law. (Pareek, 2017).

As the legal climate in our country slowly began to acclimatise with more commercial disputes in the economy, we have seen the establishment of specialised tribunals like NCLT, CCI, Rent Control Tribunals etc. These bodies were created to cater to the purpose of specialisation required at that point in time to resolve these commercial disputes. Even though these tribunals had well defined powers under their respective statutes, and the latter barred the Civil Court's jurisdiction in all disputes which were supposed to go to these tribunals, the Supreme Court and High Court often faced questions regarding jurisdiction challenges between civil courts and these tribunals. (Speech Of Hon'ble Minister Of Law And Justice, 2016). It's interesting for the author to note these challenges in this section, since majority of commercial disputes today either go to Commercial Courts and Divisions under the CCA, 2015 or these tribunals. In the famous case of ***The Secretary of State v Mask and Co.*** *(1940), if a commercial dispute*

arises out of a statute, over which the jurisdiction of the specialised tribunal lies, then the jurisdictional barring of a Civil Court needs to be expressly mentioned; otherwise, if the tribunal does not fundamentally uphold the legal principles, then Civil Courts can continue to exercise the jurisdiction over the suit. In the case of ***Dhulabhai v. State of Madhya Pradesh and others*** *(1968), the Supreme Court laid down seven elaborate principles as grounds under which the jurisdiction of the Civil court can be ousted. If we summarise the decision of the bench, we come to three broad parameters to determine whether or not the civil court has jurisdiction over the same – i) If the decision of the tribunal, on which jurisdiction is conferred, is also attributed finality by the statute' ii) If such tribunal has the same capacity and resources as a civil court when it comes to resolving the dispute at hand and iii) thirdly, whether the tribunal can act as an efficacious alternative remedy of the civil court. Thus, we can safely say that before the CCA, 2015 was enacted, there were cases which had to specifically clear out any jurisdictional clashes between the civil courts and tribunals created for handling commercial disputes. Supreme Court through various cases over the years have cleared out those clashes and ambiguities. However, that body of precedents is necessary so that no confusion regarding where commercial disputes should ideally go to, can arise now that dedicated commercial courts are set up under the CCA, 2015. (Dinesh, 2021).*

3.3.2. Role of different statutory tribunals in handling commercial disputes before The Commercial Courts Act, 2015

One of the most important commercial laws in the country are The Indian Contract Act, 1872 and The Companies Act, 2013. A huge chuck of disputes having a commercial angle and those arising out of contracts pertain to these laws. For ordinary contractual disputes which violated the right in personam, litigants approached the civil courts. However, for disputes violating a right in rem, pertaining to company law compliances, one has to approach the NCLT and NCLAT. This however does not hold true for cases relating to oppression and mismanagement. Section 241 of the Companies Act, 2013 allows a member of a company to file an application to NCLT for actions taken against the interest of the shareholders. This essentially is a right in personam. However, the same provision allows a member to file a complaint if the alleged action is taken against public interest or rights of the company. (Bhargava et al., 2020). In that sense, the right involved is a right in rem. The Companies Act, 2013 however makes it absolutely clear that all disputes arising out of concerns over oppression and mismanagement of the company will solely lie to NLCT, even if the same has a commercial angle to it. (Gandhi,

2023). This position was affirmed by the Bombay High Court in the case of ***Rakesh Malhotra v. Rajinder Malhotra*** (2018), stating that it does not matter whether the dispute relating to the same is related to right in rem or right in personam; NCLT has the exclusive authority to dispose of those cases. Further, a number of sectoral regulators, including SEBI, the telecommunications regulator TRAI, and the Electricity Regulatory Commissions, often enough deal with commercial issues couched as regulatory issues and in that sense the scope of commercial disputes expanded beyond those that went to civil courts only before the CCA, 2015. (Ahlawat, 2018).

In 2021, ***Gujarat Urja Vikas Nigam Limited v. Amit Gupta and Ors.*** (2020), a question arose with respect to deciding the correct forum for adjudicating upon the termination of a contract, which got terminated due to the initiation of corporate insolvency resolution process. The Supreme Court decided that if a contractual dispute arises in relation to an insolvency proceeding, then the NCLT and not a commercial court should take cognizance of it under section 60(5) of the Insolvency and Bankrupcy Code of India, 2016. This judgement was a big help to future litigants in terms of the multiplicity of forums, time, and expenses. (Agrawal & Tripathi, 2022).

However, recently the Delhi High Court in ***Anchal Mittal & Ors. v. Ankur Shukla*** (2022) confirmed that a dispute that arises between two partners in a limited liability partnership is ‘commercial’ in nature and must go to the Commercial Court. The parties contended that since the dispute arose out of a ‘body corporate’ under the Limited Liability Partnership Act, 2008 and the adjudicating authority is NCLT, the latter has the exclusive jurisdiction to try such a dispute. The High Court decided that simply because an LLP is considered to be a 'body corporate' under the Limited Liability Partnership Act, 2008, it cannot be equated with a company, where the jurisdiction for all disputes more often than naught lies with the NCLT and the jurisdiction of Civil Courts are barred under the provisions of section 430 of Companies Act, 2013. Thus, an inter se dispute between partners in an LLP will lie only to a commercial court or a civil court. (Jhunjhunwala & Ray, 2022).

Another very common confusion with respect to choice of jurisdiction would be between consumer disputes and commercial disputes. Before the CCA, 2015 was enacted, if a dispute arose between a business and a consumer, the party raised the same before the appropriate consumer forum, basis the pecuniary jurisdiction of the dispute. In ***Yashwant Rama Jadhav v. Shaukat Hussain Shaikh*** (2017) the National Consumer Dispute Resolution Forum (NCDRC)

observed that Section 3 of the Consumer Protection Act, 2019 provides for relief to a consumer in a way that does not violate any other existing law. Thus, the remedy provided under Section 3 is an additional remedy available to a consumer. However, even if the opposite party goes to a civil court, the jurisdiction of the consumer court is not ousted. (2017). In another recent case, ***M/s Imperia Structures Ltd v Anil Patni & Another*** (2020), the Supreme Court held that concurrent remedies can be made available under two different statutes, without one cancelling the jurisdiction of the other. Thus, consumer disputes, even if they had a commercial angle, could also go to civil courts. After CCA, 2015, these consumer disputes which were handled by ordinary civil courts now lie to commercial courts. So, further a confusion arises as to how the jurisdiction of the same will be divided between the Commercial Courts and Consumer Courts. (Nagpal & Jhawar, 2020). Recently, the Supreme Court in ***Shrikant G. Mantri v. Punjab National Bank*** (2022), gave an elaborate description of the true scope of a "consumer" in terms of Section 2(1)(d) of the Consumer Protection Act, 1986 and held that the 'business to business' disputes cannot be construed as consumer disputes, and could not come under the protection and purview of the Consumer Protection Act, 1986. The court further mentioned that scope of the 1986 Act revolves around 'business to consumer' disputes which ideally should go to consumer courts. But when it comes to 'business to business' disputes, the latter are a category of commercial dispute that should be exclusively handled by the Commercial Courts. (Bhardwaj, 2022).

Another chunk of commercial disputes particularly those arising out of intellectual property rights (IPR) issues, would go to the Intellectual Property Appellate Board (IPAB) in appeal against the Registrar order. (Kumar & Paul, 2014). The Tribunals Act, 2021 abolished the IPAB and stated that all matters in appeal from the Registrar's order would go to the Commercial Court for copyright related disputes, and for other IPR disputes, it would go to High Courts. Section 6 of The Copyright Act, 1957 states that certain copyright disputes relating to the term of copyright under Chapter V of the Act, and publication of the work shall be exclusively handled by the Commercial Court. (Bhatia, 2022). While the abolition of IPAB has been applauded by some stating that the same was simply an added layer of litigation as matters frequently went to High Courts against IPAB orders; others have contested the abolition on the grounds that the High Court lacks the expertise and specialisation that technical members of IPAB have with respect to handling IPR disputes. The absence of Chairman for long periods of time, High Courts' power to rule on constitutional aspects of an IP as well as public interest

as a consideration in handling of IPR cases, etc. convinced the government to abolish the said tribunal and refer the responsibility to the commercial courts. (Tiwari & Bhardwaj, 2021).

3.3.3. Different categories of commercial disputes under The Commercial Courts Act, 2015

After long discussions and deliberations upon deciding the scope of the CCA, 2015, as well as looking at the different ways in which other countries have chosen to define the term 'commercial', the CCA, 2015 has identified 22 categories of disputes that are treated as 'commercial' and added a residuary clause that gives Central Government the right to notify any other dispute from time to time. Section 2(1)(c) which provides such definition for the list of 22 disputes starts with the term 'means' instead of the term 'includes'. (Chandra, 2023). In ***Bharat Coop Bank Limited. V. Cooperative Employees Union*** (2007), the Supreme Court held that when definition clause of a statute starts with the word 'means', it indicates that definition needs to be interpreted exhaustively. While observing the same, the Supreme Court referred to the observation of Lord Esher, M.R. in ***Gough v. Gough*** (1952); he said the word 'means' in a definition clause suggests that the same is a hard and fast definition and no other meaning other than included in the clause can be assigned to its meaning. Thus, we can safely say that the intention of the legislature is to exhaustively define commercial disputes under the provision of Section 2(1)(c). (Prasad, 2021).

In ***Ambala Sarabhai Enterprises Limited. V. K.S Infrastructure LLP***. (2020), the Supreme Court while deciding whether or not the Commercial Court has jurisdiction over the dispute at hand, observed that a strict interpretation like in taxing statutes would not be the correct way to go for deciding issues pertaining to jurisdiction. He reiterated that the CCA, 2015 was enacted for speedy disposal of commercial disputes that were of high value and importance to foreign litigants often, so the latter has a positive impression of the Indian legal system. However, if too wide a meaning is given to a dispute while entertaining the same and deciding upon its 'commercial' essential, then it would defeat the purpose of CCA, 2015. Thus, every other suit merely because it is high value and seeks the special disposal procedures would come knocking the doors of the Commercial Court and clog the system. This would also block the way of genuine commercial suits to be entertained by Commercial Courts as intended by law makers. (Mulla & Bhot, 2021). To add to that, the High Court in ***Smt. Kanthamma Chandrasekhar v. Rohan Housing Private Limited*** (2019), stated that whether a dispute is a

commercial dispute or not needs to be raised before the appropriate Commercial Court and not through a petition filed before the High Court under Article 227 of the Indian Constitution.

In another case, ***Ladymoon Towers Pvt Ltd. v. Mahendra Investment Advisors Pvt. Ltd.*** (2019), the Calcutta High Court analysed the different categories of disputes and held that if a transaction is required to be fixed into the one of the ambits of one of the categories of 'commercial dispute' as given in Section 2(1)(c), then the Court would simply encourage unnecessary wastage of time in determining whether the dispute is a commercial dispute. (Sarach & Sanklecha, 2022). The Court pointed out that judges have a tendency to accept the listing of matters before the Commercial Division, which is usually done by the concerned department or occasionally by the court if any party objects to such classification. Thus, it is essential to discuss what constitutes a 'commercial dispute.' To this, the Delhi High Court added that the statement of objects and reasons of the CCA, 2015 do not indicate that a wide interpretation the definition of "commercial disputes" should be construed. (Deshmukh & Gupta, 2022).

Section 2(1)(c) defines that commercial disputes are disputes arising out of 'Commercial disputes' includes disputes arising out of ordinary transactions of merchants, bankers, financiers, and traders, which we categorise under three broad headings: (Krishnaswamy & Aithala, 2020).

(i) **trade/mercantile disputes** - those relating to mercantile usage, agency, partnerships, sale, export or import of merchandise or services,

(ii) **infrastructure and construction disputes** – including carriage of goods, construction and infrastructure contracts including tenders, agreements relating to immovable property used exclusively in trade or commerce, relating to aircrafts, oil and natural gas,

(iii) **business and financial disputes** – arrangements including franchising, distribution and licensing, management and consultancy agreements, joint ventures, investment agreements, information technology, financial services, insurance, intellectual property rights etc.

The author in the following paragraphs has discussed the scope of 'commercial dispute' against each category mention in Section 2 and the precedents that have developed around them, which helps us identify and assess its scope better.

(i) Ordinary transactions of merchants, bankers, financiers, and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents – Section 2(1)(c)(i)

Even though in the above cases, we saw that the Supreme Court and High Courts have suggested that one should not widen the scope of commercial disputes too much, if we look at i), the classes of persons mentioned like merchants, bankers, financiers, traders is connected to the expression 'mercantile documents' by using the term 'such as.' In ***Goodyear India Limited v. Collector of Customs*** (1997), the Supreme Court said that the words 'such as' were illustrative in nature and does not suggest any limitations. Therefore, the word 'such as' in this clause coming prior to 'mercantile documents' does mean that only mercantile documents fall within this definition. In other words, 'such as those relating to mercantile documents' cannot be construed as words of limitation while construing this definition.

In the last eight years, Commercial Courts have delivered a rich volume of precedents which throw light on some guiding principles for deciding whether or not a dispute is 'commercial dispute.' The most common of these were disputes arising out of commercial loans rendered by financiers. In ***Credwyn Holdings (India) Limited v. Jimmy J Gazadar*** (2021), the Court held that any suit for recovery of money based on financial assistance rendered in the ordinary course of business through an intercorporate deposit is a commercial suit. By extension of that, all disputes arising out of financial transactions of fixed deposits, or a recovery of money based on the strength of a failed joint venture agreement are to be treated by commercial disputes, ***Rammohan Vedantham v. Arvind Reddy Kumham***. (2022).

In ***Punj Llyod Limited. V. Hadia Abdul Latif Jameel Company Limited***. (2018), the Court observed that the word 'mercantile' in Section 2(1)(c)(i) is broad and includes within its conspectus, any transaction relating to trade or business. The suit pertained to disputes arising out of transactions involving corporate guarantees. The Court further stated that a corporate guarantee is nothing but a mercantile document which is executed for the purposes of securing the interest of the party in whose favour it has been issued. And therefore, such transactions would clearly constitute commercial disputes. (Whittaker & Paris Whittaker, 2020). On the same line of thought, a commercial loan advanced to a real estate developer by another real

estate developer is a transaction relating to mercantile documents and the like, entered between traders and financiers. (Neelam Chawla & Basanta Kumar, 2022). This is because the real estate developer develops flats as stocks in trade and becomes a trader or merchant of those flats. Thus, any dispute between them due to any loan advanced is a clear case of 'commercial disputes' under Section 2(1)(c)(i), ***South City Projects (Kolkata) Limited v. Ideal Real Estates Private Limited***. (2021)

While, many such disputes relating to loan agreements fell within the scope of Section 2(1)(c)(i), there were also cases relating to recovery of money where the Court refused to treat the suit as a 'commercial suit'.

In ***Kailash Devi Khanna v. D.D Global Capital Services Private Limited*** (2019), it was stated for the first time that not all suits for recovery of money would fall within the ambit of a 'commercial suit' unless it can be shown that the transaction in the said matter was based on mercantile documents. Following this, the Madras High Court in ***R. Kumar v. T.A.S. Jawahar Ayya and others*** (2019) held that a suit for recovery of money based on mortgage deed would not fall within the ambit of the clause, if the loan was for advanced for meeting personal expenses. The High Court studied the evolution of Section 2(1)(c)(i), and concluded that all transactions of merchants, bankers, financiers, and traders must relate to some mercantile document and the underlying transaction must definitely be that of a commercial one. Thus, a loan advanced on friendly terms cannot be equated with commercial lending, within the meaning of Section 2(1)(c)(i), ***Glasswood Reality Private Limited. V. Chandravilas Kailashlumar Kothari*** (2021).

The issue of whether a hand loan advanced on informal terms would be called a commercial transaction came before the Calcutta High Court in ***Ladymoon Towers Pvt Ltd. v. Mahendra Investment Advisors Pvt. Ltd***. (2021). The judgement elaborates on the dictionary meaning of the terms 'merchants', 'bankers', 'traders' and 'financiers' to come to the conclusion that any dispute where the basis of disagreement between the parties is a non -commercial cause, cannot be called a commercial dispute. The Court stated that if one looks at the gradation of disputes under the provision Section 2(1)(c)(i), the latter considers all forms of agreements from which a commercial dispute may arise. This tells us that the intention of the framers was to emphasise upon the commercial flavour of a transaction, as opposed to agreements that are entered into without a commercial cause or purpose. A commercial purpose essentially means any dealings between parties where their economic or commercial interests are involved and thus provides

economic benefits to either party. It does not include transactions where profit making is an incidental outcome or happens by accident. (Deshmukh & Gupta, 2022). Therefore, even though the handloan extended had an expectation of the principal sum being returned with interest, the same loses its commercial flavour by reason of informal terms and the consequent uncertainty resulting from it. It was supported by the recent judgement of ***Prime Hitech Textiles LLP vs Manish Kumar*** (2022), where the court held that even if parties in the dispute have businesses, that is not enough to conclude that the transaction between the parties are connected with any business transaction. Thus, the parties can approach the ordinary civil courts where the remedy exists but as far as the Commercial Court is concerned, the forum is not right to provide a remedy to the case at hand.

A similar reasoning was also provided by the Bombay High Court in ***Bharat Mudanna Shetty v. Ahuja Properties and Developers*** (2021), where it was stated that the merchant or the trader in a transaction is also an individual who may help another individual and that very help can take the shape of a lending. However, not every instance of lending can be for a commercial purpose or reek of business or trade and similarly, not every trader can act as a trader. Justice Naidu pointed out that lumping everything commercial together would simply flood the adjudicatory arteries of the judicial system and force the worthier, truly trade related disputes to take a back seat. A liberal approach towards treating a dispute as 'commercial' can lead us to unintended consequences; the Supreme Court in ***Ambala Sarabhai Enterprises Limited. V. K.S Infrastructure LLP*** (2020) warns us of the same.

The second very common class of commercial disputes were those arising out of tortious claims and suits for injunction and damages. The Court in ***Perpetuuiti Tecnosoft Services Private Limited v. Sanovi Technologies India Private Limited*** (2014), held that a claim in tort for damages for alleged interference in the contractual businesses of a party related to ordinary transaction of trade and commerce; thus within the scope of the Section 2(1)(c). This was supported by the Bench of ***G.I Retail Private Limited v. Goomo Orbit Corporate and Leisure*** (2020) which held that any suit for injunction and damages for injurious falsehood fell within the scope of a commercial suit. However, recently in ***Big Bang Boom Solutions v. Centauri Composites Private Limited*** (2021), held that a suit for damages based on defamatory statements on online platforms was not a commercial dispute since the entire cause of action was founded on the tort of libel.

An interesting issue relating to whether a dispute arising out of an operational lease would fall within the definition of 'commercial' dispute came to the Division Bench of the Madras High Court in ***Integrated Finance Company Limited v. Garware Marine Industries Limited*** (2019). The court referred to the distinction between financial lease and operational lease by citing the Supreme Court judgement ***Association of Leasing and Financial Service Companies vs. Union of India and others*** (2010). The Bench said a financial lease requires transfer of all the risks and rewards incidental to ownership, even though the title may or may not be eventually transferred to the lessee. The lessee could use the asset for its entire economic life and thereby acquires risks and rewards incidental to the ownership of such assets. A financial lease is therefore a financial loan from the lessor to the lessee. If a lease does not have the above essentials, it is an operational lease, and thus not connected to a commercial transaction. Therefore, for the purposes of Section 2(1)(c), only disputes out of financial leases are considered to be commercial suits. (Aggarwal & Badhwar, 2021).

Another unique issue that came up in a dispute was whether a commercial dispute loses its 'commercial' characteristic since the plaintiff claimed that fraudulent dealing in the principal transaction involved more than one defendant, and some of them refused to surrender to the jurisdiction of the commercial court. The court held that there is no requirement under the CCA, 2015 stating that against every single defendant, there needs to be a commercial or mercantile document or transaction. The statutory intent was not to encompass the wide commercial and corporate fraud into the CCA, 2015; ***National Spot Exchange Limited v. N.K. Proteins Limited*** (2019)**.** In ***Punjab University v. Unit Trust of India*** (2014), the court elucidated uponthe term 'commercial action'. It was observed that a commercial action would relate to a cause for construction of a mercantile document and cover within its ambit, a 'commercial purpose' that denotes making profit out of an undertaking.

ii) <u>Export or import of merchandise or services – Section 2(1)(c)(ii)</u>

The above category is drawn from the Part 58.1(2)(b) of the UK Civil Procedure Rules, whereby 'export or import of goods' is treated as a commercial claim. However, if we look at Section 2(1)(c)(ii), it also includes the expression 'services' and use of the word 'merchandise'in place of 'goods'. In ***State of Gujrat v. Bharat Pest Control*** (2018), the word 'goods' is broader than 'merchandise'. In another case ***CIT v. Suresh*** (2003), the difference between theterm 'goods' and 'merchandise' was highlighted. The Court stated that the word 'merchandise'

means an article of trade and commerce and the words "goods" and "merchandise" have to be read in widest possible terms.

iii) Issues relating to admiralty and maritime law - Section 2(1)(c)(iii)

The High Courts of Calcutta, Bombay, and Madras exercise admiralty jurisdiction on their original side. In Calcutta, these matters are governed by the Calcutta High Court Admiralty (Jurisdiction and Settlement of Maritime Claims) Rules, 2019 (2019). In Madras, its governed by Order XLII of the Original Sides Rules and Rules for Regulating the Procedure and Practice of Cases brought before the High Court of Judicature at Madras in exercise of the admiralty jurisdiction. In Bombay, these admiralty suits come under the Chapter LX of the Original Side Rules, 1980 setting out the practice and procedure of cases before the High Court under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (2017).

From the above, there is no doubt that all admiralty suits should go to the Commercial Division of the High Court. This was elaborated by the Supreme Court in ***M.V. Elisabeth v. Harwan Investment and Trading Private Limited*** (1993). Justice T.K. Thomspson observed that the admiralty jurisdiction of the High Court is dependent on the presence of the foreign ship and irrespective of where the defendant resides or carries on the business or the cause of action arose, the High Court can assume jurisdiction to arrest such ship. Once a foreign ship is arrested and the owner comes to the High Court to release the same, the proceedings continue as a legal action. (Sundaram, 1994).

In ***Porto Maina Maritime SA v. Owners and Parties Interested in the vessel of M.V. Gari Majestic*** (2013), the Calcutta High Court further explained the expression ‘admiralty law’ and ‘maritime law’. The High Court explained that ‘admiralty law’ refers to the body of law including procedural rules developed by the English Courts of Admiralty in their exercise of jurisdiction over matters pertaining to the sea. It solely gives the admiralty courts the power to exercise inherent jurisdiction over these matters. Thus, all matters admiralty law which bore a maritime character through years codified the law relating to ships and shipping. ‘Maritime law’ on the other hand includes commercial maritime law, maritime safety, pollution prevention and labour law as well as admiralty law in common law jurisdictions, but does not extend to the public international law of the sea. In other words. admiralty law often connotes the maritime law relating to "wet" matters, i.e., those involving ships when they are at sea, as distinguished from "dry" matters also involving ships but pertaining only to commercial aspects that are essentially land- based issues. (Chandran, 2022).

iv) Transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same - Section 2(1)(c)(iv)

This category is very specific as it clearly points out that the transaction needs to be a sale, lease or financing of any of the four categories – aircrafts, aircraft engines, aircraft equipmentand helicopters etc. Any dispute arising out of this transaction is a commercial dispute for the purposes of CCA, 2015. (Wagh et al., 2023).

v) Carriage of goods Section - 2(1)(c)(v)

Unlike in UK CPR 58(1)(2)(c), where the mode of carriage is specifically identified as land, air, sea or pipeline, the provision under CCA, 2015 does not spell out the mode of carriage. If we however want to look at the scope of disputes under this category, the same can be said to arise from contracts under The Carriage by Road Act, 2007 (2007), The Indian Carriage of Goods by Sea Act, 1925 (1925), Multimodal Transportation of Goods Act, 1993. In ***Kandala Cargo Handlers v. Container Corporation of India Limited*** (2019), it was stated that a contract where a petitioner acts as an agent of the respondents for handling and packaging works performed for the purpose of transporting is not of carriage of goods simplicitor as contemplated under Section 2(c)(v). Thus, the nature of such contract, makes a part of it as non-commercial. The Court concluded that where a part of the contract, being the main transaction, is non-commercial in nature, the same would not be subjected to the CCA, 2015. (Chandran, 2022).

vi) Construction and infrastructure contracts, including tenders - 2(1)(c)(vi)

The World Development Report, 1994 published by the World Bank tells us the difference between economic and social infrastructure. The former public utilities, public works and other transport sectors while the latter includes projects encompassing education and healthcare. (et al., 1994). The Deputy Chairman of the Planning Commission in India headed the Empowered Sub-Committee of the Committee on Infrastructure (2014) whereunder, the following activities fall within the definition of 'infrastructure':

a) Electricity

b) Non-Conventional Energy

c) Water supply and sanitation

d) Telecommunications

e) Roads and bridges

f) Ports

g) Inland waterways

h) Airports

i) Railways

j) Irrigation

k) Storage

l) Oil and gas pipeline networks

Even though the CCA, 2015 does not define either of the terms, 'construction' or 'infrastructure', the above gives us some context of what encompasses the subject matter of this category of commercial disputes. In ***Blue Nile Developers Private Limited v. Movva Chandra Sekhar*** (2022), the court looked at the definitions of 'construction' and 'infrastructure' to conclude that the terms cannot be used interchangeably. (Kumar et al., 2023). It observed that a dispute over an agreement relating to building and redevelopment of a residential project with flats and community facilities fell within the scope of Section 2(1)(c)(vi). Similarly, the Calcutta High Court held that a development agreement whereby a plaintiff contemplated vacant possession and making a construction is a construction contract, ***Swastik Project Private Limited v. City Enclave Private Limited*** (2021).

At The National Workshop for High Court Justices for Commercial Division and Commercial Appellate Division on Commercial Disputes, 2022 organised by the National Judicial Academy, it was observed that the construction and infrastructure demands are intertwined with the economic development of a country wherein Foreign Direct Investment is the key factor. (2022). It was further discussed that infrastructure contracts do not pose normal and usual contractual issues, and sincere there is no set guideline for issues pertaining to infrastructure contracts, it leaves a lot of room for assumptions. In general, the risk inconstruction and infrastructure projects is high which makes it probable for a loss if any stay order by a court or tribunal causes added delay to the same. It was pointed out that in India, only the states of Gujarat, Andhra Pradesh, and Punjab have enabling statutes for these projectsand the rest of the states merely have a policy for the same. (Chandran, 2022). In ***Reliance***

Airport Developers Pvt. Ltd. vs. Airport Authority of India & Ors (2006), the court held that the judiciary must not enter into business decisions involved in construction and infrastructure projects but judiciary's focus must be to ensure that government does not do things patently illegal, irrational or procedural impropriety. Additionally in ***Kailash Nath Associates vs. DDA*** (2015) and ***State of Gujarat vs. Kothari Associates*** (2015), it was stated that for an infrastructure project to look lucrative to a global investor, it must not be subjected to any delay, change orders, contract frustration etc. (Panda & Padhi, 2019). In ***Energy Watchdog vs. CERC*** (2017), it was observed by the court that whenever a contract gets frustrated, one needs to look into impossibility of the contract being performed due to destruction of subject matter, the patent illegality of the same if its allowed to run as per agreed contractual terms and the loss of object of the contract. (Jena, 2017). The CCA, 2015 must be read regularly including exceptions provided in the Act such as Sec. 8 along with Sec. 35 of the Civil Procedure Code, 1908 (1908). Reiterating this principle, the Bombay High Court held in ***Vaijnath Dayanad Kale v. Nerkar Properties LLP*** (2020), that an agreement to transfer development rights for construction of a building, irrespective of whether the same is for residential or commercial use, is a construction contract falling within Section 2(1)(c)(vi).

vii) <u>Agreements relating to immovable property used exclusively in trade or commerce – Section 2(1)(c)(vii)</u>

The scope of this clause came up for consideration for the first time in ***Ujwale Raje Gaekwar v. Hemaben Achyut Shah*** (2016). The Gujarat High Court declared point blank that any suit for declaration and injunction in respect of immovable property would not fall within the ambit of Section 2(1)(c)(vii). Later, in ***Vasu Healthcare Private Limited v. Gujrat Akruti TCG Biotech Limited*** (2017), the Division Bench of the Gujrat High Court interpreted the word 'used' in the sub-clause and stated that it means 'actually used' or 'being used' as distinguished from 'likely to be used' or 'to be used'. In this case, the land plots were allotted to defendants for constructing a biotech park which was to be used for trade or commerce in future. The likeliness of that usage would not bring the dispute within the four corners of the provision. The matter was taken to the Supreme Court through a special leave petition (SLP).

While the above SLP was pending, the Supreme Court delivered the judgement of ***Ambala Sarabhai Enterprises Limited v. K.S Infraspace LLP*** (2020). The Supreme Court observed that a suit to enforce the execution of any mortgage deed in respect of a property not being exclusively used for trade or commerce cannot be called a commercial suit for the purposes of

CCA, 2015 (Gupta, 2022). Affirming the decision of the Division Bench of Gujrat High Court in Vasu Healthcare, the Court held that the instant case relates to execution of a mortgage deed as per the terms of memorandum of understanding and throughout the suit, there is no mention of the nature of use of the immovable property in any trade or commerce. Thus, unless an immovable property is utilised exclusively for trade or commerce, a dispute arising from it does not simply bring it within the scope of Section 2(1)(c)(vii). In the concurring judgement,Justice Banumathi observed that the word 'used' in the clause must be read purposively and not to denote a property which is 'ready to use' or 'likely to use'; the latter interpretation would otherwise defeat the entire purpose of the CCA, 2015 and the fast-tracking objective behind it. (Wagh et al., 2023).

On the same line of thought, in ***Madhuram Properties v. Tata Consultancy Services*** (2018), the Division Bench of the Gujrat High Court held that a dispute with respect to an immovable property used exclusively for residential purposes does not fall within the definition of Section 2. Neither does a suit for cancellation of a general power of attorney and sale deeds and a decree of possession, fall within the ambit of the provision, ***Hindpal Singh Jabbal v. Jasbir Singh*** (2016).

In ***Jagmohan Behl v. State Bank of India*** (2021), the Supreme Court was faced with the question of whether a suit for realisation of mesne profits along with interest can qualify as a commercial suit. The Supreme Court observed that the clause (c) used in Section 2(1) uses the expression 'arising out of'. That read with subclause (vii) must be given their natural and general contours and used expansively. Thus, reading together, it includes all matters relating to immovable properties as long as the latter is used for trade or commerce. The explanation clause to Section 2(1)(c) stipulates that a commercial dispute does not lose its character merely because the suit involves recovery of the property or money out of the property given as security or any other relief pertaining to immovable property. The Supreme Court held that the explanation clause as well as clause (vii) must be read harmoniously to mean that all disputes arising out of immovable property used exclusively for trade or commerce is a commercial dispute and the agreements in respect of that could include recovery of the immovable property or realising money out of the immovable property given as security or any other relief pertaining to such immovable property. (***Kanchan Gange Realtors Private Limited. V. Monarch Infrastructure Developers Private Limited***)

In ***Armstrong Investment Private Limited v. Sri Sandip Bazaar*** (2021), the Calcutta High Court observed that the right to possession of an immovable property under Section 106 of the Transfer of Property Act, 1882 is a statutory right distinguishable from that arising from a lease agreement. Thus, a relief sought in context of that had no nexus with clauses in the lease agreement. Therefore, it cannot be called a commercial dispute arising out of an agreement under Section 2(1)(c). Similar ratios were held by the High Courts in ***Bhagwati Prasad Jhunjhunwala v. UCO Bank*** (2021) and ***K.B Consortium v. Crystal Processors Private Limited*** (2021), where execution petitions in respect of a commercial suit involving immovable property as well as consequent relief in an immovable property prayed against a third party would fall within the net of the CCA, 2015.

viii) <u>Commercial disputes falling out of various agreements – Section 2(1)(c)(viii) to (xvi)</u>

In the above clauses, it has been stated that any dispute arising from the exhaustive list of agreements or services would automatically qualify as a commercial dispute. The CCA, 2015 has not gone ahead and defined the scope of each of these agreements nor has the courts so far seen any dispute which challenged that the same does not pertain to the definition of any of these agreements. (Chandran, 2022)

Nature of the Agreement	Relevant Provision
Franchising agreements	Section 2(1)(c)(viii)
Distribution and licensing agreements	Section 2(1)(c)(ix)
Management and consultancy agreements	Section 2(1)(c)(x)
Joint venture agreements	Section 2(1)(c)(xi)
Shareholders agreements	Section 2(1)(c)(xii)
Subscription and investment agreements pertaining to the services industry including outsourcing services and financial services	Section 2(1)(c)(xiii)
Mercantile agency and mercantile usage	Section 2(1)(c)(xiv)
Partnership agreements	Section 2(1)(c)(xv)
Technology development agreements	Section 2(1)(c)(xvi)
Agreements for sale of goods or provision of services	Section 2(1)(c)(xviii)

TABLE NO. 1: TYPES OF COMMERCIAL AGREEMENTS UNDER CCA, 2015

In ***Arvind Processing Park v. Mayursinh Bhupathsinh Vaghela*** (2019), it was held by the Division Bench of the Gujrat High Court that an agreement to act as a broker entitling oneself to a commission would fall within the term 'service' under Section 2(1)(c)(xvi). Similarly, an agreement for storing tea packages for tea traders would also amount to 'service' under the provision, ***Kanoj Tea Private Limited v. Octavious Tea and Industries Limited*** (2021). However, a suit for specific performance of a sale deed or agreement is not a commercial dispute, as laid down in ***Jai Bhagwan v. Rakesh and Another*** (2018). In ***Rachit Malhotra v. One97 Communications Limited*** (2021), it was held that an agreement for purchase of shares under a scheme for the employees is not a shareholders agreement; rather the latter is an agreement where all shareholders agree on the management of the company. Thus, in the instant case, the agreement for employees' acquisition of shares does not fail under Section 2(1)(c)(xii).

ix) <u>Intellectual Property Disputes – Section 2(1)(c)(vii)</u>

Section 11 of the CCA, 2015 (2015) states that jurisdiction of commercial courts and divisions are barred in all cases where the dispute falls within the exclusive jurisdiction of specialised tribunals. Before the abolition of the Intellectual Property Appellate Board (IPAB) by the Tribunals Act, 2021, civil courts were barred from entertaining any suit falling within the scope of IPAB's jurisdiction. (Kaushik, 2021). By extension of that, those disputes could not come to the Commercial Courts. However, for suits relating to injunction and damages for passing off and infringement, it would still lie to the civil courts and therefore the same fell within the net of Section 2(1)(c)(vii). It has been declared by the. Tribunals Act, 2021 that all suits falling within IPAB's scope would now go to High Courts except for those certain copyright disputes relating to the term of copyright under Chapter V of the Act, and publication of the work shall be exclusively handled by the Commercial Court. (Kaur & Sharma, 2016).

Section 6 of the CCA, 2015 (2015) makes it amply clear that CCA, 2015 applies only if the suit is a commercial suit within the meaning of Section 2(1)(c) and it is of the specified value. Madras High Court released a Practice Note which identified specific provisions under the IPR statutes which state that disputes under the same will only lie to a District court (Hebbar et al., 2021). These provisions are:

a) Section 134(1) of Trademarks Act, 1999 (1999)
b) Section 62(1) of Copyright Act, 1957 (1957)
c) Section 22(2) of the Designs Act, 2000 – second proviso (2000)

d) Section 104 of the Patents Act, 1970 (1970)
e) Section 66(1) of Geographical Indications of Goods (Registration and Protection) Act, 1999 (1999)

If any dispute arises out of the above provisions, the same should go to the District Court, however if the suit does not have the specified value, then the District Court cannot act as a Commercial Court and the CCA, 2015 should ideally not apply to such suit. The IPR dispute will therefore be tried as an ordinary civil dispute as per timelines and procedures of CPC, 1908. First Proviso to Section 7 however states that if such IPR dispute is filed or pending in the High Court, then it must be heard by the Commercial Division, thereby bringing it into the ambit of CCA, 2015. Section 7 of CCA, 2015 states that all suits and applications relating to commercial disputes stipulated by any statute to lie in a court not inferior to a District Court and if the same is pending or has been filed in the High Court, then the same will be heard by the Commercial Division. For the city of Madras, the Principal District Court or the principal civil court of original jurisdiction is the original side of the Madras High Court. Thus, an IPR dispute can be filed before the Commercial Division of the Madras High Court, by virtue of first proviso of Section 7, ***Sundaram Finance Limited v. M.K. Kurian*** (2016). The court also noted that the pecuniary jurisdiction of the City Civil Court of Madras is 10 lakhs as per Section 3-A of the Madras City Civil Courts Act, 1892 (1892). Section 16 of the Act vests concurrent jurisdiction over suits up to 10 lakhs in value with the High Court and the City Civil Court (1892).

The situation was however slightly different in ***Shri Sushanta Malik alias Susanta Malik v. SREI Equipment Finance Limited*** (2015). It was held by the court that Section 21 of the City Civil Court Act, 1953 (1953) contains an overriding clause over Letters Patents and thus, only the City Civil Court in Calcutta and not the High Court can admit suits of value up to 10 lakhs. Thus, the correct court for filing a Section 9 of the Arbitration and Conciliation Act, 1996 can only be filed in the City Civil Court, if the value did not exceed 10 lakhs.

In ***Havells India Limited v. The Advertising Standards Council of India*** (2016), the plaintiff filed a suit against the direction of ASCI to take down a particular tagline used by the former in his advertising campaigns. The plaintiff contended that the tagline creates an intellectual property right of commercial value and contributes to its brand equity. Therefore, it deserves the same protection as a trademark. The defendant on the hand responded that they had no objection to the plaintiff's claim over the tagline as its trademark, however the said tagline is a

misleading advertisement against the ASCI Code. The court concluded that for a commercial dispute to arise, first and foremost, there needs to be a dispute in place. Since the defendant has not objected to the plaintiff's claim of intellectual property over the tagline, no cause of action arise. The court further observed that the plaintiff is trying to masquerade the present suit as an intellectual property dispute, whereas it is simply a suit challenging the action of the defendant in issuing a direction, the scope of which only lies in the realm of advertising and has no concern with any intellectual property right claimed by the plaintiff. Therefore. The instant casecannot be called a commercial dispute under CCA, 2015 and the plaintiff is free to explore reliefs provided by the ordinary civil court. (Vishwanath, 2016)

Before 2018 Amendment, in ***Guiness World Records v Sababbi Mangal*** (2016), the Delhi High Court expanded the scope of jurisdiction of commercial courts and divisions. It stated that all IPR disputes can be tried by commercial courts, irrespective of whether the suit value is above the minimum limit of 1 Crore rupees or not (as was the then specified value). We saw a vast majority of trademark infringement cases and injunction applications where the CCA, 2015 was applied such as the summary judgement passed by the court in ***SanDisk LLC v. Memory World***. (2018)

The above confusion was solved by the Delhi High Court in ***Vishal Pipes Limited v. Bhavya Pipe Industry*** (2022). The court in this case noted that after 2018, IPR disputes were listed in three different classes of courts in Delhi:

a) District Judges/Additional District Judges (Non-Commercial)-Suits valued below Rs.3 lakhs.
b) District Judges/ADJs (Commercial)-Between Rs.3 lakhs till Rs.2 crores.
c) Commercial Division of the High Court (Original Jurisdiction) -Above Rs.2 crores.

IPR disputes were mandated to be instituted in District Courts due to specific provisions in IPR statutes, however is view of 'specified value' under CCA, 2015, the same IPR suits are being heard and adjudicated upon by a different set of District Judges, i.e., District Judge (non - commercial), under the provisions of CPC as applicable to civil disputes. Thus even though all IPR disputes are commercial disputes, they are getting subjected to different substantive and procedural laws, before different Courts for adjudication. The High Court clearly laid down that all IPR suits are commercial suits and therefore should be subjected to the CCA, 2015 where it is to be filed in the District Court (Commercial). However, since they are commercial disputes, they must be ascribed a specified value as per Section 6. Even though there is no

valuation methodology mentioned in any of the IPR statutes, Section 12 (d) of CCA, 2015 states that the specified value of the IP suit should be based on the market value of the subject matter IP and not that of the reliefs claimed. Thus, a plaintiff cannot undervalue a suit and avoid the rigours of the fast track procedures under the law causing immense difficulties to the defendant. (Siddiqui & Mishra, 2023) This is in contraction to Supreme Court's observation in ***Bharat Bhusha Gupta v Pratap Narain Verma and Anr*** (2022) where it said that *"the market value of the immovable property involved in the litigation might have its relevance depending on the nature of relief claimed but, ultimately, the valuation of any particular suit has to be decided primarily with reference to the relief/reliefs claimed".* The Delhi High Court also notes that if a plaintiff does value the suit below the specified value of 3 lakhs, then it needs to be justified evidentially and should only be allowed in exceptional cases.

x) **Exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum – Section 2(1)(c)(xix)** (2015)

The above provision is identically worded as the UK CPR Part 58.1(2)(d). It describes a very straightforward category of disputes which arise from exploitation of oil and gas reserves, electromagnetic spectrums and other natural resources.

xi) **Insurance and Re-Insurance – Section 2(1)(c)(xx)** (2015)

This provision is worded from the UK CPR Part 58.1(2)(e). In the 188th Report, the Law Commission stated that where the claim in a general insurance policy is above the specified value, the same would fall within the ambit of the CCA, 2015. In ***Vikram Greentech India Ltd, vs. New India Assurance Company Ltd*** (2009), the court described an insurance contract as a species of commercial transaction where there is a requirement of good faith on the part of the insured. Other than that, there was no other spottable difference between a general contract and an insurance contract. (M & Muthyanolla, 2023). Insurers are primarily governed in India by the Insurance Act 1938 (1938) and the Insurance Regulatory and Development Authority Act 1999 (1999). There is no specific dedicated forum for resolving insurance disputes; in the absence of an arbitration clause, the insured go either to consumer forums or civil courts (now, commercial courts after CCA 2015). The insurer can however only go to the commercial court. ***Indian Bank vs Oriental Insurance Company Ltd*** (2019) is one of the first cases where the Madras High Court Commercial Division adjudicated an insurance dispute involving dishonestly and non-disclosure.

xii) **Contracts of agency relating to any of the above – Section 2(1)(c)(xxi)** (2015)

This category of disputes arising from a contract of agency in respect of any of the classes of cases in the previous categories.

xiii) Residuary powers to notify – Section 2(1)(c)(xxii) (2015)

This clause gives the Central Government the power to notify additional disputes as commercial disputes as and when the it thinks fit. There has been no notification till date. The residuary powers were mentioned by the author while discussing ***Ambala Sarabhai Enterprises Limited. V. K.S Infrastructure LLP***. (2020)

xiv) Explanation (a) of Section 2(1)(c)(i) (2015)

The case of the explanation was discussed by the Law Commission in the 188th Report. The Commission was of the opinion that if a partnership deed treats an immovable property as a partnership property, or creates a mortgage in respect of an immovable property given as security by a businessman in favour of another, then disputes arising from all of them should essentially come to the Commercial Division, provided the main underlying transaction is of commercial nature. The Commission added to that, disputes arising out of immovable properties, used for commercial purposes, like eviction cases would also come to the commercial court, provided that the latter does not enjoy the protection of the rent control legislation. The author has discussed this view of the Law Commission in details in **Section 3.2**. Further, the Explanation clause came up for analysis while discussing Section 2(1)(c)(vii) where the Delhi High Court stated that Explanation a) is the part and parcel of the provision. The court is ***Jagmohan Behl v. State Bank of Indore*** (2021) encourages us to harmoniously read both provisions. Detailed comments and observations in the judgement have been previously discussed by the author while discussing Section 2(1)(c)(vii) category of disputes.

xv) Explanation b) - State or any of its agencies or instrumentalities, or a private body carrying out public functions (2015)

The expression 'State' is used in the same sense as Article 12 of the Indian Constitution (1950). The expressions 'agencies', 'instrumentalities' and 'public functions' denote the same legislative intention. The lawmakers wanted to cover commercial transactions entered into by the state, its agencies and instrumentalities. Many government and public bodies like state industrial infrastructural corporations enter into contracts by virtue of which private bodies in the nature of a special purpose vehicle are created and state concessions and functions are

extended to them. Any dispute arising therefrom would be a commercial dispute for the purposes of CCA, 2015. (Goel, 2015).

3.4. Valuation of a 'commercial dispute'

The second most important feature of a commercial dispute is the specified value of the same. Only when a dispute qualifies the twin test; a) fall within the scope of Section 2(1)(c) and Section 2(1)(i). The CCA, 2015 in its original form had fixed the specified value of a commercial dispute at 1 crore. This was still a sharp decrease from 2 crore which was initially proposed by the Law Commission in 2003 in its 188th Report. Since then it received a lot of criticism about creating a divide between classes of litigants and treating those with a high value disputes better by proving them access to swifter , faster commercial courts. Further from 2014, the value of a commercial suit needed to come within the World Bank Study of 'Ease of Doing Business', therefore in 2018, the first amendment to the CCA, 2015 reduced the value of the suit to 3 lakhs. The author has discussed the same in detail in Chapter II.

Under the current CCA, 2015, the specified value of a commercial dispute is fixed at three lakhs. Section 2(1)(i) also specifies that it can be of a higher value, if the Central Government takes out a notification to that effect. So far, no such official notification has come out.

Section 12 of the CCA, 2015 tells us the different ways in which such value can be calculated:

i) If the suit or application relates to recovery of money, then its valuation largely depends on the plaintiff. The money he seeks to recover along with the interest computed till the date on which the suit starts, will be considered the specified value of the suit.
ii) If the suit or application relates to a movable, immovable, or intangible property, the market value of the same will be considered the specified value of the suit.
iii) In an arbitration of a commercial dispute, when the award will come to the commercial court for enforcement, the specified value of the suit will be the claim or counterclaim set out in the statement of a claim.

The twin test was mentioned again in the case of ***Condor Healthcare Private Limited v. M/S Corem Pharma Private Limited*** (2018). It was held that a commercial dispute under Section 2(1)(c) has to be of specified value and unless both these conditions were met, the jurisdiction of a commercial court under CCA, 2015 cannot be invoked. In ***Yamuna Techno Consultants***

LLP vs Scaleban Equipments Private Limited (2020), it was held that it was a primary responsibility of the trail court to asses whether a dispute alleging itself to be a commercial dispute falls within the scope of Section 2(1)(c) and can be said to be of specified value, as per the specific procedure provided in Section 12.

The valuation of a suit not only helps understand the pecuniary jurisdiction of a court but also helps us determine the court fees that need to be fixed. The valuation of a suit is either provided in respective state amendments or High Court fee Rules, in states where the High Court enjoyed original civil jurisdiction. Earlier, the valuation method of suits was governed under the two statutes like the Court Fees Act of 1870 (1870) and the Suits Valuation Act of 1887 (1887). In the 188th Report (The 188th Law Commission Report, 2003), the Law Commission while fixing the pecuniary value of a commercial suit at 1 crore, mentioned that the Suits Valuation Act of 1887 (1887) depicted a complicated method of valuation. In the 253rd Law Commission Report (The 253rd Law Commission Report, 2015), it pointed out that various High Court have different pecuniary jurisdiction ranging from ten lakhs to one crore. In the first, The Commercial Courts, Commercial Division and Commercial Appellate Division Of High Courts Bill, 2015 fixed the pecuniary value of a commercial suit at 1 crore. This created a very odd situation where High Courts with pecuniary jurisdiction of less than 1 crore, the ordinary civil bench would hear some commercial cases who do not have the specified value of 1 crore, whereas, similar cases of valuation 1 crore would be heard by the Commercial Division Bench of the same High Court. This created a discrepancy because in the same High Court, commercial cases heard by the ordinary civil bench would not get the benefit of special fast-track procedure. To cure this, it was suggested that a common original pecuniary jurisdiction for these courts should be set up for these Commercial Divisions.

The CCA, 2015 in this current form, is completely silent about the payment of court fees. Therefore, the corollary is that the commercial court is an ordinary civil court constituted under the CCA, 2015 that will fall within the definition of 'court' under The Andhra Pradesh Court Fees and Suits Valuation Act, 1956, laid down in ***Soma Hyderabad City Centre Private Limited v. Telengana State Road Transport Corporation***. (2019)

In ***Mrs. Soni Dave v. M/s. Trans Asian Industries Expositions Private Limited*** (2016), it was held that a harmonious reading of Section 12 of CCA, 2015 and the Suits Valuation Act and Court Fees Act for the immovable property needs to be done to ascertain the value of a commercial suit. The intention of Section 12 was not to introduce a new method of valuation

for jurisdiction and court fees and therefore, the Court Fees Act would be used to determine the value of the property involved and the CCA,2015 will determine the specified value of a suit. The court further discussed that one of the main ways in which specified value of a suit can be determined is the market value of the property involved in the matter. The market valuelargely depends on the demand and supply of that property which fluctuate daily. It can be easily manipulated to bring the specified value of the commercial suit within the pecuniary jurisdiction of the commercial court. It straightaway strikes at the objective of setting up these courts as even those cases which originally did not fall under the jurisdiction of these courts have been brought under it through deceptive means for getting faster decisions. (Thakur, 2022).

Since the CCA, 2015 does not mention the use of the Court Fees Act of 1870 (1870) and the Suits Valuation Act of 1887 (1887), it creates often a dilemma as to whether these statutes can be invoked while assessing the specified value of the commercial suit. It is possible for a plaintiff to claim a higher rate of interest and increase the specified value of the suit to come under the purview of the CCA, 2015 even though the valuation would have been different using the Court Fees Act and Suits Valuation Act. The plaintiff would use the advantage of Section 21 of the CCA, 2015 that has an overriding effect on the statute. In ***Mrs. Veena Bahl and Others v. Manmohan Bahl and Others*** (2017), CCA, 2015 is not intended to interfere with the Suits Valuation Act and Court Fees Act and the 'extent' of overriding effect given to this provision has to be interpreted accordingly. The court also observed that CCA, 2015 is not intended to override every other Act and every other provision, and it must have had a limited extent regarding overriding.

A very common way in which a valuation of a suit can be brought under the CCA, 2015 is through amendment in plaints. Thus, with the incentive of faster adjudication, the plaintiff can amend the pleadings to bring it under commercial courts. In ***Sanofi Aventis v. Intas Pharmaceuticals Limited and Another*** (2016), the court allowed such amendment stating that the same is bonafide. However, in another instance, ***Subhashini Malik v. S.K. Gandhi and Others*** (2016), the Delhi High court stated that the principle of dominus litis (plaintiff is the master of suit) cannot be used to amend the plaint as per his/her own choice and convenience. Thus, at the time for allowing such amendment to the plaint particularly to the valuation, court should see that there is no abuse of process. (2021)

Thus, the complications around the specified value of a commercial suit persist since the beginning of the CCA, 2015. better framing of these provisions will help us gain some clarity over its relation with Suits Valuation Act and Court Fees Act, or even a decision from the Supreme Court on these fundamental issues will suffice. Lastly, the valuation of suits has been a subjective issue varying from state to state. So, in some states, this leads to very less difference between the specified value of these courts and pecuniary jurisdiction. This makes some state's commercial courts seem more lucrative than others. It may lead to forum shopping.Hence, to stop this, common law or some common guidelines or rules need to be framed. (Chandran, 20222)

Subsection 3 of Section 12 states that no appeal or revision application is allowed against an order of the commercial court or division that pronounces that it has jurisdiction to try a commercial suit. Contextually, this provision appears in Chapter III dealing with specified value. Thus, the bar under the subsection is only limited to questions of pecuniary jurisdiction. Further, the provision only bars such revisions and appeals which go against findings that the Commercial Court has jurisdiction and not against findings that it does not have jurisdiction.

It is essential however for courts to read the provision of Section 12(3) with other provisions dealing with jurisdiction like Section 6, 8, 13(2) and 15(5) so that the bar does not impact other provisions relating to territorial jurisdiction, subject matter jurisdiction and jurisdiction with respect to pending matters. (Wagh et al., 2023).

3.5. Different stages of adjudication of a commercial dispute

From the very first day, when the CCA, 2015 was proposed back in 2003 as a legislation, the main ethos of the legislation was to reduce the time for disposal of cases. While creating separate specialised commercial courts was one of the ways to achieve that objective, the other was to reduce procedural formalities that a case had to go through before its gets a judgement pronounced and issues resolved by a judge. The CCA, 2015 brought some significant amendments to the Civil Procedure Code, 1908 in order ensure that from the day a suit is instituted till the execution of the decree happens in a time bound manner. One of the objectives of the Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015 was to improve the litigation culture of the country and put across the idea that a litigation should be controlled by the judiciary instead of by the litigant. (Wagh et al., 2023).

The objective of this section is to analyse the changes that have been brought and understand if they can bring a solution to the problem of delays that our judiciary is struggling with. The author has not described each and every step that a commercial suit goes through; primarily it follows the procedure of civil suit disposal under the Civil Procedure Code, 1908. The amendments which were however made to CPC by the CCA, 2015 in respect of a commercial suit and the opinions and interpretations made by different High Courts and Supreme Court with regard to these amendments form the premise and crux of the following section. (Wagh et al., 2023).

3.5.1. Pre-Institution Mediation

In 2018, the CCA, 2015 was amended for the first time to introduce a very unique process that all commercial suits have to go through. In all commercial transactions, disputes are inevitable. In the past decade, we have seen litigants choose alternative disputes resolution methods like arbitration and mediation to resolve their disputes as opposed to litigation in courts since the latter involves inherent delay and costs. The Directive Principles of State Policy (Article 38, 1950), enshrined in Part IV of the Indian Constitution reflects that India is a welfare state and one of the most paramount functions of a welfare state is providing expeditious and inexpensive dispute resolution processes as part of the justice delivery system of the country. Unlike the traditional dispute resolution system that focussed solely on identification of right and wrong between the litigants and prescribing penalties rather than protecting their inter personal relationship, mediation not only provides affordable justice to parties in conflict but also gives them a chance to reach an amicable settlement between them. (Joseph, 2011). Mediation is primarily a voluntary and non-binding out of court negotiation process in which a neutral third person controls the interaction between the participants and reaches cordial and innovative solutions. It empowers the participants to come forward and solve their own problems with the help of a mediator who simply facilitates the entire process. Although mediation has its obvious advantages, it has still not been whole heartedly accepted as a dispute resolution process by litigants. (Singh, 2018). The commercial dispute resolution process provided under the present CCA, 2015 creates a sandwich form of resolution method where litigation is combined with mediation to get the best of both and a favourable solution to the dispute. Before, we start discussing the facets of pre-institution mediation under the CCA, 2015, we must look at how mediation has been a very sought after mode of dispute resolution way before the CCA, 2015 came and how our traditional courts have looked at the same.

3.5.1.1. Mediation of commercial disputes prior to 2015

During the British Raj, the Panchayati system worked as a dispute resolving forum. It however got statutory acceptance only in 1999 when the Civil Procedure Code, 1908 was amended. The 129th Law Commission Report on Urban Litigation and Mediation as Alternative to Adjudication and the Arrears Committee Report, also known as the Justice Malimath Committee Report in 1988 (1988) suggested that if courts start referring parties to mediation for disputes that they think have the potential of being solved amicably, then it would solve the problem of backlog of cases and judicial delays to an extent. In fact, the 1999 amendment to the Civil Procedure Code was one of the direct recommendations of this Committee. This amendment also introduced Section 89 to the Civil Procedure Code, 1908. Under Section 89, a civil court had the power to refer a party to mediation, if the latter felt that the dispute could be amicably solved through a settlement. In two successive cases Salem Bar Association – I in 2003 (2003) and further in Case – II (2005) in 2005, this amendment was upheld to be constitutionally valid. Finally, it 2005, the court formally approved the Civil Procedure ADR and Mediation Rules 2003 (2003). The Court had further noted that for mediation to become a desirable dispute resolution method for parties in dispute, the government has to make specific financial allocation of funds for the judiciary involved and have a panel of well-trained mediators that the Court may make a reference to. In response to that, the Tamil Nadu Mediation and Conciliation Centre (1862), the first court annexed mediation centre was inaugurated. Thereafter, in August 2005, the ex-Chief Justice of India, Justice R.C. Lahoti, constituted a Mediation and Conciliation Project Committee for imparting mediation training for Judges. (Mediation Training Manual of India, Supreme Court of India).

In 2009, the 222nd Law Commission Report on 'Need for Justice-dispensation through Alternative Dispute Resolution' (2009) observed that mediation not only addresses the dispute at hand but also addresses the emotions underlying the dispute. Thus if a mediation is successful, not only is a satisfactory solution reached, but also the ill-will that would have existed between the parties end.

International Conference on ADR, Conciliation, Mediation and Case Management organised by the Law Commission of India in 2003 (2003), Workshop on the Use of Alternative Dispute Resolution in 2015 and many other initiatives by the government have time and again quoted experts from Dr. S Muralidhar , Hiram E. Chodosh to Justice Chandrachud gave spoken in

favour of mediation and observed that as a technique mediation has the potential to solve problems which beset the litigative system of our country.

Thus, we can safely say that court mandated mediation is not an entirely alien concept introduced under the CCA, 2015; except that from 2018 onwards, the Parliament felt that all commercial disputes needed to mandatory sit down and amicably mediate their disputes and ensure no such settlement is possible before they follow the route of resolution by courts. (Blake et al., 2013).

3.5.1.2. Pre-Institution Mediation: A salient feature of The Commercial Courts Act, 2015

3.5.1.2.1. Setting the context

On 3.05.2018, the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act added Section 12A introducing mandatory pre-institution mediation for all commercial suits. This initiative was largely based on the World Bank Doing Business Reports, which is a global ranking of countries based on key economic parameters. In 2015, the World Bank noted that countries that aim at establishing fast and efficient commercial dispute resolution frameworks often have specialised commercial courts or divisions where pre-trial mediation is used to amicably solve major issues at dispute, before it proceeds to trial. From 2015 up till 2017, India had climbed up its ranks in the Doing Business Index and it largely owed it to the CCA enacted in 2015. To further India's image as a responsive legal system in front of the global community, Section 12A was introduced through the 2018 Amendment. One can very well identify such ethos from the statement of object and reasons of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Bill, 2018. Thus, the main objective behind introducing pre-institution mediation was to resolve commercial disputes quickly through the mechanism of alternative dispute resolution. (Muralidhar, 2003).

The idea is heavily drawn from the Italian legislature that passed a mandate in 2009 to regulate civil and commercial mediation as an attempt to recover from inordinate delays clogging their civil justice system. (Abramson, 1998). In 2010, the Italian government passed a legislative decree No. 28 of 2010 making pre-trial mediation mandatory. In other words, unless a litigant attempted settlement through mediation, a suit could not be instituted in an Italian court. The category of disputes slowly expanded in 2012, and around the same time, the new decree saw a lot of protests from lawyers and litigants. Unfortunately, in 2012, this decree was quashed by

a fifteen-member panel of the Italian Constitutional Court on the ground that the Italian Parliament never delegated the government the power to introduce such pre-trial mediation system. In response, the government passed the Law Decree No. 69 of 2013 under which compulsory mediation procedures were introduced for a period of four years and were said to be continued subject to further evaluation. (Lye, 2016). It was also stated that mediation needed to be completed within three months instead of four and had to have the mandatory presence of lawyers. The latter requirement was to assuage the concerns of the Bar Associations who protested against the 2010 decree. By 2017, the Ministry of Justice in Italy released statistics that showed that the nationwide success rate of mediation was 43.60% especially when litigants chose to opt for active mediation at the first meeting. This data in a way demonstrated how mediation could be an effective way of offloading litigation from an already overworked and overburdened legal system. (Fach Gomez, 2019).

The Indian legislature took inspiration from Italy's story at the time when lawmakers here drafted Section 12A. While introducing the Bill, the then Law Minister proclaimed that except in cases of urgent relief, parties must give themselves a chance to mediate the dispute before coming to court. Therefore, he quoted, '*pre-mediation litigation is an important milestone*'.

3.5.1.2.2. Exception to Section 12A: Contemplation of urgent relief

An important exception to Section 12A stipulates that in case an urgent relief is contemplated, pre-institution mediation can be avoided by the parties. The word 'contemplate' is of significance here, since it constitutes a jurisdictional fact for application of Section 12A. In the usual course of a suit, it is the plaintiff who acts as the *dominus litus* or the master of the suit and is entitled to either seek or abstain from seeking any urgent relief. The dictionary meaning of the term 'contemplate' is 'thought of'. It in a way denotes that the law makers intended to give liberty solely to the plaintiff to either seek or not seek urgent relief. In other words, the embargo under Section 12A operates on the basis of whether the plaintiff contemplates or seeks an urgent relief in a commercial suit, and not on whether he is entitled to get such relief from the court. (Panda, 2020).

This expression was examined by the Division Bench of the High Court in ***M.K. Foods v. Dabur India Limited*** (2019). The Commercial Court had direction the plaintiff to first exhaust the pre-litigation mediation before coming to the court. The plaintiff challenged this direction by way of a revision application filed to the High Court under Article 227 of the Constitution.

The High Court set aside the order of the Commercial Court and held that the expression 'A suit which does not contemplate urgent relief' cannot be equated with a scenario where the plaintiff is entitled to urgent relief. It further added that entitlement to a relief would be considered by the court once the suit is numbered after taking into account several aspects. However, for the purposes of Section 12A, one needs to look at whether there was a contemplation of an urgent relief. (Ramesh & Vaijayanthee, 2019).

A similar judgement was passed by the Madhya Pradesh High court in ***GSD Constructions Private Limited v. Balaji Fabtech Engineering Private Limited*** (2019), where it held, if the plaintiff sought for interlocutory relief under the Civil Procedure Code, 1908, such application can only be denied after consideration on merits. The same litigant cannot be asked to mediate first, when the application sought reflects an urgent relief sought. In ***Sidana Shoe Material v. Sumangalam Impex Private Limited*** (2021), the Commercial Appellate Division found that even though the plaintiff applied for pre-litigation mediation, the mediation was unable to grant any interim relief which was desired by the plaintiff. The interim relief was sought to restrain the defendants from disposing off their assets as they issued dishonoured cheques. The Division held that sufficient grounds existed for issuing interim orders and bypassing the mandate under Section 12A was necessary at the dispute.

3.5.1.2.3. Nature of Section 12A: Mandatory or Directory

The nature of Section 12A with respect to its mandatory or directory character has created quite a bit of confusion for litigants in the past four years since 2018. High Court across the country have taken conflicting positions on whether the provision is a mandate or a direction simplicitor.

In ***Deepak Raheja v. Ganga Taro Vazirani***, the Bombay High Court held that the mandate of Section 12A was simply procedural and failure by the parties to exhaust it would not stand as an absolute embargo in instituting the commercial suit. It further held that Section 12A was similar to Section 80 of the Civil Procedure Code, 1908 and if a defendant does not raise a plea at the very first stage, it would be assumed that he has waived his right to object to the suit referred for mediation under Section 12A. (Jain & Chourey, 2020).

Unfortunately, this decision was reversed by the Division Bench of the Bombay High Court who refused to equate Section 12A with Section 80 of Civil Procedure Code (1908). It held that Section 12A classified commercial suits into two categories on the basis of urgent relief.

The law is pretty clear that the commercial suit where urgent relief is not sought, the same has to undergo mediation before coming to court, since the latter is an appropriate remedy for that type of a dispute. The court observed that for a thorough change in the litigation culture in the country, we need to recognise that court adjudication is not the sole way of resolving a disputes. (Gupta et al., 2020). If parties adopt mediation in commercial suits, it will gradually set a precedent and litigants over time will come to realise that mediation and negotiation too can result in a mutually acceptable solution to the dispute. The court further held that CCA, 2015 encourages mediation to the extent that a settlement agreement passed has the status of an arbitral award that can be enforced into a decree. The party not happy with such settlement can resort to a Section 34 application under the Arbitration and Conciliation Act, 1996. However, Section 12A is not a facility but a mandate and thus, if no urgent relief is sought, mediation must be explored before one runs to clog the court docket. The court finally concluded that pre-litigation mediation was introduced to change the traditional litigation oriented mindset and to emphasise that even alternative dispute resolution was an equally effective tool, even better, in some cases, to resolve commercial disputes. (Mulla et al., 2023). The decision was supported by the High Courts of Calcutta, Bombay, Allahabad and Delhi in a series of cases – ***Laxmi Polyfab Private Limited*** (2021) ***v. Eden Reality***, ***Awasthi Motors v. Managing Directors*** (2021), ***Apex Maritime India Private Limited v. Apex Maritime Company Inc.*** (2021) etc.

Unfortunately, even after such an elaborate discussion, the confusion continued in decisions passed by the Madras High Court and the Madhya Pradesh High Court. The Madras High Court in ***Curewin Pharmaceuticals Private Limited v. Curewin Pharma Private Limited*** (2021), held that Section 12A cannot be held to be mandatory since the court cannot be considered a substitute to alternative dispute resolution. Making Section 12A a compulsory remedy would impede the access to justice. Similarly, in ***Shahi Exports Private Limited v. Gold Star Line Limited*** (2021), the court held that a litigant cannot be denied civil justice in courts if he does not explore the possibility of mediation. By holding Section 12A as mandatory, it would often lead to rejection of the plaint for non-compliance of the provision. (Singh & Jain, 2022)

The author however would like to quote the observations of the Supreme Court in ***Vikram Bakshi v. Sonia Khosla*** (2014), where the latter called mediation a new dimension of access to justice and one of the best forms of conflict resolution. Thus, if mediation is a facet of access of justice, then it cannot be condemned by obfuscating the right that it seeks to promote. Sir Geoffrey Vos pointed out in his lecture at the Hull University that the word ‘alternative’ needs to be taken out of ADR; and dispute resolution should be integrated as a whole where mediation

should be a part and parcel of resolving disputes that arise on a daily basis. (Vos, 2021). There is nothing alternative about either mediation, early neutral evaluation or judge led resolution. Therefore, even though Section 9 of the Civil Procedure Code, 1908 gives a right to a litigant to institute a suit, it cannot be said that Section 12A constitutes an impediment on that right. At best, it regulates such right by pushing him to go through pre-litigation mediation, that too in cases where urgent relief is not sought. The same Madras High Court in ***Bramanath Subramaniam v. S.A. Chandrasekaran*** (2020), held that Section 12A is mandatory. (Nair & Qureshi, 2020).

All of these contradictory judgements from different High Courts called for an authoritative precedent from the Supreme Court. On 17th August 2022, in ***Patil Automation Private Limited v. Raheja Engineers Private Limited*** (2022), the Supreme Court held that Section 12A was mandatory and unless a litigant exhausts the remedy provided under the provision, he cannot come to the commercial court for instituting a suit. However, the Court noted that an appropriate institutional machinery to perform the role at the scale required under Section 12A is an absolute need of the hour, and with that, a robust cadre of professional mediators, especially because the pecuniary jurisdiction of the Commercial Court is now as low as three lakh rupees (INR 300,000), which would encompass an enormous number of disputes. (Shah, 2021).

3.5.1.2.4. Consequences of non-compliance of Section 12A

From the above judgements, it has been established that Section 12A is a legal mandate that needs to be followed by parties before 'institution' of a commercial suit. In ***Olympic Cards Limited v. Standard Chartered Bank*** (2022), it was observed that the act of numbering the plaint and inclusion in the Register of suits by the Registry under Order IV Rule 2 of the Civil Procedure Code, 1908, would constitute 'institution' of the suit. Therefore, the stages prior to such institution are considered as preliminary in nature. Where a commercial suit is presented seeking no interim relief, the application of Section 12A poses no difficulty. However, when an application of interim relief accompanies the plaint, whether the interim relief sought is urgent or not poses a question. Such scrutiny of urgency falls on the Court Registry which does not have any adjudicatory powers to decide the issue even before the numbering of the plaint. Therefore, it is left to the court to decide whether an application of interim relief is urgent or not. (Sonam Gupta, 2023)

Secondly, even though such mandate is provided under Section 12A, the provision does not spell out the consequences for the suit, if such remedy is not exhausted. In ***Dhanbad Fuels v. Union of India*** (2021), the Calcutta High Court held that failure to mediate under Section 12A would not essentially reject the plaint and the suit at best would be kept at abeyance, where parties would be directed to complete the mediation process. Unfortunately, inconsistencies have arisen in other judgements passed by High Courts. In ***Terai Overseas Private Limited v. Kejriwal Sugar Agencies Private Limited*** (2020) and ***Amit Motorcycles v. Axis Bank Limited*** (2020), an application was filed for by-passing the mediation under Section 12A, however such application was not admitted and the plaint was rejected. In situations like that, where the plaintiff has to reinstitute a fresh suit all over again, due to the mediation being a non-starter, it would cause immense hardship to the plaintiff and cost him additional expenses. (Ayyub, 2022).

If we look at Section 3 of the Limitation Act, 1963, it specifically states that every suit or appeal instituted after the period of limitation would stand dismissed. However, Section 12A of CCA, 2015 does not spell out any explicit consequence for non-compliance. High Courts have previously held that Section 12A is a procedural provision. In ***R. v. Sekhon*** (2014), Chief Justice Lord Wolf stated that rules of procedure do not take away a court's jurisdiction, which are provided in the substantive law. The procedural provisions are meant to provide a convenient and just machinery enabling the court to exercise its jurisdiction. In ***Wang v. Comr of Inland Revenue*** (1993), the Privy Council suggested that whenever any non-compliance of a procedure arises, one needs to ask two questions – whether the legislature intended to make the person comply with such provision and if so, if failure of such non-compliance would deprive the court of jurisdiction and render a decision that it purports to make, null and void? Following a somewhat similar premise, the Commercial Court at Tis Hazari in ***Gurjinder Singh v. Gurbir Singh*** (2021) passed a summary judgement under Order XIII-A of the Civil Procedure Code, 1908. The order was challenged in the Delhi High Court in a revision under Article 227 of the Constitution on the ground that Section 12A was not complied with. The High Court held that the ground of non-compliance of Section 12A should have been raised before the Commercial Court itself and not later in the High Court, after the summary judgement had been passed. (Tiwari & Verma, 2022).

3.5.1.2.5. Procedure for pre-institution mediation

On 3.07.2018, the Central Government has authorised the State Authority and the District Authority under Section 6 and Section 9 of the Legal Services Authorities Act, 1987 (1987) for conducting pre-institution mediation under Section 12A of the CCA, 2015. A detailed standard operating procedure has been issued by Delhi, Karnataka, West Bengal State Legal Services for facilitating that process. Under Section 21A (2) and Section 12A (1), the Central Government released the Commercial Courts (Pre-institution and Mediation) Rules 2018. Rule 3 elaborates the procedure for initiation of proceedings under Section 12A. A party to a commercial dispute has to file an application to the district or state legal services authority to initiate mediation. The district or state legal services authority will then send a final notice to the opposite party for appearance. If he fails or refuses to appear, the mediation is treated as a non-starter and a report of the same is noted. The entire process of pre-institution mediation is completed within a period of three months, and a further extension of two months can be granted if both parties consent. Rule 7 puts a lot of emphasis on the confidentiality of the mediation and the ethics that a mediator must adhere to while attempting to resolve the dispute. If the parties arrive to a settlement, then the same is reduced to writing. The settlement agreement would have the same status as an arbitral award passed under the Arbitration and Conciliation Act, 1996 and needs to be enforced accordingly. The mediation fee charged will be as per the quantum of claim in Schedule II of the Commercial Courts (Pre-institution and Mediation) Rules 2018. (Kanuga & Bhosale, 2021)

The second proviso to Section 12-A (3) states that the period during which parties are engaged in pre-institution mediation shall not be computed for the purposes of limitation under the Limitation Act, 1963. It means that from the time, a plaintiff makes a request under Rule 3 by presenting the Form I, to the date of which the mediation process closes, the limitation period does not apply to the suit. (Aggarwal, 2019). The principle of statutory limitation must be construed liberally so that an otherwise good claim cannot be scuttled, laid down in ***Roshanlal Kathuria v. R.B Mohan Singh Oberoi*** (1975).

3.5.2. Pleadings, transfer and appeals within a prescribed timeline

3.5.2.1. Specificity of Pleadings in a commercial suit

The CCA, 2015 puts great emphasis on the specificity of pleadings. It urges that pleadings in a commercial suit should be able to identify the details in litigation. In ***Maria Margadia Sequeria v. Erasmo Jack De Sequeria*** (2012), the Supreme Court criticised the practice of

vague pleadings and observed that inconsistencies in in details put in pleadings often lead to a non-existent or false claim. Thus, title documents and relevant records play a very vast role in a civil case, and form the premise on which its fate is decided. To carry forward this attitude, the Court in ***Vifor (International) v. Suven life Sciences Limited*** (2019), observed that the effort of expeditious dispute resolution is not solely the responsibility of the commercial court but also of the litigants and the counsels. One way of ensuring swiftness and efficacy in commercial dispute resolution, is making precise and concise pleadings which explicitly spell out the basis of a claim or defence and avoid unnecessary framing of issues and evidences which have no bearing on the final adjudication of the suit. The same principle was reiterated in ***UNI AIR Cargo Limited v. Sharons Link Logistics and Another*** (2019), where the court observed that a commercial court litigant needs to be extra vigilant and well aware of his claim, so that the proceedings can be completed within the mandated timelines. He cannot have the luxury of finding out about his claim slowly as the litigation unfolds. (Singh, 2023)

3.5.2.2. Statement of Truth in the Affidavit

Under Order VI Rule 3-A of CPC, for a commercial suit, the High Courts need to prescribe the various forms of pleadings either through High Court Rules or practice directions. Accordingly, the various High Courts of Delhi, Bombay, Madras and Calcutta have come up with practice directions or amended their Original Side Rules to prescribe such forms.

An important addition to the Section 26(2) of CPC by the CCA, 2015 was the requirement of 'Statement of Truth' in an affidavit and the plaint would be verified by the same. In ***Shiv Ratna Paper Limited v. Raini Petrochem Private Limited*** (2017), the Delhi High Court under Order VI Rule 15-A(4) disallowed a written statement filed by the defendant, since the pleading was not accompanied by a statement of truth. This was supported by the judgement delivered by the Division Bench of the Bombay High Court in ***Haier Telecom (India) Private Limited v. Drive India Enterprise Solutions Limited*** (2018). The above decisions were reconsidered by the Calcutta High Court in ***Harji Engineering Works Private Limited v. Hindustan Steelworks Construction Limited*** (2021), where it noted the directory language of Order VI Rule 15-A(5) and held that a pleading unaccompanied by the statement of truth was a defective pleading that needed to be cured by the Court's permission. (Antal, 2021).

3.5.2.3. Format of Summons

The CCA, 2015 does not specify any format for summons to be issued by the court in a commercial dispute. However, the Supreme Court in ***Auto Cars v. Trimurti Cargo Movers Private Limited*** (2018) held that a summons needs to clearly spell out the 'day, date, year and time' of appearance, in the absence of that, the service is vague and improper and a resultant ex-parte decree can be set aside. A Practice Direction was issued by the Delhi High Court that prescribed a proforma for summons to be issued in a commercial suit. The High Court in ***Mothers Pride Dairy India Private Limited v. Portrait Advertising and Marketing Private Limited*** (2017), held that such a proforma would bring uniformity in issuing summons in a commercial suit and the defendant can be rightfully made aware of the mandate and limitation period prescribed for filing written statement under the CPC. (Katyal, 2023)

3.5.2.4. Written Statements

Under Order V, Rule 1 of CPC, the written statement had to be filed within 30 days from the date of service of summons, by the defendant. Under the second proviso of Order V and proviso to Order VIII Rule 1, this period could be stretched to another 60 days but not more than 90 days from the date of service of summons. This provision was however held to be directory in ***Salem Bar Association (II) v. Union of India*** where it was held that if the text of any provision did not spell out any consequences for non-compliance, the same would be treated as directory. This anomaly was cured the CCA, 2015. It amended the second proviso to Order V and the proviso to Order VIII Rule 1 to include that if a defendant does not file his written statement within 30 days after the date of service of summons, the court can impose costs on him and allow him a maximum time extension of 120 days; however even after that, if he fails to submit the written statement, his right to file the same shall be forfeited by the court. The intent of this amendment was confirmed by the Supreme Court in ***SCG Contracts (India) Limited v. K.S. Chamankar Infrastructure Private Limited*** (2019), where the Supreme Court held that no civil court has the power to accept the written statement of the defendant after the expiry of 120 days from the date of service of summons. However, in ***Star Music v. Yogesh Movie Makers*** (2019), the Madras High Court Commercial Division clarified that the court must be fully satisfied and record reasons as to why, it can pass a judgement against a defendant whoseright to file a written statement has been forfeited due to expiry of time. The Court needs to ensure that there are no disputed questions of fact, and if the same happens, the court should ask the plaintiff to settle the factual controversy in the plain before passing an ex-parte decree against the defendant. Otherwise, even if at that stage, the matter is disposed off expeditiously,

it would give rise of series of appeals which ultimately would delay the final disposal and lead to multiplicity of proceedings. The latter hardly promotes the cause of a speedy trial. (Singh & Dwivedi, 2022).

In case of transferred suits under Section 15(4) of the CCA, 2015, the Court will prescribe new timelines for disposal of those suits and can accept written statements beyond 120 days. The above Supreme Court judgement was confirmed by previous High Court judgements in ***OKU Tech Private Limited v. Sangeet Agarwal*** (2016) and ***Mira Gehani v. Axis Bank*** (2019). The point was also confirmed in the case of ***Colonial Life Insurance Company (Trinidad) Limited v. Reliance General Insurance Company Limited*** (2019). The Bombay High Court held that a defendant in a commercial suit already gets 120 days to file the written statement instead of 90 days in a non-commercial suit. Therefore, an application for time extension beyond 120 days would not be permissible under the provision. (Mulla & Mehta, 2019).

Under Section 7, first proviso of the CCA, 2015, suits from IPR statutes even if they are not of specified value lie to the Commercial Court and Division. The author has discussed the scope of this provision in detail in Section 3.3.3. In ***Bharat Bhogilal Patel v. Leitz Tooling System*** (2019), the Bombay High Court held that the 120 rule would only apply to commercial suits of a specified value and not suits of unspecified value. By that logic, none of the amendments made to CPC under the CCA, 2015 would apply to a commercial suit of a non-specified value. Accordingly, these suits would be transferred to the commercial court which would treat them under the unamended CPC. However, this position has changed slightly after the ***Vishal Pipes Limited v. Bhavya Pipe***. Both of these judgements are discussed in detail in Section 3.3.3.

The 120-day rule inserted by the CCA, 2015 has been interpreted quite strictly so far. The Supreme Court in ***SCG Contracts (India) Limited v. K.S. Chamankar Infrastructure Private Limited*** relying on the judgement of ***R.K. Roja v. U.S. Rayudu*** (2016), clarified that even if any application for rejection of plaint is pending under Order VII Rule 11 of CPC, the pendency of that application cannot be used as an excuse to delay the filing of the written statement or used to retrieve a lost opportunity of filing of the written statement. Any additional time can only be granted by the Supreme Court under Article 142 of the Indian Constitution, ***Sejal Glass Limited v. Navilan Merchants Private Limited*** (2017).

The time period of 120 days will be counted from the date of service of summons and not from the date of first appearance of the defendant. This was held by the Bombay High Court in ***Mira Gehani v. Axis Bank*** (2019), where the court held that advocates can no longer avoid serving

the writ of summons, however, if the defendant enters appearance and waives off such service, then the commencement of the 120-day period will be from the date of such waiver. The above ruling was supported by the Supreme Court in ***GTL Infrastructure v. Citicorp International*** (2019), where it held that following the above rule will prevent loss of days that happen in serving summons and expedite the disposal of commercial suits. (Kumar & Pandey, 2022).

It has also been held by the High Courts that the reply statement of the plaintiff along with affidavit of admission and denials were all time barred under the CCA, 2015; held in ***Atlanta Limited v. National Highways and Infrastructure Development Corporation Limited*** (2019)**.**

3.5.2.5. Counterclaim

In ***Indcon Boiler Limited v. Maeda Corporation*** (2019), the Delhi High Court clarified that the counterclaim in a commercial suit would be governed by the same rule as a plaint and therefore, time period for filing a written statement to a counter claim would be governed by Order VIII Rules 1 and 10. The High Court formulated the following guidelines with respect to counter claims in a commercial suit:

a) The Presiding Officer at the trail court (commercial) has a responsibility to examine the counter claims when they are presented before the court.
b) The counter claims needs to be mandatorily be registered and given a number
c) If the plaintiff is present on the day the counter claims are submitted, then a specific order has to be passed stating the summons of the counter claims has been accepted by the plaintiff. In his absence, summons against the counter claim needs to be served to the said plaintiffs.
d) The time period for filing written statement to the counter claims would commence after the above three events take place.

In ***Ashok Kumar Kalra v. Surendra Agnihotri*** (2019), the Supreme Court held that even though the CPC does not put an absolute embargo on filing counter claim after filing the written statement. However, it does not give the defendant any right to cause substantive delay. The court has to ensure that the outer limit for filing a counter claim is till the stage of framing of issues.

Further, to promote the idea of speedy resolution, the Delhi High Court in ***Tulsi Giusi Spa v. House of Trims Private Limited*** (2019), held that parties in a commercial dispute will not be

allowed to vaguely deny each and every plea in the opposite party's pleadings without justifying with clearly spelled out reason to do so. For example, if he denies or disputes the court's jurisdiction, he has to give a statement of which court ought to have jurisdiction. Similarly, if he denies the valuation of the suit, he has to give his own statement as to the value of the suit. Otherwise, if every plea denial is allowed, it unnecessarily puts an onus on the other party to prove each and every plea, lot of which are not even disputed in the suit. It creates an unnecessarily lengthy number of issues frames, equally voluminous evidence and cross examination which ultimately defeats the purpose of fast disposal. (Chandran, 2022).

3.5.3. Disclosure, discovery, and inspection in a commercial suit

The CCA, 2015 has perhaps made the most significant amendment in case of discovery, disclosure and inspection of documents in a commercial suit. It substituted an entire Order XI in CPC and inserted a new one whereby the commercial courts can impose exemplary costs if parties fail to disclose relevant documents or withhold them wilfully. (Chandran, 2022). The objective of this new Order was explained in ***Nitin Gupta v. Texmaco Infrastructure and Holding Limited*** (2019) where Justice Endlaw observed that unless Commercial Courts and Commercial Divisions stop entertaining applications for late filing of documents in the name of 'interest of justice', the commercial courts would also suffer the same fate as other civil courts of the country. Thus, unless good cause can be shown for non-disclosure of documents, the courts should restrain from entertaining applications for late filing of the same. This was supported by the Delhi High Court's observation in ***Dolby International AB v. Das Telecom Private Limited*** (2018), where the court states that for a fast disposal of a commercial suit within the prescribed statutory timelines, it is essential that all the different aspects and stages of completion like pleadings, admission or denial of documents, case management hearings etc. are all finished on time. (Amendments Made To CPC By The Commercial Courts Act, 2015 2019)

The procedure of the discovery, disclosure and inspection of documents under the new Order XI and its importance in the overall timebound adjudication of the commercial suit was explicitly summarised by the Delhi High Court in ***Xerox Corporation v. P.K Khansaheb*** (2018)**.** In ***Zee Entertainment Enterprises Limited v. Saregama India Limited*** (2019), the court held that a plaintiff in a commercial suit not only has to make a declaration on oath with respect to the title and name of the documents, but also all specifications and particulars for the

same. And it places a heavy onus on the plaintiff to not rely at a later point in time on such documents which he chose to not disclose. The court needs to be shown strong reasonable cause for non-disclosure to lift the embargo on him to not use any undisclosed documents. (2016). However, the court in ***Sudhir Kumar @ S. Baliyan v. Vinay Kumar G.B*** (2021) clarified that this requirement of establishing reasonable cause for non-disclosure of documentsdoes not apply in situations where the plaintiff did not possess any documents in his power at the time of filing the plaint and only discovered the additional documents subsequently.

While stating the importance of interrogatories in a commercial suit, the Madras High Court in ***Quintessential Designs India Private Limited v. Puma Sports India (Private) Limited*** (2019), held that interrogatories can only be filed by parties with the court's permission at the very initial stage before the trial commences and issues are framed. In a commercial suit which is time bound at every step of disposal, interrogatories are allowed in the middle of the trial, it might give rise to additional issues, pleadings and defences requiring amendment at both sides, and ultimately all of this will put the clock of the trial to stage one.

After all documents are disclosed, interrogatories are filed and inspection of those are completed, the next stage is admission and denial of all disclosed documents. The time limit for doing that under the new Order XI is 15 days from the date of completion of inspection or any other date set by the court. In ***Unilin Beheer B.V v. Balaji Action Buildwell*** (2019), the Delhi High Court stated that under Rule 3 of the Delhi High Court Original Side Rules, if the defendant fails to the written statement along with the affidavit of admission or denial of documents filed by the plaintiff, his written statement would be taken off record and it would be deemed that he admitted to the documents filed by the plaintiff thus entitling the court to pass a decree. However, in a later case of ***Sudhakar Singh v. Webkul Software Private Limited*** (2020), it was observed that such compulsory filing of admission or denial statement is only under the Delhi High Court Original Side Rules and not under CPC. Therefore, the commercial court erred in taking off record the written statement filed by the defendant, when he failed to submit the admission and denial statement.

The author has not described the other stages involved at this stage, such as production of documents by a court order, examination of electronic records etc. The admission of secondary evidence is regulated under Section 65 and Section 66 of the Evidence Act, 1872 (1872). In a case, ***Dhanpat v. Sheo Ram*** (2020), before the Madras High Court Commercial Division, the latter observed that commercial suits very often get disrupted due to objections filed relating

to admissibility of secondary evidence. The court therefore devised a procedure asking parties to file a separate affidavit along with their admission or denial statement indicating whether documents which were sought to be marked were originals or photocopies. (Pandey, 2021). Taking cue from this decision, the High Court too in ***Texmo Industries v. Techmo Industries*** (2017), held the procedure would enable the court to decide whether secondary evidence was available on record, thereby precluding countless challenges at the stage of marking which had the deleterious effect of slowing down a trial.

3.5.4. Summary judgements

The provision of summary judgement was introduced by the CCA, 2015 by inserting Order XIII-A into the CPC, 1908. It allows commercial courts and divisions to pronounce summary judgements in commercial disputes without recording oral evidence. This idea was promoted by the Law Commission in its 253rd Report so as to allow parties to summarily dispose off the commercial suit at any point in time before issues are framed. The scope of Order XIII-A is heavily drawn from the UK CPR, Part 24. Strangely, a similar power was available to civil courts under Order XII Rule 6 before Order XIII-A was inserted whereby on application by the parties or on its own motion, the civil court could pass a summary judgement. Infact, the power under Order XII Rule 6 was much wider in its ambit since it did not restrict to a stage before framing of issues. (Chandra, 2023)

The overlap between these provisions was first noticed by the Division Bench of the Madhya Pradesh High Court in ***M/S. Indus Cityscapes Constructions Private Limited v. M/S. Karismaa Foundations Private Limited*** (2019) where the court held that remedy under Order XIII-A for a commercial suit subsumes that under Order XII Rule 6. However, in ***Christian Louboutin Sas v. Abubaker and Ors*** (2018), the Delhi High Court held that the power of the commercial court in Order XIII-A is in addition to the power under Order XII Rule 6 of the CPC. This decision was unfortunately reversed by the Division Bench holding that the very premise of invoking Order XII Rule 6 is predicated on admission by the defendant, when he is sent summons or he is called upon to admit certain facts. In order to invoke Order XII Rule 6, it is a sine qua non that a party to a suit has to admit to the pleadings of the opposite party, puts forth his case. On the other hand, under Order XIII-A, the order for summary judgement can be passed, since it is introduced in addition to the provisions in Order XII Rule 6. (Deshmukh et al., 2020).

The only difference between Order XIII-A and Order XII Rule 6 however is that the former can be invoked only when an application is filed to that effect by a party whereas under Order XII Rule 6, the court can suo moto initiate a summary proceeding. Unfortunately, the High Court have created a diversity of opinions on the same in a series of cases. While in ***Bright Enterprises Private Limited v. MJ Bizcraft LLP and Another*** (2017), the Delhi High Court held that a summary judgement under Order XIII-A is permissible if an application supported by appropriate documentary evidence is filed by a party. This view was supported in a subsequent decision of the Delhi High Court in ***Rockwool International S/S v. Thermocare Rockwool (India) Private Limited*** (2018). However, in ***Jindal Saw Limited v. Aperam Stainless Services and Solutions Precision Sas and Ors*** (2019) and ***K.R. Impex v. Punj Lloyd*** (2019), the Division High Court noted that under Delhi High Original Side Rules, 2018, a court can explore the possibility of passing a summary judgement without any specific application filed for that purpose. (Shrivastava, 2023).

Order XII Rule 6 also cannot be invoked in cases where special provisions for summary judgement has been raised under Order XXXVII of the CPC. In ***Hubtown Limited v. IDBI Trusteeship Services Limited*** (2016), it was clarified by the Division Bench of the Bombay High Court that once a suit was instituted under special procedures of Order XXXVII, it will continue to be governed by that Order, even if they are transferred as 'commercial suits' to the commercial court. Therefore, in those commercial suits, Order XIII-A has no application. However, if the party has obtained leave to defend in a summary suit he has crossed the threshold of making out a case for trial. If the court has found that the defense requires a summary trial under Order XXXVII, it is unnecessary to subject the defendant to the summary judgement application under Order XIII-A by applying a no 'real prospects of successfully defending the claim' standard. (Gupta, 2020).

The objective of summary judgement for commercial suits under Order XIII-A was explained in ***Jindal Saw Limited v. Aperam Stainless Services and Solutions Precision Sas and Ors***. (2019). The Court explained that most commercial transactions and contracts today are based on instantaneous and electronic evidence, which explicitly tell us what might have transpired between the parties before signing a contract. The intention of the parties can be well derived from such a contract and there is hardly any scope to explain the same in a proceeding or at trial. Therefore, the CCA, 2015 under Order XIII-A entitles a court to pass a judgement summarily based on the pleadings and other materials placed on record. This gives investors

an impression of a very fast and responsive legal system, where litigation is not a hurdle. (Chauhan, 2021).

As regards the stage at which such application for summary judgement can be filed, Rule 2 clearly states that an application of that nature will lie to the commercial court only before issues are frames. In fact, the proviso to Rule 2 states that after issues are framed in a suit, no application for summary judgement can be filed by the applicant and considered by the court. In ***K.R. Impex v. Punj Lloyd*** (2019), the Delhi High Court called his provision directory instead of mandatory. The Court reminded us that while admitting applications for summary judgement after framing of issues should be discouraged, one might not forget the principle objective of the CCA, 2015; which is early disposition of commercial suits. Therefore, if a commercial suit is befitting of a summary judgement, the Court should not be constrained to consider such application merely on account of issues having been framed. (Wood, 2011).

There are two grounds for summary judgement – a) If the applicant, plaintiff or defendant has no real prospect of succeeding on the claim and b) there is no compelling reason as to why the summary judgement should not be passed before recording oral evidence. (Jha, 2020). These grounds were discussed by the Madras High Court in ***Syrma Technology Private Limited v. Powerwave Technologies Sweden AD*** (2020). The court said that the burden of the first ground lies on the applicant while the burden of the second ground lies on the respondent. If the applicant is asked to show that there is no compelling reason to not pass the summary judgement, it would tantamount to asking the applicant to prove the negative. Thus, the burden should be on the respondent to show that summary judgement should not be granted, based on facts and material on record. (Tyagi, 2023). Justice Lord Woolf in ***Swain v. Hillman*** (1999) observed that the only question that the commercial court needs to ask itself before passing a summary judgement is whether facts before it are such that a full trial is necessary. In other words, whether fate of the suit will be altered if oral evidence is recorded. If the court finds that answer in the negative, then such order can be passed. However, at all times, the court must have 'compelling reasons' or sufficiently strong reasons which leads it to not move forward with the trial. Since our Order XIII-A is worded from Part 24, UK CPR, these principles can be looked at by our commercial courts while passing summary judgements. (Sood, 2021)

3.5.5. Case Management hearings

One of the most valuable objectives of the CCA, 2015 when it was introduced as a Bill was to change the litigation culture in India; in other words, to set up proceedings in commercial courts in such a manner that the same will controlled by the court and not by the litigants. (Warrier, 2018). In light of this objective, Justice Bhandari, back in 2011 in ***Ramrameshwari Devi v. Nirmala Devi*** (2011), observed that every trial court should prepare a complete schedule and fix dates for all stages of the suit, right from filing the plaint to the pronouncement of the judgement. It should be the duty of the court to stick to such schedule as far as possible, and if any interim application is filed, the same should be disposed off in between the dates of hearings fixed in the schedule. To take this vision forward, the Law Commission in its 253rd Report suggested the introduction of 'Case Management Procedure' under Order XV-A of CPC.The Commission pointed out that if the litigation process is left to the parties, each party is bound to pursue the course that best suits his interest which necessarily does not lead to a fair and expeditious resolution of the dispute. However, if courts set up effective standards for fast disposal, continual monitoring and periodic assessment of performance, it would be in a position to adjudicate civil disputes for the benefit of the larger community. (Seth, 2021).

Although, the above was spoken for all civil disputes at large, the first of such endeavor to timely control the process of litigation was made by the CCA, 2015. While citing theimportance of case management in commercial disputes, the court in ***Vifor (International) Limited v. Suven Life Sciences Limited*** (2019) stated the effort to expediate commercial disputes must be initiated not only by the commercial courts but also by the litigants and counsels. (Mishra & Mishra, 2020). Thus, for quick disposal, parties need to – a) make preciseand concise pleadings without adding unnecessary pleas to the length of pleadings, b) file relevant documents to support or disprove the claim on time, c) prepare an entire blueprint of the case so that they understand their own claim and defense at the very beginning of the commencement of the suit and not when litigation unfolds in later stages and d) avoid raising omnibus issues that are vague and require no bearing on the actual fate of the dispute and finally, e) apply for unnecessary additional time to reply to an interim application, even when it does not need so. If the parties can avoid the above, only then the CCA, 2015 can be implemented in the true sense. (Quddhose, 2020).

In the first case management hearing, the following orders can be passed by the court:

a) Framing issues of the commercial suit
b) Recording the list of witnesses that the parties will examine

c) Fixing the date by which evidences of the witnesses and parties will be recorded
d) Fixing the date by which all written arguments will be filed
e) Fixing the date by which oral arguments will be heard, not later than 6 months from date of case management hearing.
f) Give directions on evidence and how to submit the same. In ***Shah Chandrika v. Orbit Finance Private Limited*** (2020), the Bombay High Court held that the commercial court has power to redact portions of evidence that are not pleaded. In other words, if the court feels that the evidence provided does not trace itself to the foundation of a pleading, the same can be rejected.

Accordingly, on the above pointers, the court has the power to pass appropriate orders under Rule 6 like hearing pending summary judgement applications, adjourning a hearing if it finds reason, directing a party to appear for examination, consolidate proceedings etc. to name a few. If any of these orders are not complied with, the court can impose costs on the defaulting party and foreclose his right to file affidavits, cross examine witnesses, file written submissions, address oral arguments etc. Additionally, if the court wants to act on recalcitrant litigants who are willfully at fault, it may entirely dismiss or decree the suit. Since, this would be in the nature of a penalty, it can be set aside under Order IX Rule 9 or Rule 13. (Standing International Forum of Commercial Courts 2020).

Uniquely, the court does not adjourn a case management hearing if an advocate of the party is not present. Such adjournment can only be sought by an application or if the court believes that there is a justified reason for the absence of the advocate. This is a significant step to ensure that the litigation is controlled by the court and cannot be avoided by parties to suit their interest. (Ragone & Alvaro, 2019).

3.5.6. Costs

The CCA, 2015 introduced a completely new regime of costs for commercial disputes by substituting Section 35 and removing clause (2) from Section 35A of CPC. Like many other amendments, this too is worded from UKCPR, Part 44.

One of the principal objectives behind introducing commercial courts in the country was to bring about a change in the litigation culture. One such method of controlling litigation that has proved to be successful is the mechanism of imposing costs. (Miller, 2018). Litigation can no longer be treated a luxury by litigants where courts are used as battle fields to settle issues that

have little or no consequence. (Reinert, 2018). Unfortunately, our courts have scarce resource and thus the same has to wisely used. The regime of costs under the CCA, 2015 aims to instill that very discipline so that it in essence effects the litigation culture in the country. (Reeves, 2021)

In ***Anandji Haridas and Company Private Limited v. State of Gujrat*** (1976), the Supreme Court observed that imposition of costs are not done to punish the defeated party but to recompense and indemnify him for legal expenses he has incurred in the prosecution. In ***Ashok Kumar Mittal v. Ram Kumar Gupta*** (2009), the court observed that Section 35A of CPC was introduced in the year 1922 and therefore the ceiling of costs given under the provision, that is, Rs. 3000 is extremely in today's time and age. The same view was followed in ***Vinod Seth v. Devinder Bajaj*** (2010).

Following the judgement of the Supreme Court in ***Sanjeev Kumar Jain v. Raghubir Saran Charitable Trust*** (2011), the Law Commission headed by Justice P.V. Reddy submitted the 240th Report on 'Costs in Civil Litigation' (2012) suggesting amendment to Section 35-A, Section 95 and Order XXV, Order LXI, Order XX Rule 6A of the CPC. Unfortunately, none of these suggestions were adopted by the Parliament and remained a reform on paper. In the 253rd Report, at the time of suggesting the 2015 Bill, the Law Commission noted the observation of the Supreme Court in ***Subroto Roy Sahara v. Union of India*** (2014), and suggested that a mechanism for compulsory costs must be put in place for commercial disputes. Accordingly, the Commission suggested that a new Section 35 be introduced in CPC, which will elaborate on what constitutes costs and the circumstances the Court should consider while passing an order on costs. They further recommended the deletion of Section 35-A (2).

Under Section 35(2), the proviso allows the Court to impose costs on the plaintiff, if he raises frivolous claims. Thus, it deviates from the general principle of 'winner takes it all' and incorporates a principle of apportionment principle where costs are apportioned between parties according to the degree to which they succeeded in the issues they raised or contested. (Pawar et al., 2021). This principle followed in ***Ircon International Limited v. C.R. Sons InfraProjects Limited*** (2018), where the Delhi High Court imposed an order of costs on the plaintiff,holding that most of the claims raised were frivolous, even though ultimately the plaintiff, in whose favour the judgement was passed.

The above principles were neatly summed up in ***Johnsey Estates (1990) Limited v. Secretary of State for the Environment*** (2001), by Justice Chadwick. He stated that while imposing costs on a litigant, the court needs to look at the following principles:

i) There has to be a specific order of the court, and only thereafter costs can be recovered.
ii) The above order is subject to the discretion of the trial judge
iii) In usual circumstances, costs should follow the event. However, if a party has been successful in one issue and unsuccessful in another and overall, he has won the litigation, the court may still make an order of costs against him if it feels that he acted unreasonably and vexatiously. (Behl, 2023)
iv) The appellate judge will not interfere with such discretion just because he feels that he would have exercised the discretion differently. (Kiernan, 2018)

Section 35(3) sets out the various circumstance which the court should consider while making an order for costs:

a) Conduct of parties
b) Partial Success
c) Frivolous counter claims leading to delay in case disposal
d) Unreasonable refusal to settle a dispute
e) Initiating a frivolous claim leading to wasting the court's time.

Even though the new regime for costs is a lot more stringent than before, the Delhi High Court in ***Crocs Inc v. Bata India Limited*** (2019)., reminded that all courts while imposing costs at the interim stage should ensure that it does not lead to ruining credible defense of the unsuccessful party that deserved a full trial. The disparity in financial standing between two parties can often cause a good defense to be ruined of the unsuccessful party, the court should keep that in consideration.

Finally, the most important feature for commercial disputes, with regard to imposition of compensatory costs is that there is no monetary bar for the same. In other words, the bar of Rs. 3000 which applies to costs for civil disputes under Section 35(2) does not apply to CCA, 2015. (Modi & Bangia, 2021). This was clarified by the court in ***Dashrath B Rathod v. Fox Star Studios India Private Limited*** (2017). Similarly, a cost of Rs. 10,00,000 was awarded against the defendant in the commercial suit of ***Matrimony.com Limited v. Thodu Needa Telegu***

Matrimony (2019) for consistently using offending remarks, in spite of an ad-interim injunction order against him.

3.5.7. Appeals

Section 13 of CCA, 2015 details out the procedure of appeal from commercial courts and divisions.

Court of first instance	Appellate Court	Provision
Commercial Court (below the level of district judge)	Commercial Appellate Court (District Judge) as defined under Section 3-A	Section 13(1)
Commercial Court (District judge)	Commercial Appellate Division of the High Court	Section 13(1-A)
Commercial Division of High Court	Commercial Appellate Division of the High Court	Section 13(1-A)

TABLE NO. 2: PROCEDURE OF APPEAL FROM COMMERCIAL COURTS AND COMMERCIAL DIVISIONS

Under Section 13, the appellate Commercial Court or Division can only hear appeals from orders mentioned in Order XLIII of CPC and Section 37 of the Arbitration and Conciliation Act, 1996. In ***HPL (India) Limited v. QRG Enterprises and Another*** (2017), the Division Bench of the Delhi High Court held that the word 'judgement' under Section 13 only refers to a decree and appealable orders under Order XLIII. Unfortunately, the wordings of Section 13 states that appeals can be by the "judgment or order" of a commercial court or division, and using such expression makes us question if orders of the commercial court can be appealable other than those enumerated in Order XLIII in CPC. (Vaid, 2021)

An interesting question to answer would be whether state amendments made to Order XLIII would be incorporated into Section 13 of the CCA, 2015 by virtue of the proviso. If we carefully read the proviso of Section 13, it states that appeals are allowed from orders mentioned Order XLIII of CPC as amended by CCA, 2015. However, Section 16 read with theSchedule of CCA, 2015 nowhere amends Order XLIII. Further Section 16(1) contains a non- obstante clause which overrides the CPC provisions or the jurisdictional power of the High Court which is in conflict with CPC. However, since Order XLIII has not been amended by CCA, 2015, there is no scope for application of Section 16(3). This brings us our next question:

Whether the legislature by referring to Order XLIII in Section 13 proviso wants to telescope all of its provisions even the state amendments made to the order. (Jain & Maheshwari, 2022).In ***Mahindra and Mahindra v. Union of India*** (1983), the Supreme Court observed that whena subsequent legislation brings into itself some of the clauses of a former legislation, then we have to read the clauses or provisions as if they had actually been written in the latter legislation and there should not be an occasion, where the former legislation is referred at all. Therefore, in the context of the CCA, 2015, its provisions must be read with a rider that state amendments to the CPC must not conflict with the provisions of CCA, 2015. Therefore, any additional right of appeal provided by the state amendments to Order XLIII would apply to Section 13 of the CCA, 2015 by virtue of its incorporation by the proviso. (Mehta et al., 2021). We should presume that the legislature was aware of the state amendments when CCA, 2015 was enacted and yet chose to not exclude those state amendments from the purview of CCA, 2015, Section 16 to be specific. However, in Gopi Lal c. CIT, the Division Bench of the Punjab High Court reminded us that a right of appeal is essentially a remedial right and should therefore be liberally constructed. (Aggarwal & Aggarwal, 2021).

The above view was also taken by the Supreme Court in ***Kandla Export Corporation v. OCI*** (2018) where the Supreme Court observed that proviso in Section 13 limits itself to orders enumerated in Order XLIII of CPC and Section 37 of the Arbitration and Conciliation Act, 1996. (Warrier, 2018)

There is another set of orders appealable under Section 37 of the Arbitration and Conciliation Act, 1996. The author has dealt with the same in detail in the coming section.

3.6. Challenges in enforcing arbitral awards passed in domestic and international arbitration

One of the most important features of the CCA, 2015 that it also impacts the conduct of arbitrations, both domestic and international under the Arbitration and Conciliation Act, 1996. Particularly, at the stage of enforcement of an arbitral award or any appeal that arises out of an arbitral award, the role of the commercial court becomes important. The author has previously noted in the hypothesis of her research that resolution of commercial disputes by these courts also affects the effectiveness of alternative dispute resolution as awards or settlements arising out of arbitration or mediation need to ultimately get enforced by Commercial Courts or Commercial Divisions of High Courts under The Commercial Courts Act, 2015. And therefore, it is equally important to assess how well commercial courts are functioning or the challenges

they face in dealing with arbitration matters. (Antonopoulou, 2023). The importance of commercial courts in arbitration matters was recently highlighted in the case of ***M/s. Chopra Fabricators & Manufacturers Pvt. Ltd. v/s Bharat Pumps and Compressors Ltd. & Another*** (2022). The Supreme Court pointed out that once an arbitration award has been passed, it must be enforced and executed quickly by the commercial court, so that the litigant can enjoy the fruits of a favourable award. If the execution proceedings to enforce an award takes an indefinite amount of time, then it will frustrate the purpose and object of the Arbitration and Conciliation Act, 1996 as well as the Commercial Courts Act, 2015. (Bose, 2022). Thereafter the Supreme Court directed the Allahabad High Court to prepare a detailed report on – a) number of execution petitions to execute arbitral awards both under the Arbitration Act, 1940 and under the Arbitration and Conciliation Act, 1996 that are pending in the subordinate courts/executing courts in the entire state; b) number Section 34 applications that are pending in the entire state and from which year and lastly c) number of Section 37 applications that are pending before the High Court and from which year. (Hazarika, 2022).

3.6.1. Jurisdiction of Commercial Courts/Divisions in arbitration matters

Section 10 of the CCA, 2015 (2015) sets out the jurisdiction of the Commercial Court/Commercial Division of a High Court. However, for a matter to fall within the ambit of this provision, the subject matter of arbitration must be a commercial dispute under Section 2(1)(c) and it must be of specified value under Section 12.

Nature	Forum	Provision
All applications or appeals arising out of international commercial arbitration under the provisions of the Arbitration and Conciliation Act, 1996	Commercial Division (where such a division has been constituted by the High Court)	Section 10(1)
All applications or appeals arising out of domestic arbitration under the provisions of the Arbitration and Conciliation Act, 1996	Commercial Division (where such a division has been constituted by the High Court)	Section 10(2)

All applications or appeals arising out of domestic arbitration under the provisions of the Arbitration and Conciliation Act, 1996	Commercial Court exercising territorial jurisdiction over the arbitration (where a commercial court has been constructed by the state government)	Section 10(3)

TABLE NO. 3: JURISDICTION OF COMMERCIAL COURTS/COMMERCIAL DIVISIONS IN ARBITRATION MATTERS

Under Section 2(1)(e) of the Arbitration and Conciliation Act, 1996 (1996), the principal civil court of original jurisdiction is the superior most court in the district which happens to be the High Court in states of West Bengal, Delhi, Madras and Bombay.

In ***Gaurang Mangesh Suctancar v. Sonia Gaurang Suctancar*** (2020), the Bombay High Court was faced with a dilemma. An application under Section 9 of the ACA, 1996 was filed in the Commercial Court of Panjim (presided by an ad-hoc Senior Civil judge). This commercial court refused to entertain the application on the ground that under Section 2(1)(e), it was not the principal civil court of original jurisdiction. The state government in Goa established commercial courts at the Senior Civil Judge and commercial appellate courts at the district levels. Thus, even though under Section 10(3) of the CCA, 2015, the designated district commercial courts had jurisdiction to dispose of a Section 9 application, but the same was not a principal civil court of original jurisdiction under Section 2(1)(e) of the ACA, 1996. The High Court discussed the interplay between the ACA, 1996 and the CCA, 2015 at length and concluded that both are Central enactments and have employed the 'non-obstante clause' at more than one place. However, the ACA, 1996 should prevail when it concerns the substantive rights of the parties and the CCA, 2015 should prevail when it concerns the parties' procedural rights. Therefore, an application under Section 9 of the ACA, 1996 must lie before the commercial court and that commercial court need not be the principal civil court of original jurisdiction. (KM, 2022)

Unfortunately, conflicting opinions were given by the Gujrat High Court in two cases namely ***Kirtikumar Futarmal Jain v. Valencia Corporation*** and ***Fun n Fud v. FLK Associates*** (2020). The High Court observed that Section 2(1)(e) of the ACA, 1996 will always prevail over Section 10 of the CCA, 2015 and a court responsible for entertaining applications out of arbitration matters must be the highest judicial authority in the district, i.e., the District Court.

These conflicting views caught the attention of the government and in 2018, the CCA, 2015 was amended for the first time. The amendment empowered the state government to set up commercial courts below the level of a district judge, in places where High Courts had no original civil jurisdiction. Therefore, under Section 10(3), arbitration matters now would go to the commercial court that exercises territorial jurisdiction over the arbitration. Under the ACA, 1996, the principal civil court of original jurisdiction that is empowered to entertain arbitration matters is either a principal district judge or the High Court exercising original civil jurisdiction. (Taing, 2020). The 2018 amendment created a new tier of commercial courts below the district level who could also entertain arbitration applications, provided they exercised territorial jurisdiction over the arbitration. (Rewari & Satija, 2015). However, no subsequent amendment was made to Section 10(3) of the CCA, 2015. Previously in 2014, the Supreme Court in ***State of Maharashtra v. Atlanta Limited*** (2021), held that the 'principal civil court of original jurisdiction' did not rest the choice of jurisdiction on courts subordinate to thatof the district judge.

The above anomaly was somewhat resolved by the Supreme Court in ***Kandla Export Corporation v. OCI***. The Supreme Court observed that the ACA, 1996 was a self-contained code and therefore the provisions of the CCA, 2015 must give way to the provisions of the former. The court also observed that by applying harmonious construction of both the statutes, it is clear that ACA, 1996 is a special statute and the CCA, 2015 being a general statute should operate in spheres other than arbitration. The court reasoned that if CCA, 2015 was allowed to prevail over the ACA, 1996, then all enforcement decrees passed by commercial courts would get an additional right of appeal under Section 13 of the CCA, 2015 that it does not get under ACA, 1996 and it would ultimately delay the execution of foreign or domestic awards. (2016). Unfortunately, this view was not followed in the recent decision of the High Court of Orissa in ***M.G. Mohanty v. State of Odisha*** (2022), where the court held that all arbitration applications must be heard by a commercial court, even if the latter is not a principal civil court of original jurisdiction under Section 2(1)(e) of the ACA, 1996. The ACA, 1996 must yield to the CCA, 2015, when it comes to the procedural aspects of the matter.

For international arbitrations, Section 10(1) of the CCA, 2015 clearly states that applications and appeals arising out of the same would lie to the Commercial Division of the High Court. Under Section 3 of the CCA, 2015, Commercial Divisions are established only in High Courts where the latter enjoys original civil jurisdiction. Recently, in ***ITI Limited v. Alphion***

Corporation and Another (2022), the Karnataka High Court ruled that even with respect to High Courts that do not enjoy original civil jurisdiction, a Commercial Division presided by a single judge must be established solely for the purposes of disposing of application arising out of international arbitrations. (Masters, 2022)

3.6.2. Transfer of arbitration matters

Section 15 of the CCA, 2015 states that all suits and application relating to a commercial dispute of a specified value shall be transferred to a Commercial Division or Commercial Court.

The different modes of transfer as stipulated under Section 15 are as follows:

Transferor Court	Transferee Court	Conditions	Provision
All suits and applications including applications under the Arbitration and Conciliation Act, 1996 pending in the High Court.	Commercial Division of the High Court	Suit or application must relate to a commercial dispute under Section 2(1)(c) and is of specified value	Section 15(1)
All suits and applications including applications under the Arbitration and Conciliation Act, 1996 pending in the Civil Court.	Commercial Court having jurisdiction	Suit or application must relate to a commercial dispute under Section 2(1)(c) and is of specified value	Section 15(2)

TABLE NO.4: TRANSFER OF ARBITRATION MATTERS TO COMMERCIAL COURTS/COMMERCIAL DIVISIONS

However, if final judgement has been reserved by the court before the constitution of the commercial court or commercial division, then such transfer will not take place.

Section 15 unfortunately is silent on the mode and the manner of transfer. In ***Dilip Choudhury v. Pratishruti Projects Limited (I)*** (2019), the court put across three fundamental points for reading Section 15 – a) Once a suit is transferred, it enters into an entirely different procedural regime that has an objective of fast tracking the disposal, b) Only those suits pending final judgement would be saved from such transfer and c) Under Section 15, the onus is on the litigant to take the first step of transfer and it is he who has to file an application for the transfer of the pending suit. In ***Dilip Choudhury v. Pratishruti Projects Limited (II)*** (2020), the court dismissed the above view and stated that the responsibility of transfer of commercial suits lies on the Court or the Registry of the Court. (Dey, 2020). Following that line of thought, the court in ***Government of India v. Jaiswal Ashoka Infrastructure Private Limited*** (2019), set aside an order where a Section 34 application under ACA, 1996 was heard without transferring it to the jurisdictional Commercial Court. (Agarwal, 2022)

The power to make such transfer however solely lies with the Commercial Appellate Division of the High Court under Section 15(5) of the CCA, 2015. Under Section 24 of the CPC, 1908 a district judge cannot transfer a suit to a commercial court within its jurisdiction, laid down in ***D.K. Jain v. C.S. Aggarwal*** (2019). A similar view was taken in ***C.K. Surendran v. Kunhimoosa*** (2021). Following the same principle, the Calcutta High Court held that a commercial suit of specified value filed on the original side of the High Court cannot be transferred to the Commercial Division of the same High Court unless such transfer order comes from the Commercial Appellate Division. In such a case, the original side of the High Court should return the plaint under Order VII Rule 10 for presentation before the Commercial Division. What the judgement has completely ignored that all High Courts have the inherent power under Article 151 nevertheless to return a plain if it was required for the ends of justice. But a Commercial Division in a High Court does not have an independent existence without the ordinary original side civil jurisdiction of the High Court, therefore the Commercial Division is another wing of the ordinary original side civil jurisdiction of the High Court. Thus, just to save the procedural technicality of Section 15(5), it is illogical to say that a High Court using Article 151 cannot transfer a commercial suit from its original civil side to its Commercial Division, which is a part of the very same ordinary original side civil jurisdiction of the High Court. Ideally, the plaintiff should be asked to carry out necessary amendments in the plaint to bring it in conformity with the requirement of CCA, 2015. (Mody et al., 2022). In ***Ajoy Kumar Ghosh v. State of West Bengal*** (2008), the court held that there cannot be any bar in the exercise of inherent jurisdiction to convert an application filed on the original side of the High Court to

an application on the appellate side of the same High Court. By the same token, there should not be a bar on the transfer of a commercial suit between the ordinary original side civil jurisdiction of the High Court and the Commercial Division on the same High Court. (Kapoor & Ahsan, 2023).

Section 15(5) also provides a remedy to a litigant who can file an application to the Commercial Appellate Division of a High Court if the trial judge refuses to execute the transfer of the suit to the jurisdictional commercial court, laid down in ***Raymond UCO Denim Private Limited v. Genesis Embroidery***. (2020).

Section 15 bars transfer of those cases where the final judgement is reserved, and once is suit is converted to a commercial suit, then the CCA, 2015 will apply to procedures that were not complete at the date of transfer. In ***Videocon International Limited v. SEBI*** (2015), the Supreme Court noted that a vested substantive right cannot be taken away by an express provision. However the intent of the legislature in CCA, 2015 was that when a suit does get transferred as a commercial suit, the provisions of the Act would apply and it cannot be said that a substantive right vested in the plaintiff has been taken away by Section 15. The transferred suit, now a commercial suit, would thus to subjected to the single recourse of appeal under Section 13, laid down in ***Nirman Consultants Private Limited v. NNE Limited*** (2019).

A bare reading of Section 15(4) tells us that the Commercial Division or Commercial Court to which the suit has been transferred to, can hold case management hearings or prescribe new timelines for a speedy and efficacious disposal of such suit. Thus, the timeline amendments introduced in the Order V and Order VIII by the CCA, 2015 do not necessarily apply to that suit. In ***Colonial Life Insurance Company (Trinidad) Limited v. Reliance General Insurance Company Limited***, the Bombay High Court held that the 120 days timeline for filing written statement does not apply to a transferred suit. Similarly, in ***Raj Television Network v. Sony Music Entertainment India Private Limited*** (2018), the Madras High Court clarified that the 120-day time period is not applicable to transferred suits under Section 15(4) of the CCA, 2015. (New Indian Xpress, 2017). Further in ***Tablets (India) Limited v. D.R Johns Lab Pharma Private Limited*** (2018), it was held by the court that it was unreasonable to ask the party to file a written statement where ex-parte evidence has been recorded. That stage should be skipped and straight away oral arguments should be heard.

3.6.3. Execution petitions

A decree or order in a suit is executed by either a court that passed it or a court to which it is sent for execution through transfer under Section 38 and 38 of CPC, read with Order XXI Rule 10. A question arose before the Madras High Court in ***Millennium Steel India Private Limited v. Ind Barath Thermal Power Limited*** (2017), as to whether execution petitions would be heard by the Master of the High Court, as in happens in case of decrees passed by the single judge in its ordinary original civil jurisdiction under the Madras High Court Original Side Rules, or by the Commercial Division of the High Court. Under the Madras High Court Original Side Rules, Rule 1(4) defines 'Court' to mean a Judge, Master or Fist Assistant Registrar; therefore, there is some form of diffusion of jurisdiction amongst all three functionaries which come under the generic term 'court'. However, Section 4 read with Section7 of the CCA, 2015 states that the Commercial Division of a High Court will be manned by a single judge who would exercise jurisdiction over all suit and application under Section 2(1)(e)of specified value, including execution petitions. There is no scope for diffusion of jurisdictionin this case. We can thus safely say that a decree passed by a Commercial Division will be executed by the very Division itself and not by other functionaries of a court. A similar view was taken by the Delhi High Court in ***Bayer Intellectual Property GMBH and Another v. Symed Laboratories Limited*** (2019).

With respect to execution of arbitral awards, the Division Benches in Rajasthan High Court in ***Ess Kay Fincorp Limited v. Suresh Choudhary and Another*** (2019) and that of Madhya Pradesh High Court in ***Yashwardhan Raghuwanshi v. District and Sessions Judge*** (2019), have held that all execution applications arising out of an arbitration must be heard of by the jurisdictional commercial court, even if it is not a court as defined under Section 2(1)(e) of the ACA, 1996. The judgement of the Supreme Court in ***Kandla Export Corporation v. OCI*** also adds confusion to the above view. The author has discussed the above judgement in detail in the previous section. (Indulia et al., 2022).

3.6.4. Appeals under the Arbitration and Conciliation Act, 1996

Section 13(1) and 13(1-A) of the CCA, 2015, Proviso states that all those orders under Section 37 of the Arbitration and Conciliation Act, 1996 are appealable. Section 37(2) of ACA, 1996 bars any second appeal from an order passed under Section 37. The Supreme Court in ***BGS SGS Soma JV v. NHPC Limited*** (2019), held that the substantive right of appeal is governed by the ACA, 1996 while the forum of appeal is regulated by Section 13 of the CCA, 2015.

(Indulia, 2022). Therefore, under Section 37 of the ACA, 1996 and Proviso to Section 13, the following orders are appealable:

i) An order refusing to refer parties to arbitration under Section 8 of ACA, 1996
ii) An order granting or refusing an interim application under Section 9 or Section 17 of the ACA, 1996
iii) An order setting aside or refusing to set aside an arbitral award under Section 34 of the ACA, 1996
iv) An order accepting a plea under Section 16(2) and Section 16(3). (2020)

In ***Government of Maharashtra v. Borse Brothers Engineers and Contractors PrivateLimited*** (2019), the Supreme Court held that the appeal under Section 37 of the ACA, 1996 issubject to the limitation period of 60 days under Section 13 of the CCA, 2015. (Lochan et al., 2021). However, if the appeal under Section 37 arises out of disputes that are not commercial disputes of specified value, then the same is governed by Articles 116 and 117 of the LimitationAct, 1963, where the period of limitation is 90 days or 30 days, depending on the forum of appeal. (Chilumuri & Chaudhari, 2021).

In an instance, where an order is passed by a Commercial Court (below the level of a District Judge) and then it is taken to the Commercial Appellate Court (District Judge), where the latter remands the case to the Commercial Court for fresh disposal, under Order XLIII, Rule 1(u), an appeal can lie from an order remanding a case. But if we read that with Section 13(1), an appeal solely lies from a Commercial Court to a Commercial Appellate Court, and therefore, Section 13 provides the remedy of appeal against an order of the District Judge exercising original jurisdiction as a Commercial Court alone. There is no remedy against a remand order passed by a District Judge exercising appellate jurisdiction as a Commercial Appellate Court to the High Court. However, in 2018, after introducing Commercial Appellate Courts, the amendment Act did not make any changes to Section 13(2). The bar to a second appeal could possibly be said to not include or apply to appellate decrees of a Commercial Appellate Court. (Katyal, 2023).

In ***Varun Fashion v. ITC Limited*** (2017), the Commercial Division of the Delhi High Court accepted a written statement on record after 120 days. This order was patently illegal, but the Division Bench has no right to maintain an appeal against it under Section 13 of the CCA, 2015. Such error needs to be corrected by allowing intra court appeals other than inviting

parties to submit pleadings, frame issues and lead evidence only to tell them in appeal by the Commercial Appellate Division that all of this was illegal.

In another instance, the Kerala High Court in ***Oommen Thomas Oanicker v. Monica Constructions Private Limited*** (2021)., while hearing an appeal under Section 13 of the ACA, 1996 against the dismissal of an application under Section 8 held that it was the Commercial Court that needed to hear the said dispute. Therefore, it transferred the case to the Commercial Court and held that the application under Section 8 was not maintainable. Rejecting such application was technically not an order refusing to refer parties to arbitration and would not fall within the net of Section 37. The Division Bench of the Kerala High Court held that the order dismissing the Section 8 application was patently illegal but it did not possess the jurisdiction to sit over appeal in the matter under Section 13 of the CCA, 2015. Thus, the appellant was only left with the remedy to file a revision application to the High Court under Article 227 of the Constitution.

The above issues need a thorough re-consideration by the legislature and courts to iron out the existing glitches and clarify points of conflicts for ordinary litigants.

3.7. Infrastructure of commercial courts: Ease of access to litigants

The CCA, 2015 for the first time created commercial courts in the country which required designated judges and infrastructure. In the 188th Report, the Law Commission suggested that High Courts and Stage Governments should ensure that Commercial Divisions in High Courts would have as many benches as necessary with the adequate number of judges rich in handling civil and commercial cases, manning these benches. It was also observed that these judges and lawyers who would access these benches should be provided continuous legal education on commercial laws. Unfortunately, the 2009 Bill did not mention anything about providing additional and better trained judges for these courts and it was completely left to the discretion of the Chief Justice of the High Court to determine the composition of these commercial benches. Further, it was suggested that the existing vacancies of judges in the High Courts must be urgently filled up to deal with the increased workload from the bulk transfer of commercial matters from district courts. (Sarraf, 2023).

The 253rd Report of the Law Commission was heavily based on the Report of the Sub-Committee of National Court Management Systems Committee (NCMS) headed by Justice Badar Durrez Ahmed (2012). The Report collected suggestions from various High Courts as

well as from global experience to prescribe minimum national common standards for Court Management Systems at the policy level. The Report suggested that Commercial Divisions should have rich technological infrastructure like computerization in the process of a trial and in order to do that, first and foremost, the strength of benches across the country should be increased by 25%. Judges of these commercial courts should have considerable experience in commercial litigations and this new cadre of judges would be selected through a well-defined recruitment process and entitled to a higher pay in salary. It was also recommended that judges of Commercial Courts and Divisions would receive special training for six months at the National Judicial Academy or relevant State Judicial Academy with a view towards their continuous professional education. (Ortolani, 2022)

All of these above details in the Law Commission Reports did not unfortunately transpire into the CCA, 2015 and the provisions relating to infrastructure were only dealt with cursorily. The lack of legislative mandates on infrastructure and judicial selection has only gone on to show that High Courts and the State Governments have essentially renamed existing courts as commercial courts. (Jain, 2021)

In 2020, by a Gazette Notification, the West Bengal State government set up 4 dedicated commercial courts at Siliguri, Asansol, Rajarhat and Alipore, with a pecuniary jurisdiction of 30 lakhs. Other commercial courts which were within the territorial jurisdiction of the City Civil court at Calcutta have a pecuniary jurisdiction of 3-10 lakhs and that of the Commercial Division of the High Court is 10 lakhs. (2020).

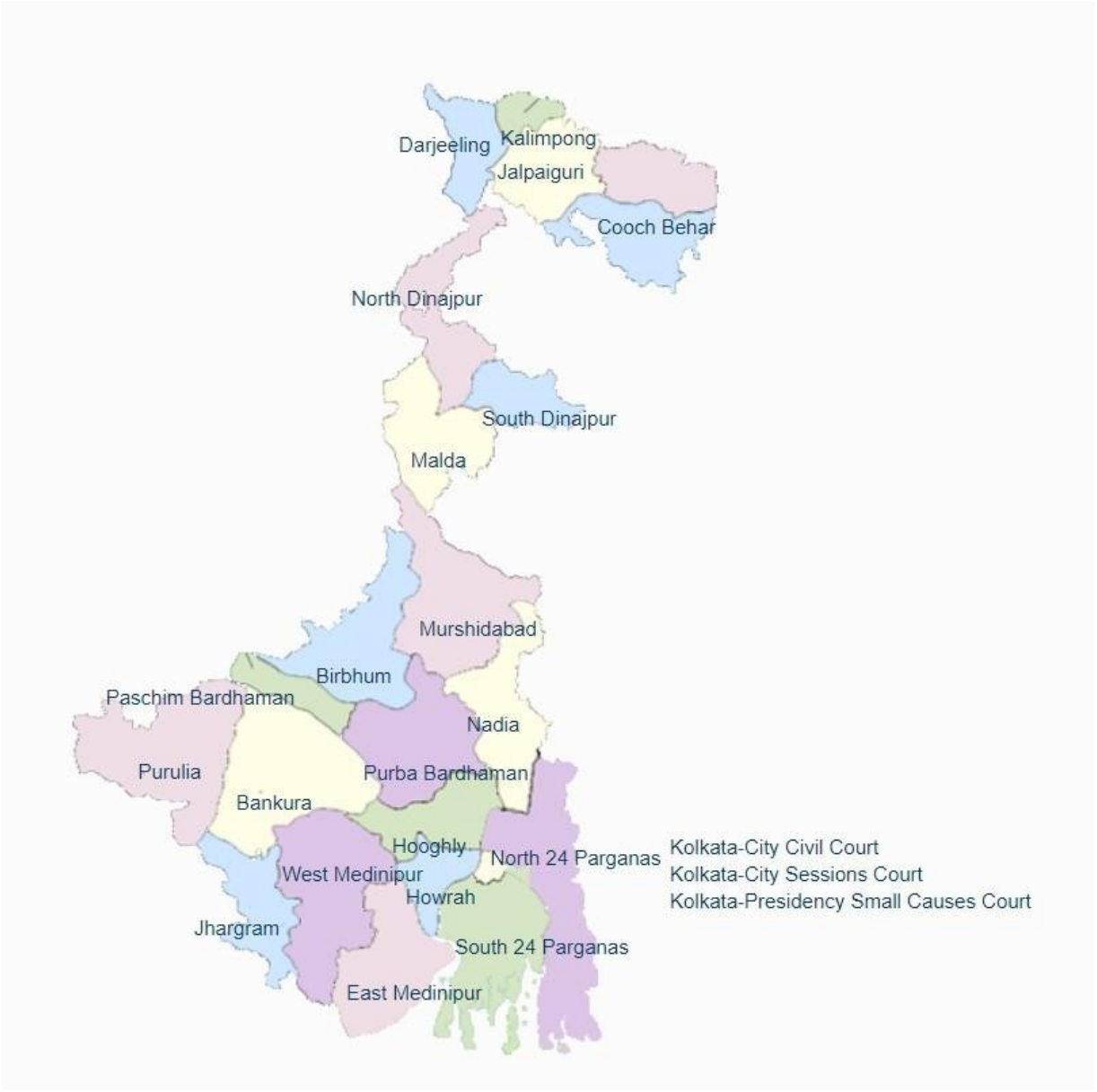

Fig. v)

Under the CCA, 2015, after the 2018 amendment, commercial courts are to be established in all of these districts since the Calcutta High Court enjoys original civil jurisdiction. The specified value of a commercial dispute is of 3 lakhs under the CCA, 2015. Thus, unless in every district, the district judge also acts as a commercial court judge and follows the disposal process under the CCA, 2015 and amended CPC, 1908, the litigant of a commercial suit is left without a forum to ask for remedy or resolution. The dedicated commercial courts only entertain commercial disputes of 30 lakhs and above. There has been no official notification regarding establishment of any commercial court or assignment of a commercial judge at the district level. Such information is also not available on the website of the West Bengal

Commercial Courts and Divisions. Thus, it appears, that a commercial litigant with a dispute of value 3 lakhs is forced to come all the way to the Commercial Court at the City Civil Court in Kolkata, irrespective of where he is placed or his dispute arises. Therefore, before the CCA, 2015, the same litigant could go to the nearest district court that enjoyed territorial jurisdiction over the dispute. The author wants to make a point that every single district court in the state should have a commercial bench, which follows the speedy procedures under the amended CPC, 1908 and CCA, 2015. Only then can we guarantee sufficient access to those who need swift commercial justice.

It would however be wrong to say that the High Courts have not been proactively working towards setting up of more courts. In 2019, the Delhi High Court in ***Prag Chawla vs Government of NCT of Delhi and Another*** (2019), directed the government to set up 18 fast track courts and 22 commercial courts in various districts of Delhi. It also reminded the state government that it cannot sit over the appointments but instead is duty bound to sanction the requisite number of posts. In July, 2022, a petition was filed in the Delhi High Court asking for more commercial courts to be set up. It was pointed out that, As against the world's best practice towards the timeline for disposal of commercial disputes of 164 days, Delhi takes 747 days in deciding a commercial dispute. However, the same had not been set up till date. (The Economic Times, 2019). A public interest litigation (PIL) was filed by Amit Sahni. On 4th April, 2023, the Delhi High Court gave the government an additional six months to construct the court rooms and strictly asked the Public Works Department (PWD) to stick to the time frame. (Jha, 2022)

3.7.1. Appointment of judges to commercial courts

Section 18 and 19 of the CCA, 2015 states that judges with experience in handling commercial disputes would sit on the Commercial Courts, Commercial Divisions, and their respective appellate bodies. It is the job of the State government to ensure that necessary infrastructure in terms of judicial resources is provided to these judges so they can swiftly dispose of the disputes. Additionally, they need to be trained constantly and necessary facilities for imparting such training should be established by the State government. While the former is a mandate, since Section 18 starts with the word 'shall' which makes it compulsory for the state government to provide infrastructure which it thinks necessary for these courts to properly function; Section 19 leaves to state governments to decide whether training institutions are required or not to train and educate the presiding judges. (Sundaram, 2018)

In 2021, the Supreme Court asked the government to appoint the judges in High Courts against all existing vacancies. It was suggested that all High Courts have a shortage of around 40% judges, which requires a "collaborative" exercise involving the judiciary and the government to fill up those posts. This by extension, means that for all commercial courts to function effectively at the district level as well as the Commercial Division/Appellate Division at the High Court, all posts need to be filled up at all time. (Anand, 2021)

3.7.2. Training of judges of commercial courts

The CCA, 2015 leaves it to the State government to decide how the new judges of the commercial courts will be trained. Various state governments have taken initiatives at their ends in the last 7 years. The West Bengal Judicial Academy organised the Sensitization Programme on issues related to Commercial Courts Act, 2015 on 29th June, 2019 (2019). A year later in 2020, the government nominated 30 Judicial Officers including 4 Judicial Officers posted as Presiding Officers of Commercial Courts in West Bengal and other 26 Judicial Officers in the rank of District Judge (Entry Level) to participate in the One Day Non-Residential Workshop" on Various Provisions of Commercial Court Act, 2015. (2020).

In 2022, the National Judicial Academy conducted a Refresher Course for Commercial Court Judges (2022). Recently, the Delhi Judicial Academy conducted the Orientation Course for District Judges (Commercial Courts) on 4th March, 2023. (2023). Similar programmes and refresher course have been consistently conducted by the Delhi Judicial Academy in June, September and December, 2022. An interesting Collaborative Workshop of Delhi Judicial Academy with CIPAM for Enforcement of Intellectual Property Rights for District Judge (Commercial Courts) was held on 09th April, 2021. (2021). Similarly, other states have also made significant attempts at educating and training district judges and those at the higher judicial services with respect to commercial matters.

The European Bank of Reconstruction and Development has a Legal Transition Programme where it helps transition countries to establish or improve commercial law judicial training programmes. This serves the Bank's mandate to foster transition, as enhanced judicial capacity in commercial law contributes positively to the business environment and the investment climate. Accordingly, they have developed core principles for judicial training in commercial law, which are essentially a high-level guide to commercially relevant dimensions of judicial training in transition countries. Reviewing how commercial judges are trained across countries

would be a very fruitful takeaway for India to improve the training facilities for its judges. (1996-2020).

3.8. Disclosure of statistical data pertaining to resolution of commercial disputes on websites

Section 17 (2015) of the CCA, 2015 mandates Commercial Courts, Commercial Appellate Courts, Commercial Division, Commercial Appellate Division to update and maintain statistical data pertaining to number of suits, applications, appeals or writ petitions filed, the pendency of such cases, the status of each case, and the number of cases disposed of etc. These data were to be published by the High Court in their respective websites. This was a unique provision aimed at remedying the inadequacy of judicial statistics and providing a mechanism to measure judicial performance.

Accordingly, in 2018 the government notified the Commercial Court (Statistical Data) Rules which were further amended in 2020 (2020). Under the Rules, the High Courts have to ensure that data to be collated and published on the use of several virtual facilities made available under the e-Courts mission, including the number of e-filed cases, e-payment transactions, and e-processing of summons.

3.8.1. Time taken to dispose of a commercial dispute

As of February, 2023, the total number of cases pending before all the commercial courts in Delhi on the last day of the month is 26,559. Out of 2339 cases instituted that month, 1456 were disposed of. Thus, only 62% were resolved within that very month. From November, 2021 to February 2022, the total number of cases pending have kept on increasing. The pictureis quite similar with respect to the four dedicated Commercial Courts of West Bengal. For the Commercial Court at Rajarhat, Alipore, Asansol and Siliguri, the average number of cases that are disposed off every month is below 10, while pendency of cases is between 100-150. Similarly, for the Commercial Courts in Mumbai, the total number of pending cases have increased from 2685 in December 2021 to 2807 in February. For better implementation of CCA, 2015, particularly Section 17, the Commercial Courts (Statistical Data) Rules 2018 was enacted that required the Commercial Courts, Commercial Appellate Courts, Commercial Division or Commercial Appellate Division to release information regarding pendency and status of each commercial suit, time to dispose it etc. by the tenth of every month. (Consolidated

Statistical Report of The Commercial Courts of West Bengal). In 2020, these rules were amended, these new rules require the courts to publish data on the use of several virtual facilities made available under the e-Courts mission, including the number of e-filed cases, e- payment transactions, and e-processing of summons. Further, details with respect to case management hearings, contested commercial cases also need to be recorded by the High Courts. Of 24 High Courts, only High Courts of Mumbai, Delhi, Karnataka, Rajasthan, Uttarakhand etc. have maintained data up to February 2022, in accordance with the format prescribed by the 2020 Amendment Rules. Rest others have either not been publishing any dataat all, or publishing it as per the 2018 rules (High Courts of Calcutta, Hyderabad, Madras, Patnaetc.) (Misra, 2019)

While these new rules should ideally create more nuanced data sets and maintain more efficient judicial statistics, these would better the implementation and monitoring of the CCA, 2015 only when the well-intended provisions under the Rules are brought forth in spirit. In United Kingdom, the Commercial Court is a sub-division of the Queen's Bench Division of the High Court of Justice. It comes up with an annual report that not only depicts the performance statistics of the Commercial Court but also provides detailed information about initiatives and projects undertaken to improve its service to the litigants, to make them more familiar with its use. If India wants to achieve evidence-based law and policy making, then similar attempts should be taken so that CCA Act, 2015 can be implemented in spirit and doesn't remain a reform on paper.

The primary aim of any civil law reform is speedy justice. Within that sphere, is the need to provide speedy justice of commercial disputes, those with high value litigation because commerce is the life plat of the economy. However, if we want to establish these Commercial Courts and Commercial Divisions as model courts, the government would need to provide additional infrastructure and appoint new judges for the same. The same judges of ordinary civil courts cannot be designated as judges of Commercial Courts and asked to hear matters from all over the district. It would be impossible for them to adhere to the timelines mentioned in the CCA, 2015 which is after all the main intent of the legislation.

At the valedictory ceremony of the Constitution Day celebrations, Chief Justice of India, CV Ramana stated "Another issue is that the legislature does not conduct studies or assess the impact of the laws that it passes. Re-branding the existing courts as commercial courts, without creating a special infrastructure, will not have any impact on the pendency". The CCA, 2015

was initially designed to handle high value commercial cases in the country, however it progressively enveloped almost all civil litigation in its scope. A legal reform can only be meaningful if it is supported by huge investment in moulding legal culture - of judges, lawyers and clients - and a corresponding examination of the administrative systems and processes of handling disputes. For a successful legislative reform, there needs to systematic changes both in administrative as well as cultural parameters. (2021). Otherwise, the scale and scope of such effort would be simply perceived as an 'old wine in a new bottle'.

3.9.1. Discontinuation of World Bank's Doing Business Project: Impact on the commercial courts.

One of the biggest policy justifications behind enacting the CCA, 2015 was ranking high in the World Bank's Ease of Doing Business (EODB) Index. The author in the Chapter, Section 2.6.5 and Section 2.6.7 has elaborated on how the EODB Rankings were an important factor considered by the government to give shape to the commercial courts of our country. From 2003 till the introduction of the Commercial Courts (Amendment) Bill in 2018, in the Parliament, time and again, the EODB Index has been prioritized.

Such a specific policy of chasing a global index to reform the justice system in the country has often been criticised as being too focused on satisfying an external ranking index, rather than targeting the real issue of litigation culture and systemic challenges within the Indian judiciary. Further, real stakeholder engagement or public consultation with lawyers was largely missing before such amendment. A research organisation by the name of Vidhi Centre for Law and Public Policy released a Report titled Commercial Courts Act, 2015: An Empirical Impact Evaluation in 2018, where they mentioned that they filed three separate RTI applications asking for a copy of the cabinet note approving the 2018 amendment bill and received no responses from there. The Report further pointed out that one of the major focusses of the CCA, 2015 was to improve India's image as an investment destination and therefore, the reforms introduced under the Act could turn out to be mere cosmetic changes and ineffective when it comes to making long term changes in the litigation scenario of the country. (Jauhar & Mishra,2018). The author does not entirely agree with the conclusion of Vidhi's Report. One of the objectives of the Commercial Courts and Commercial Divisions of High Courts Bill, 2015 wasimproving litigation culture in the country. It would be wrong to say that scoring high on the EODB Index has been the sole aim of the legislation. Substantive changes which would shortenand make dispute resolution more efficient, have been introduced in the CPC by the CCA,

2015. How far the same would be implemented in the years to come, would of course depend on how well these procedural reforms are implemented.

Unfortunately, on 16th September, 2021, the World Bank issued a statement where they admitted that their Doing Business Reports of 2018 and 2019 suffered from data irregularities and after conducting a series of reviews and audits on their methodology, they have decided to discontinue their Doing Business Reports which featured the EODB Rankings. They further suggested that such withdrawal was necessary since the Doing Business Reports often help countries make policy decisions and measure economic and social improvements more accurately. (2021).

Even though the term 'EODB' has come from a global index, while adopting the principle in India, it became a part of India's Make in India policy at a much larger level. The Department for Promotion of Industry and Internal Trade (DPIIT), in coordination with Central Ministries/Departments, States and Union Territories has spearheaded various reforms to improve business regulatory environment in the country, along with a dynamic reform exercise called Business Reforms Action Plan, which ranks all the States and UTs in the country based on designated reform parameters. The Confederation of Indian Industry (CII) has been working closely with the Government of India, especially Department for Promotion of Industry and Internal Trade (DPIIT), and various state governments for sustained improvement in the business environment. CII's key focus areas on EODB include collaboration with central and state governments to improve EODB, assessing and monitoring the progress of business reforms, creating a strong outreach campaign to invite feedback from industry, capacity building of state governments in EODB and providing a mechanism for regular interface and feedback for industry's views and recommendations. (CII). Various Ministries like the Ministry of Corporate Affairs and Department of Justice have initiated efforts at their end to ensure it is easier for start ups and entrepreneurs to run their businesses in the country as well as for disputes arising from those businesses to get quick resolution. EODB has also reflected or shown itself as an important factor to be considered for improving the economy in the latest budget. Thus, even though EODB started off as a global index, the principle and philosophy behind it is extremely vital for a developing country like us. EODB needs to culturally adopted in our regulatory framework and efforts initiated towards it need to be only encouraged further. (2022).

Therefore, it is undeniable, that even in the absence of such a ranking in the present day, the key to entrepreneurship, innovation or wealth creation lies in the ease of doing business in India. With or without the intervention of the World Bank, we as a nation need to focus on continuing reduction in regulatory compliance burden, decriminalization of business laws, continuous reduction in cost of doing business, use of technology to lead the improvement in various areas of doing business and providing state-of-the-art infrastructure in line with international best practices to businesses. Additionally, procedural as well as approval processes in commercial courts particularly need to be efficient, fast and transparent with use of heightened technology.

3.9.2. Initiation of Business Enabling Environment Project by World Bank

In 2021, after withdrawing the Doing Business Reports, the World Bank announced that they were now preparing to work on 'Business Enabling Environment' Report to assess the business and investment climate in a country. They also announced in the pre-concept note released in 2021, that this Report will take into consideration advice from qualified academics and practitioners outside the institution of World Bank as well as views of potential users in government, the private sector, and civil society through an open consultative process. This Report would assess whether a business environment in a country is conducive to private sector development, as to whether the economy in question promotes economic growth through innovation and entrepreneurship; provides equality of opportunities among market participants and ensures the general sustainability of the economy in the long term. (2023).

While announcing the budget for the financial year 2023-2024, the government seeks to minimise bureaucracy and reduce regulatory supervision for a buoyant business environment. It proposed the Jan Vishwas (Amendment of Provisions) Bill, 2022 to enhance ease of living and doing business in the country. Thus, it becomes clear to us, that even if EODB is discontinued, India's thrust on becoming a preferred investment destination and providing a 'business enabling environment' to its citizens remains unwavering. That said, we can safely conclude, that even in the absence of any global ranking that makes India look like an attractive country for investors, the thought of 'ease of doing business' is here to stay. (2022)

3.10. Effectiveness of the Commercial Courts under The Commercial Courts Act, 2015

After the enactment of The Commercial Courts Act, 2015, there is no publicly available study with respect to the impact that these courts have had on the litigation scenario in the country.

Although there is an Impact Evaluation Report released by Vidhi Centre for Research and Policy in 2016, the same is limited to analysis of quantitative data only at the commercial courts in Delhi. After 2018, where the CCA, 2015 was significantly amended, there is a certain lack of any publicly available data/report which has determined the effectiveness of these courts. The second part of this Chapter intends to capture the effectiveness of the commercial courts via an empirical analysis.

CHAPTER III B – THE EFFECTIVENESS OF COMMERCIAL COURTS: AN EMPIRICAL ANALYSIS

CHAPTER III B – THE EFFECTIVENESS OF COMMERCIAL COURTS: AN EMPIRICAL ANALYSIS

United Nations Conference on Trade and Development (UNCTAD) released a Report in 2011 titled 'Foundations of an effective competition agency' (2011) whereby they discussed some features that characterise public regulatory bodies such as:

i) independence;
ii) transparency;
iii) accountability;
iv) assuring due process;
v) being well funded in proportion to the mandate;
vi) being staffed by well-educated,
vii) well-trained and non-corrupt persons; and
viii) having an appellate process that itself is well structured and noncorrupt, which form the basis of evaluation.

In August 2012, Organization for Economic Co-operation, and Development (OECD) came out with an Expert Paper which discussed the primary indicators of regulatory performance. (OECD, 2012). The paper discussed that while selecting the indicators for evaluating performance of a regulatory agency, one needs to identify - (a) the purpose of the evaluation, and (b) the availability of quality data. This Paper has listed ten different key indicators for evaluation –

a) Benefits justify costs
b) Least burden
c) Net benefits
d) Performance objectives
e) Alternatives to direct regulation
f) Quantified benefits and costs/qualitative values
g) Open exchange of information
h) Co-ordination, simplification, and harmonisation across agencies
i) Innovation
j) Flexibility
k) Scientific and technological objectivity

Similarly, till 2020, when World Bank evaluated civil/commercial courts in different economies to measure the 'enforcement of contracts' indicator, they used a questionnaire which had some set parameters to measure performance. Some of the important indicators there to assess the quality of commercial dispute include Court Structure, Case Management, Court Automation, Timelines, Costs etc.

Based on the above literature on how courts/any public regulatory body can be evaluated on the basis of its effectiveness and keeping in tandem with the author's research objectives, this thesis will conduct the effectiveness of commercial courts in three different was:

i) In Section 3.8, the author has talked of the mandate of commercial courts under Commercial Court (Statistical Data) Rules 2018 to disclose monthly all data regarding commercial suits/cases on their website. The author will look at this data for the past 6 months and analyse, how well these courts are performing in terms of case disposal, institution of pre litigation mediation, adoption of case management processes etc.
ii) The author has identified four factors which are tantamount to the effectiveness of the commercial courts – Awareness, Access, Processes, Alternative Dispute Resolution. An open-ended questionnaire will be used to collect from stakeholders such as practicing lawyers, policy makers, academicians, ordinary litigants etc.

For the purposes of this research and data collection, the author has chosen four metropolitan cities – Delhi, Bombay, Calcutta and Chennai since all these cities being significant economic and commercial centres see a good traffic of commercial disputes. Further, all these High Courts enjoy original civil jurisdiction, these High Courts have Commercial Divisions as well as Commercial Courts at the district level.

The sample size for data collected through questionnaire is 200. The author has used convenience sampling method to reach at the desired sample size from the pool of stakeholders.

3.10.2. Statistical Data in Commercial Courts – Delhi, Mumbai, Kolkata, Chennai

Delhi

The author has studied the case disposal data of Delhi Commercial Courts from November 2022 till end of April 2023 to draw some conclusions.

In November 2022, the Commercial Courts in Delhi at the district level as well as the Commercial Division of the Delhi High Court received a total of 1116 applications for pre-institution mediation. However only 8 cases were resolved through the mediation and the rest were non-starter. In December, 2022, the total applications received for pre-institution mediation were 942, out of which only 28 cases were solved. In January, that number went up to 9/1066, in February it is 7/1078 and March it is 28/1153. Therefore, only in the last five months itself, the total number of commercial cases disposed off in (8+28+9+7+28=80) as opposed to a total of 5355 applications that it received. We can say that in the last 5 months, commercial disputes have been resolved through pre-institution mediation at the rate of 1.49%. The Pre-institution mediation can be avoided in cases where urgent relief was sought. However, in these months, those applications were only 13 in number.

We then come to Case Disposal Data. In November 2022, the number of commercial suits pending was 3054, in addition 78 cases were instituted in the month itself and 87 cases were disposed off by the end of November. This gives us a monthly disposal rate of 2.7% (after including pending cases). This is primarily because there is a huge backlog of 3054 cases from the previous years. Similarly, in December, the disposal rate is 1.9%, in January it is 1.6%, in February it is 1.8% and March it is 2.1%. Overall, the pending cases at the beginning of November 2022 was 3045 which increased to 3079. Thus, over a period of 5 months, the pendency has increased at the rate of 1.11%. This might seem menial or trivial as a quantitative representation, but the entire objective of the CCA, 2015 was to resolve the problem of pendency of commercial suits, and not to increase it overtime, however marginally. Additionally, the data shows that in November, the average of the total number of days between the day immediately after the registration of the case and the date of its disposal is 888 days, the same reflects as 868 days in December, 1153 days in January, 1055 days in February and finally 1251 days in March. This too has seemed to increase in the past few months. However, the days taken to dispose off a commercial suit on an average seems to have increased from November to March by 40.87%.

CCA, 2015 says that the time period for hearing final arguments and completion of trial is 6 months from the date of first case management hearing. The objective of introducing case management hearing was to get both parties and their lawyers sit with the judges and decide a schedule for the trial, so that all the subsequent stages from witness examination to recording evidence to oral arguments etc. can be completed as per the decided schedule on time, within

the next 6 months. But if we look at the statistical record of each of the commercial cases, instituted in a month, there is a minimum gap of one year, in some cases, more between the date of the case registration and the date of first case management hearing. Although the days to dispose off a commercial suit has reduced from 1094 to 626 days in 2020, we are still a long way to go if we compare ourselves to economies like Singapore where the commercial dispute resolution takes roughly 164 days.

As on this date, there are 35 Commercial Court judges at the district level benching at the District Courts of Tis Hazari, Saket, Patiala, Karkadooma, Rohini, Dwarka which cover almost all zones of Delhi. However, the statistical monthly data shows that the commercial judges sitting on these benches are also on a roaster for cases of other jurisdictions. Therefore, we can say that their attention is not solely dedicated to commercial suits under the CCA, 2015 and that is of a certain degree of concern, since pendency of commercial matters is slowly increasing.

Mumbai

Just like in Delhi, the author looked at the commercial courts statistics in Bombay. The consolidated report of November 2022 shows that the total number of applications for pre-institution mediation received that month was 375 along with pending applications amounting to 1670. However, only 4 out of those applications were successful, therefore only four commercial cases were resolved through pre-institution mediation. The number stays the same for December, where 525 applications were received. In January, 6 cases were successfully pre-institutionally mediated, February, it was 15 and March it came to 27. Therefore overall, the rate of commercial cases which were successfully resolved through mediation in commercial courts in the last 6 months is 2.53%. The Reports highlight that most of these cases become non-starter, in 90.49% of the total commercial suit applications, pre-institution mediations were a non-starter, where the parties did not even get a chance to mediate their differences. This is a significantly low rate of use of pre-institution mediation, which is such an important aspect of a commercial dispute resolution and has been called as a mandatory step to by followed by both parties, by several High Court and Supreme Court judgements. It is highly recommended and appears as an urgent need of the hour for the commercial court judges to enquire as to why litigants are reluctant to use to pre-institution mediation, which will or is meant to resolve their disputes relatively early.

When we look at the Case Disposal data, it shows November 2022 begins with 4190 pending commercial suits and receives a total of 215 fresh suits by the end of the month. 152 commercial cases were disposed off by the end of November. Thus, in a month, the disposal rate of the commercial court if we include the pending cases, is 3.45%. However, such low disposal rate is largely due to the backlog from previous years which goes on to show, that cases were not disposed off timely from the beginning of their institution. Similarly, the monthly disposal rates for December, January, February and March are 1.90%, 1.6%, 2.66% and 2.08% respectively. Additionally, we can note that the pending cases from November 2022 increased from 4190 to 4967 at the end of March, 2023 by 18.54%. Even if we take into account the fact that more and more commercial suits are approaching these courts for resolution, increasing pendency, however marginally over a period of five to six months is not a sign of an effective court/justice system. These courts are new to our judicial structure and the 2015 Bill clearly mentioned that changing the litigation structure, where the same is controlled by the courts and not by the litigants is a significant objective of the proposed legislation. Thus, the courts must take into account every single instance of delay or systemic challenge that causes such delay to ensure that commercial courts too are not alleged to be clogged and slow like other civil courts of the country.

Additionally, just like Delhi, there is at least a gap of one year or more between the date of registration of the commercial suit and the first date of the case management hearing. The data also shows that in most cases, there is gap of over a year, in some cases two years till the date hearing, where oral arguments mostly have not been completed. Thus, in the last five months, hardly any commercial suit has been disposed off within six months from the date of first case management hearing. Therefore, as per the amended Order XVA of CPC, 1908, the timelines, Rule 3 is not successfully implemented. It has not been applied to none of the 83 cases for which the case management hearings were held in March, a year or more after their registration.

Currently, there are dedicated 4 commercial courts in City Civil and Sessions Court, Greater Bombay, Main Branch and Dindoshi Branch at the district level, 16 different court rooms manned by commercial judges. In 1986, The Bombay City Civil Court and the Bombay Court of Small Causes (Enhancement of Pecuniary Jurisdiction and Amendment) Act, 1986 conferred unlimited pecuniary jurisdiction on the City Civil Court. In 2012, the pecuniary jurisdiction was reduced to 1 crore. In 2018, when the 4 commercial courts were established as part of Bombay City Civil Court, their pecuniary or territorial jurisdiction was not mentioned in the

Gazette notification. Therefore, we can assume that these commercial courts too at the district level have a jurisdiction up to one crore in value.

Chennai

In Tamil Nādu, there are three Commercial Divisions and three Commercial Appellate Divisions in the Madras High Court, alongside that the Court of Principal Judge at the district level, City Civil Court in Chennai and other Principal District Courts are dedicated as Commercial Courts. In 2020, the Registrar of the Madras High Court requested for proposals for constituting a Commercial Court at Chennai in the cadre of District Judge in place of Principal Judge, City Civil Court and 12 Commercial Courts.

The consolidated statistical report updated by Tamil Nādu Commercial Courts and Commercial Divisions do not show any data pertaining to pre-institution mediation, like in Maharashtra or Delhi. The data does not point out how many pre-institution mediation applications were received, how many have taken place, nor does it mention about the status of non-starter mediations of commercial disputes filed in the month. In October 2022, under Form 6 – Contested Commercial Cases disposed off during the month, a column is shown with the heading 'Whether Urgent Relief was sought and pre-institution mediation did not take place (Yes/No)'. In 95% of the commercial suits filed, its shown as NIL/No, which goes on to show that none of those cases filed in the month use pre-institution mediation. The data is similar in all the months till March 2023. Thus, from the Consolidated Reports, it is not possible to determine why in none of these months, the parties did not get an opportunity to use pre-institution mediation.

With respect to disposal of cases, the Report of October, 2022 shows that a total of 18 cases were disposed off during the month, out of which the average number of days for disposal is 674 days. In November 2022, that rate is 877 days, December 2022 is 1790 days, January 2023 is 749 days, February 2023 is 942 days and lastly March 2023 is 229 days. Therefore, in the last 6 months, the disposal rate is way above the desired average, which only goes on to show why pendency in these courts is high and how pre-institution mediation has failed. The number of pending cases at the beginning of October 2022 is 4001 and March 2023 ended with a total number of 4447 pending commercial cases. Thus, pendency over 6 months has increased by 11.14%. The data shows somewhat similar increase even for commercial suits and applications

filed in the Commercial Divisions and Commercial Appellate Divisions of the Madras High Court, Principal Bench and Madurai Bench.

Most of the information pertaining to commercial suits and applications filed in the Commercial Divisions and Commercial Appellate Divisions of the Madras High Court, Principal Bench and Madurai Bench are missing from the uploaded monthly consolidated reports.

As far as the case management hearings are concerned, from October, 2022 to March 2023, most of those hearings have taken place a year or two after their registration, which goes on to show that the schedule for the trial itself has taken the commercial courts a year to finalise. Therefore, it is inevitable that the disposal rates are low and most disputes have taken close to two years or more in most cases to be resolved.

We can conclude from the above, that like Maharashtra and Delhi, Tamil Nadu too needs to pull up its socks if it wants to make its commercial courts function successfully.

West Bengal

For the state of West Bengal, the author has previously mentioned in Section 3.7, about the lack of commercial courts at the district level in the state. The dedicated commercial courts created all have a pecuniary jurisdiction of 30 lakhs and above, while the Commercial Division of the High Court exercises a jurisdiction of 10 lakhs only. The other commercial court at the City Civil Court of Kolkata has a pecuniary jurisdiction of 3 lakhs but its territorial jurisdiction is limited to/same as that of the City Civil Court, which is the outer limits of the city of Calcutta. Thus, commercial disputes of specified value 3 lakhs in the other parts state do not have a commercial court to go to.

Interestingly, the consolidated statistical report uploaded on the website, only shows the data pertaining to commercial cases that have come to the dedicated commercial courts of Asansol, Siliguri, Alipore and Rajarhut. Unfortunately, all these courts have a pecuniary jurisdiction of 30 lakhs and above. Therefore, there is no record of commercial cases of value below 30 lakhs instituted and contested in the state of West Bengal in the last eight years.

For the month of October, 2022, the total number of applications for pre-institution mediation is 10. None of those were settled during the month. The number is equally low, for months

November, December till March 2023, where a dedicated commercial court has at best received three applications for pre-institution mediation. In the last six months, only 7 cases were resolved through pre-institution mediation.

The website shows a Report of the last quarter of 2022, where it is seen that from 2019-2022, a total of 995 new cases were instituted at the commercial court (district judge level). However, by the end of December 2022, 1145 commercial cases were pending. Similarly in the Commercial Division of the High Court, a total of 4434 cases were filed from 2019-2022, but by December 2022, 3632 were pending. The number of appeals however is significantly less, with only 91 in the last 5 years.

With regards to case management hearings data, October 2022 shows data pertaining to only one case where the evidence recording date is provided. It shows that the evidence was recorded in 2022, two years after the case was registered in 2019. November 2022 does not show any data. In December 2022, it shows an array of dates under the column titled 'Next Dates' for case management hearings, but all those dates are in the least one or two years after the commercial cases were registered. Similar data is visible in the coming months till March 2023. However, it is important to note that for October, December, January and March, there is no data provided with respect to case management hearings for the Commercial Court of Darjeeling. For March 2023, the pendency report shows that a total of 699 commercial cases were pending as on date, out of which only 27 were put through case management hearings. 120 out of 699 commercial cases have been pending for over three years and 89 cases are pending for over two years. This report also suggests that the commercial court at Siliguri has provided no data as such.

With respect to disposal of cases, the average number of days taken to dispose off a case in October 2022 is 169 days, for December 2022 it is 268 days, for January 2023 it is 276 days, February 2023 it is 678 days and finally for March 2023 it is 128 days. The number of pending commercial cases at the beginning of October 2022 is 650 cases which change to 695 cases at the end of February 2023. This goes on to show that even though pendency has only marginally increased over five months, it has not gone down either.

Unlike the commercial courts in Delhi, Mumbai, and Chennai, the ones in Kolkata have significantly low traffic. Starting from the number of commercial cases instituted to that of pre-institution mediations conducted, the dedicated commercial courts in Kolkata are falling behind

in numbers with respect to their counter parts. A huge reason for the same could be their higher pecuniary jurisdiction whereby commercial disputes of value below 30 lakhs are not able to utilise these dedicated commercial courts. The other reason could be the lack of commercial disputes in the state, due to different economic situation. However, these commercial courts have been given dedicated infrastructure along with judges to lead the objective of the CCA, 2015 just like the commercial courts of Delhi, Mumbai etc. Therefore, we need to ensure that all disputes of commercial nature can reap the benefits of these courts and by extension, of the CCA, 2015. The author must note that the consolidated statistical reports show little or no data from the commercial court at Siliguri and Darjeeling. In that light, it becomes pertinent to enquire into the functionalities of these courts. The state government needs to remember that the compliances and duties it has under CCA, 2015 towards creating these commercial courts would not be taken care off unless these judicial bodies are functional and beneficial to commercial litigants through the state. Otherwise, these would remain a reform on paper and no single stakeholder will be benefitted by the arduous exercise of implementing this statute, that the government has been doing for the past seven years.

3.10.3. Analysis of Data collected through questionnaire

In this section, the findings of the data analysis are presented and interpreted. The Commercial Courts Act, 2015, was enacted with the objective of expediting commercial dispute resolution and improving access to justice in India. As a critical component of the judicial system, it is essential to assess the effectiveness of this legislation. However, perceptions of effectiveness may vary depending on factors such as the city in which the commercial courts are located and the professional background of individuals involved or associated in commercial litigation. This chapter analyses the data to answer the following research questions-

1. What is the total effectiveness (score) of the commercial courts established under The Commercial Courts Act, 2015?
2. Is effective ness of the commercial courts different in four Indian Metro cities (Delhi, Mumbai, Kolkata and Chennai)?
3. Is perception of the commercial courts with respect to its effectiveness different for professionals associated with commercial litigation but from different (Legal Professional, Academician/Research Associate/Policy makers, Ordinary litigant)?

To answer these questions this chapter is divided in to following sections:

- Data Cleaning
- Sample Profile
- Reliability Analysis
- Descriptive Statistics
- Analysis of Variance (ANOVA).

3.10.3.1. Data Cleaning

Data Collection

The data for this study was collected through a Google Form survey, designed to capture respondents' perceptions of the effectiveness of The Commercial Courts Act, 2015. Total 200 individuals responded to the survey and filled the questions asked. **Table 1.**

Data Preparation

After data collection, the responses were extracted from the Google Form and stored in a spreadsheet format for further analysis. The data was reviewed to ensure that it was correctly formatted and compatible with the SPSS software for analysis.

Missing Data Handling

Upon inspection, it was found that there were no missing values in the dataset. Each respondent provided a complete response to all survey questions, resulting in a dataset with no missing data. It is because of data collection mode, if a person would submit the unanswered questionnaire, system did not allow him to submit.

Outlier Detection and Treatment

Outlier detection was performed on the Total Effectiveness Score to identify any extreme or unusual responses. Visual inspection of response distributions and box plots were used to identify potential outliers. The asterisk (*) is an indication that an extreme outlier is present in the data. In the total effectiveness score respondent number 198 is extreme outlier, that would significantly affect the analysis or interpretation of the results. Other cases are recommended outliers as shown in Table 5 and Fig 1. Which do not impact the analysis significantly. The case number 198 is removed from further analysis.

Extreme Values				
			Case Number	**Value**
Total Score of all statement	**Highest**	1	33	88.00
		2	9	87.00
		3	173	86.00
		4	4	84.00
		5	72	84.00[a]
	Lowest	1	198	22.00
		2	155	24.00
		3	123	26.00
		4	104	26.00
		5	77	26.00[b]

a. Only a partial list of cases with the value 84.00 are shown in the table of upper extremes.

b. Only a partial list of cases with the value 26.00 are shown in the table of lower extremes.

TABLE NO. 5 – IDENTIFICATION OF OUTLIERS IN RESPONSES COLLECTED THROUGH QUESTIONNAIRE

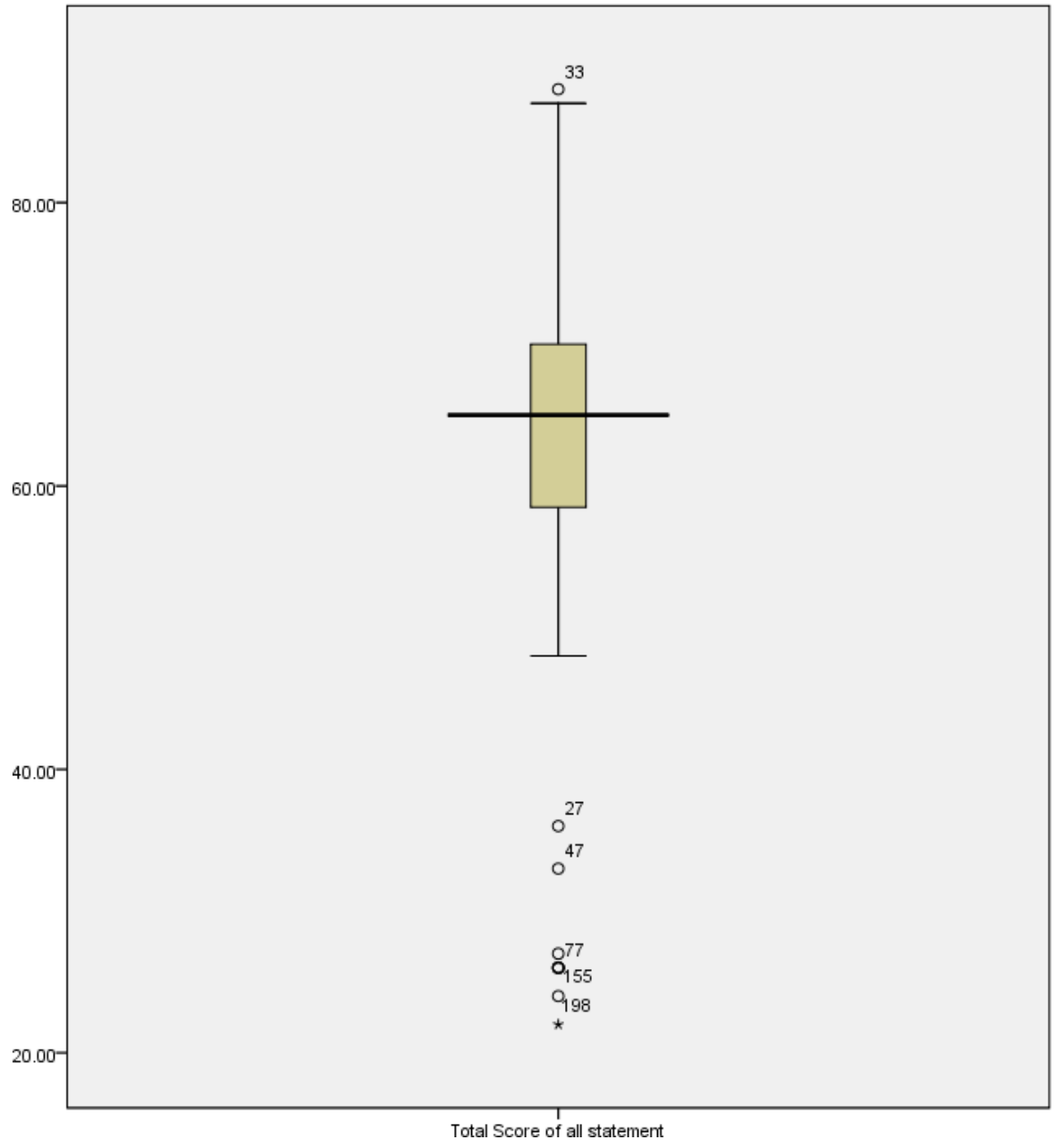

FIGURE NO. 1 - IDENTIFICATION OF OUTLIERS IN RESPONSES COLLECTED THROUGH QUESTIONNAIRE

Data Validation

To validate the accuracy and integrity of the dataset, responses were cross-checked for consistency and logical coherence. It was found 3 respondents (S.No. 83,92 and 161) have zero standard deviation in their responses. It means indicates that all the values for the questions are

identical, displaying no variability within the dataset. It is also called unengaged responses, case number 83, 92 and 161 are removed from further analysis.

The data is collected from 200 respondents but after data cleaning 196 sample size is considered for further analysis.

3.10.3.2. Sample Profile:

The sample profile consists of 196 valid cases. There are no missing values, indicating that information is available for all individuals in both the location and profession variables as shown in Table No. 6.

Statistics			
		Location	**Profession**
N	**Valid**	196	196
	Missing	0	0

TABLE NO. 6 – STATISTICS OF SAMPLE PROFILE

Out of 196 respondents, the breakdown of the locations are as follows:

- **Chennai**: There are 45 individuals from Chennai, which accounts for 23.0% of the total sample.
- **Delhi**: There are 61 individuals from Delhi, representing 31.1% of the total sample.
- **Kolkata**: There are 43 individuals from Kolkata, making up 21.9% of the total sample.
- **Mumbai**: There are 47 individuals from Mumbai, comprising 24.0% of the total sample.

The cumulative percentage column shows the cumulative distribution of the locations. For example, the cumulative percentage for Delhi is 54.1%, indicating that the combined percentage of individuals from Delhi and Chennai, the locations mentioned before Delhi is 54.1%. As shown in Table 7 and Figure 2.

Location					
		Frequency	Percent	Valid Percent	Cumulative Percentage
Valid	**Chennai**	45	23.0	23.0	23.0
	Delhi	61	31.1	31.1	54.1
	Kolkata	43	21.9	21.9	76.0
	Mumbai	47	24.0	24.0	100.0
	Total	196	100.0	100.0	

TABLE NO. 7 – BREAKDOWN OF RESPONSES BASIS LOCATIONS, OUT OF TOTAL RESPONDENTS

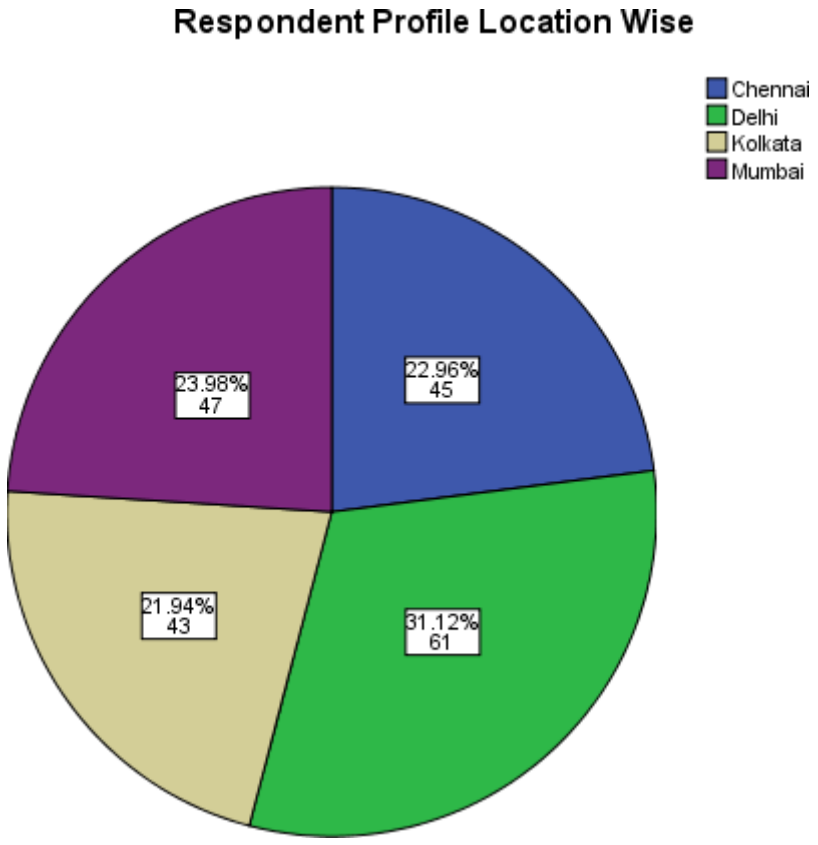

FIGURE NO. 2 - BREAKDOWN OF RESPONSES BASIS LOCATIONS, OUT OF TOTAL RESPONDENTS

The data represents a total of 196 respondents. The breakdown of the respondents according to their profession as follows:

- **Academician/Research Associate/Policy Maker**: This category consists of 59 respondents, accounting for 30.1% of the total. These individuals are likely involved in academia, research, or policy-making roles.
- **Legal Professional**: The second category includes 98 respondents, representing 50% of the total. This group comprises individuals who work in legal professions, such as lawyers, judges, or legal consultants.
- **Ordinary Litigant**: The third category encompasses 39 respondents, making up 19.9% of the total. These individuals are ordinary litigants, which implies that they are involved in legal cases as plaintiffs or defendants.

From a cumulative perspective, the data shows that academician/research associates/policy makers account for 30.1% of the respondents, legal professionals make up 80.1%, and ordinary litigants represent 100% of the respondents, as shown in Table 8. To visualize this information, a bar graph is also created with three bars representing the three professions. The height of each bar would correspond to the frequency or percentage of respondents in each category as shown in Figure No.3

		Frequency	Percent	Valid Percent	Cumulative Percentage
Valid	**Academician/Research Associate/policymaker**	59	30.1	30.1	30.1
	Legal Professional	98	50.0	50.0	80.1
	Ordinary litigant	39	19.9	19.9	100.0
	Total	196	100.0	100.0	

TABLE NO. 8 – BREAKDOWN OF RESPONSES BASIS PROFESSION OUT OF TOTAL RESPONDENTS

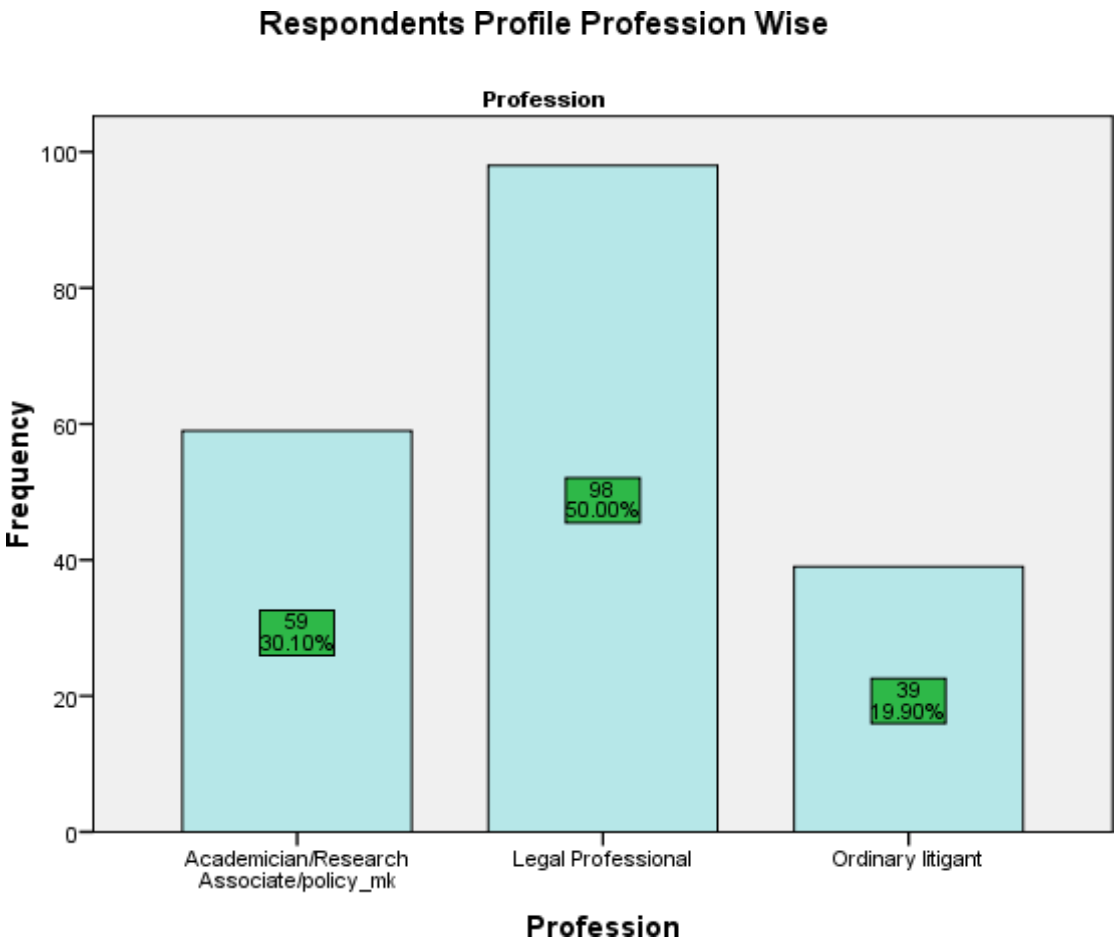

FIGURE NO. 3 - BREAKDOWN OF RESPONSES BASIS PROFESSION OUT OF TOTAL RESPONDENTS

3.10.3.3. Reliability Analysis for Constructs

Reliability analysis is a statistical procedure used to assess the consistency and stability of a measurement scale or instrument. It helps determine the extent to which the items within a scale or test are measuring the same underlying construct consistently across different conditions, time points, or individuals.

The main purpose of conducting reliability analysis is to evaluate the internal consistency of the measurement instrument. Internal consistency refers to the degree to which the items within a scale or test are interrelated and provide consistent measurements of the construct of interest.

Cronbach's alpha is used to measure the reliability of a construct. It can quantify the extent of internal consistency. The value of Cronbach’s alpha lies between 0 to 1. It provides a single

value that reflects the reliability or consistency of the measurement instrument. Higher values indicate greater internal consistency, suggesting that the items are measuring the same construct reliably.

As shown in Table 9, which includes Cronbach's alpha coefficients and the number of items for four different constructs (Awareness, Access, Process, and Alternate Dispute Resolution), we can interpret the internal consistency of each construct as follows:

- **Awareness:** The Awareness construct demonstrated a Cronbach's alpha coefficient of .728 with 5 items. This indicates moderate to good internal consistency. The items within the Awareness construct are reasonably interrelated and measure the same underlying concept.
- **Access:** The Access construct also yielded a Cronbach's alpha coefficient of .728 with 5 items. Similar to Awareness, this suggests moderate to good internal consistency. The items within the Access construct appear to be interrelated and measure the same underlying concept.
- **Process:** The Process construct demonstrated a higher Cronbach's alpha coefficient of .768 with 5 items. This indicates good internal consistency. The items within the Process construct are relatively strongly interrelated and consistently measure the same underlying concept. This suggests a higher level of reliability for the measurement scale.
- **Alternate Dispute Resolution:** The Alternate Dispute Resolution construct yielded a Cronbach's alpha coefficient of .760 with 5 items. This indicates good internal consistency. The items within the construct are interrelated and consistently measure the same underlying concept. This suggests that the measurement scale for Alternate Dispute Resolution is reliable and provides consistent results.

Cronbach's alpha coefficients above .70 are considered acceptable for research purposes (George & Mallery, 2003). In this case, the obtained coefficients for all four constructs are above this threshold, indicating satisfactory internal consistency.

	Reliability Statistics	
Construct	**Cronbach's Alpha**	**No. of Items**
Awareness	.728	5
Access	.728	5

	Reliability Statistics	
Construct	**Cronbach's Alpha**	**No. of Items**
Process	.768	5
Alternate Dispute Resolution	.760	5

TABLE NO. 9 – RELIABILITY STATISTICS FOR FOUR DIFFERENT VARIABLES

3.10.3.4. Descriptive Statistics for effectiveness

The Table No. 10 presents descriptive statistics for the effectiveness of the Commercial Courts Act, 2015. It focuses on the total score obtained from the measurement of effectiveness.

- **N**: The sample size is 196, indicating the number of observations or cases included in the analysis. These respondents likely provided their assessments of the effectiveness of the Commercial Courts Act.
- **Minimum**: The minimum score observed for the effectiveness of the Commercial Courts Act is 24.00. This represents the lowest score given by any respondent, suggesting the least perceived effectiveness.
- **Maximum**: The maximum score observed for the effectiveness of the Commercial Courts Act is 88.00. This represents the highest score given by any respondent, indicating the highest perceived effectiveness.
- **Mean**: The mean score of 63.95 out of 100 indicates the average assessment of the effectiveness of the Commercial Courts Act across all respondents. This mean score suggests a moderate level of perceived effectiveness among the respondents.

Descriptive Statistics					
	N	**Minimum**	**Maximum**	**Mean**	**Std. Deviation**
Total Score of all statement	196	24.00	88.00	63.9490	11.60846

TABLE NO. 10 - DESCRIPTIVE STATISTICS FOR THE TOTAL EFFECTIVENESS SCORE OF THE COMMERCIAL COURTS ACT, 2015

Descriptive Statistics for Awareness

Descriptive Statistics					
	N	Minimum	Maximum	Mean	Std. Deviation
Awareness Score	196	6.00	24.00	15.5255	3.42455
Valid N (listwise)	196				

TABLE NO. 11: DESCRIPTIVE STATISTICS FOR THE VARIABLE 'AWARENESS' SCORE.

Table No. 11 presents the descriptive statistics for the variable "Awareness Score." A total of 196 observations were included in the analysis. The minimum score observed was 6.00, while the maximum score was 24.00. On average, the participants had a mean awareness score of 15.53 out of a total possible score of 25. The standard deviation, which measures the variability or dispersion of scores around the mean, was found to be 3.42455. The awareness score among all the respondents is approximately 62.1% (15.5255/25 * 100) of the total possible score, indicating a moderate level of awareness regarding the Commercial Court Act 2015.

Descriptive Statistics for Access

Descriptive Statistics					
	N	Minimum	Maximum	Mean	Std. Deviation
Access Score	196	5.00	24.00	15.3265	3.72042
Valid N (listwise)	196				

TABLE NO. 12: DESCRIPTIVE STATISTICS FOR THE VARIABLE 'ACCESS' SCORE.

The minimum score observed in the dataset is 5.00, while the maximum score is 24.00. On average, the participants achieved a mean access score of 15.3265 out of a total possible score of 25. The standard deviation, which measures the variability or dispersion of scores around the mean, is calculated to be 3.72042.

The relatively high mean score suggests a moderate level of familiarity or knowledge regarding the provisions and processes outlined in the Commercial Court Act 2015. However, the observed variability, as indicated by the standard deviation, indicates that there is some diversity in the access scores, suggesting differences in the level of understanding and familiarity among the participants.

Descriptive Statistics for Processes

Descriptive Statistics					
	N	**Minimum**	**Maximum**	**Mean**	**Std. Deviation**
Process Score	196	5.00	21.00	16.6837	3.04865
Valid N (listwise)	196				

TABLE NO. 13: DESCRIPTIVE STATISTICS FOR THE VARIABLE 'PROCESS' SCORE

The minimum score observed in the dataset is 5.00, while the maximum score is 21.00. On average, the participants achieved a mean process score of 16.68 out of a total possible score of 25. The standard deviation, which measures the variability or dispersion of scores around the mean, is calculated to be 3.05. The relatively high mean score indicates a reasonably good understanding and knowledge of the processes outlined in the Commercial Court Act 2015.

Descriptive Statistics for Alternative Dispute Resolution

The minimum score observed in the dataset is 5.00, while the maximum score is 25.00. On average, the participants achieved a mean score of 16.4133 out of a total possible score of 25 in the area of Alternative Dispute Resolution (ADR). The standard deviation, which measures the variability or dispersion of scores around the mean, is calculated to be 4.05572. The relatively high mean score indicates a reasonable level of understanding and familiarity with the concepts and principles of Alternative Dispute Resolution as outlined in the Commercial Court Act 2015. However, the observed variability, as indicated by the standard deviation, suggests some diversity in the scores, indicating variations in participants' knowledge and grasp of the ADR components.

Descriptive Statistics					
	N	Minimum	Maximum	Mean	Std. Deviation
Alternative Dispute Resolution Score	196	5.00	25.00	16.4133	4.05572
Valid N (listwise)	196				

TABLE NO. 14: DESCRIPTIVE STATISTICS FOR THE VARIABLE 'ALTERNATIVE DISPUTE RESOLUTION' SCORE

Analysis of Variance (ANOVA)

ANOVA (Analysis of Variance) is a widely used statistical technique for comparing means between two or more groups. It examines whether there are statistically significant differences among the means of the groups being compared. However, ANOVA relies on certain assumptions to ensure the validity of its results. These assumptions include independence, normality and homogeneity of variance.

Assumptions of ANOVA

Independence: The observations within each group should be independent of each other. This assumption implies that the data points in one group are not influenced by or related to the data points in other groups. Violating this assumption may lead to biased and inaccurate results. To measure independence in the context of applying ANOVA to assess the effectiveness of the Commercial Court Act 2015 across different groups in four metro cities of India (Academicians, Legal Professionals, and Normal Litigants). The study has considered the following things:

1. **Non-overlapping Groups**: Each participant should belong to only one group (e.g., Academician, Legal Professional, or Normal Litigant). Avoiding overlap ensures that individuals' characteristics and experiences within one group do not influence or overlap with those in another group.
2. **Confidentiality and Privacy**: The participants' responses and data are kept confidential. This helps maintain independence by preventing participants from being influenced by others' responses or modifying their behavior based on group affiliations.

3. **Data Collection Procedures**: The study has Implemented standardized and consistent data collection procedures across all groups and metro cities. The data collection process does not introduce any systematic bias or dependency among the observations.
4. **Normality:** The data within each group should follow a normal distribution. The assumption of normality ensures that the sampling distribution of means is also approximately normal.

The normality of the data can be assessed using two statistical tests: The Kolmogorov-Smirnov test and the Shapiro-Wilk test. The results of these tests for total score of effectiveness in different cities (Chennai, Delhi, Kolkata, Mumbai) and in different professions (Academician/Research Associate/policy makers, Legal Professional, Ordinary litigant) are presented in the Table No.15 and Table 16.

Tests of Normality							
		Kolmogorov-Smirnov[a]			Shapiro-Wilk		
	Location	Statistic	Df	Sig.	Statistic	df	Sig.
Total Score of all statement	Chennai	.140	46	.027	.952	46	.059
	Delhi	.119	61	.031	.981	61	.443
	Kolkata	.205	43	.000	.874	43	.000
	Mumbai	.121	47	.083	.930	47	.007
a. Lilliefors Significance Correction							

TABLE NO. 15: THE TEST OF NORMALITY OF DATA FOR TOTAL SCORE OF EFFECTIVENESS OF COMMERCIAL COURTS IN DIFFERENT CITIES

1. **Chennai:**
    - **Kolmogorov-Smirnov Test**: The test statistic is 0.140, and the significance level is 0.027. With a p-value of 0.027, there is evidence to reject the assumption of normality at the conventional significance level of 0.05.
    - **Shapiro-Wilk Test:** The test statistic is 0.952, and the significance level is 0.059. The p-value of 0.059 suggests that there is no significant evidence to reject the assumption of normality at the conventional significance level of 0.05.
2. **Delhi:**
    - **Kolmogorov-Smirnov Test**: The test statistic is 0.119, and the significance level is 0.031. With a p-value of 0.031, there is evidence to reject the assumption of normality at the conventional significance level of 0.05.

- **Shapiro-Wilk Test:** The test statistic is 0.981, and the significance level is 0.443. The p-value of 0.443 suggests that there is no significant evidence to reject the assumption of normality at the conventional significance level of 0.05.

3. **Kolkata:**
    - **Kolmogorov-Smirnov Test**: The test statistic is 0.205, and the significance level is 0.000. With a p-value of 0.000, there is strong evidence to reject the assumption of normality at the conventional significance level of 0.05.
    - **Shapiro-Wilk Test**: The test statistic is 0.874, and the significance level is 0.000. The p-value of 0.000 suggests that there is strong evidence to reject the assumption of normality at the conventional significance level of 0.05.
4. **Mumbai:**
    - **Kolmogorov-Smirnov Test:** The test statistic is 0.121, and the significance level is 0.083. The p-value of 0.083 suggests that there is no significant evidence to reject the assumption of normality at the conventional significance level of 0.05.
    - **Shapiro-Wilk Test:** The test statistic is 0.930, and the significance level is 0.007. With a p-value of 0.007, there is evidence to reject the assumption of normality at the conventional significance level of 0.05.

Tests of Normality							
		Kolmogorov-Smirnov[a]			**Shapiro-Wilk**		
	Profession	**Statistic**	**df**	**Sig.**	**Statistic**	**df**	**Sig.**
Total Score of all statement	**Academician/Research Associate/policymaker**	.243	59	.000	.803	59	.000
	Legal Professional	.095	98	.030	.962	98	.007
	Ordinary litigant	.127	39	.117	.952	39	.096
a. Lilliefors Significance Correction							

TABLE NO. 16: THE TEST OF NORMALITY OF DATA FOR TOTAL SCORE OF EFFECTIVENESS OF COMMERCIAL COURTS IN DIFFERENT PROFESSIONS

1. **Academician/Research Associate/Policy Maker**:
    - **Kolmogorov-Smirnov Test:** The test statistic is 0.243, and the significance level is 0.000. With a p-value of 0.000, there is strong evidence to reject the assumption of normality at the conventional significance level of 0.05.

- **Shapiro-Wilk Test:** The test statistic is 0.803, and the significance level is 0.000. The p-value of 0.000 suggests that there is strong evidence to reject the assumption of normality at the conventional significance level of 0.05.

2. **Legal Professional**:
    - **Kolmogorov-Smirnov Test**: The test statistic is 0.095, and the significance level is 0.030. With a p-value of 0.030, there is evidence to reject the assumption of normality at the conventional significance level of 0.05.
    - **Shapiro-Wilk Test**: The test statistic is 0.962, and the significance level is 0.007. With a p-value of 0.007, there is evidence to reject the assumption of normality at the conventional significance level of 0.05.
3. **Ordinary Litigant:**
    - **Kolmogorov-Smirnov Test**: The test statistic is 0.127, and the significance level is 0.117. The p-value of 0.117 suggests that there is no significant evidence to reject the assumption of normality at the conventional significance level of 0.05.
    - **Shapiro-Wilk Test**: The test statistic is 0.952, and the significance level is 0.096. The p-value of 0.096 suggests that there is no significant evidence to reject the assumption of normality at the conventional significance level of 0.05.

To interpret the test of normality, we compare the significance level (Sig.) with the conventional significance level of 0.05. If the Sig. value is greater than 0.05, The null hypothesis fails to be rejected and conclude that the data can be assumed to follow a normal distribution. Conversely, if the Sig. value is less than or equal to 0.05, the null hypothesis will be rejected and conclude that the data does not follow a normal distribution.

Homogeneity of Variance

The variance of the dependent variable should be equal across all groups. It ensures that the variability within each group is consistent, allowing for meaningful comparisons. It is important to assess these assumptions rigorously as violations can affect the accuracy and reliability of ANOVA results. The Levene test has been conducted to assess the homogeneity of variances among the groups. The results of the test are presented in the table below:

Test of Homogeneity of Variances			
Total Score of all statement			
Levene Statistic	df1	df2	Sig.
1.835	3	193	.142

TABLE NO. 17: TEST OF HOMOGENEITY OF VARIANCES

The significance level (Sig.) associated with the Levene test was determined to be 0.142. This indicates that the observed difference in variances among the groups was not statistically significant at the conventional alpha level of 0.05.

Based on these findings, The study fails to reject the null hypothesis of homogeneity of variances. This suggests that the groups under investigation exhibit similar variances, supporting the assumption of homogeneity of variances for subsequent statistical analyses.

The study checked the assumptions of ANOVA, it was found homogeneity of variance and independence of cases are fulfilled but in case of normality assumption is violated in case of Kolkata and Mumbai. Assumption of normality is also violated in case of Legal professionals and Ordinary litigants. According to Donaldson in case of violation of normality assumption, equal sample size from each group makes the ANOVA test robust. (Donaldson,1968)

Effectiveness of Commercial Court Act 2015 City Wise

The Table No.18 provides a summary of the total scores, along with measures of central tendency (mean), dispersion (standard deviation), standard error, confidence intervals, and the range of scores for each city. These statistics allow for comparisons between cities and an understanding of the overall effectiveness of the commercial courts established under The Commercial Court Act 2015.

Descriptives								
Total_Score								
					95% Confidence Interval for Mean			
	N	**Mean**	**Std. Deviation**	**Std. Error**	**Lower Bound**	**Upper Bound**	**Minimum**	**Maximum**
Chennai	43	65.0698	10.03422	1.53020	61.9817	68.1578	33.00	84.00
Delhi	43	66.9070	9.16207	1.39720	64.0873	69.7266	48.00	88.00
Kolkata	43	58.0698	14.43441	2.20123	53.6275	62.5120	26.00	84.00
Mumbai	43	64.3256	13.41591	2.04591	60.1968	68.4544	24.00	86.00
Total	172	63.5930	12.32254	.93959	61.7383	65.4477	24.00	88.00

TABLE NO. 18 – SUMMARY OF SCORE OF EFFECTIVENESS OF COMMERCIAL COURTS IN DIFFERENT CITIES

The Table No.19 presents the results of an analysis of variance (ANOVA) for the dependent variable "Total_Score" (effectiveness of the commercial courts under The Commercial Courts Act 2015) across the independent variables "Cities" (Chennai, Delhi, Kolkata, Mumbai).

ANOVA					
Total_Score					
	Sum of Squares	**df**	**Mean Square**	**F**	**Sig.**
Between Groups	1900.860	3	633.620	4.423	.005
Within Groups	24064.651	168	143.242		
Total	25965.512	171			

TABLE NO. 19 – RESULT OF ANOVA FOR THE TOTAL SCORE OF EFFECTIVENESS OF COMMERCIAL COURTS

The Hypothesis used for ANOVA is as follows:

H0 (Null Hypothesis): There is no significant difference in the mean effectiveness of the Commercial Court Act 2015 across the cities (Chennai, Delhi, Kolkata, Mumbai).

H1 (Alternative Hypothesis): There is a significant difference in the mean effectiveness of the Commercial Court Act 2015 across the cities (Chennai, Delhi, Kolkata, Mumbai).

The significance level (p-value) associated with the F-value is provided in the Table No.11 as 0.05. Comparing this value to a chosen significance level (0.05), if the p-value is less than the significance level, it would reject the null hypothesis and conclude that there is evidence to suggest a significant difference in the mean effectiveness of the Commercial Court Act 2015 across the cities. Conversely, if the p-value is greater than the significance level, it would fail to reject the null hypothesis and conclude that there is not enough evidence to support a significant difference in the mean effectiveness across the cities.
In this case, since the p-value (0.005) is less than 0.05, the null hypothesis has been rejected and conclude that there is a significant difference in the mean effectiveness of commercial courts under the Commercial Court Act 2015 across the cities.

In order to know which cities, have different effectiveness of commercial courts under The CCA, 2015, it would require further investigation by Post Hoc test. The Table No. 20 shows the result of Post Hoc analysis.

Multiple Comparisons						
Total_Score Tukey HSD						
(I) Location	**(J) Location**	**Mean Difference (I-J)**	**Std. Error**	**Sig.**	**95% Confidence Interval**	
					Lower Bound	**Upper Bound**
Chennai	**Delhi**	-1.83721	2.58117	.892	-8.5352	4.8607
	Kolkata	7.00000*	2.58117	.037	.3021	13.6979
	Mumbai	.74419	2.58117	.992	-5.9538	7.4421
Delhi	**Chennai**	1.83721	2.58117	.892	-4.8607	8.5352
	Kolkata	8.83721*	2.58117	.004	2.1393	15.5352
	Mumbai	2.58140	2.58117	.750	-4.1166	9.2793
Kolkata	**Chennai**	-7.00000*	2.58117	.037	-13.6979	-.3021
	Delhi	-8.83721*	2.58117	.004	-15.5352	-2.1393
	Mumbai	-6.25581	2.58117	.077	-12.9538	.4421
Mumbai	**Chennai**	-.74419	2.58117	.992	-7.4421	5.9538
	Delhi	-2.58140	2.58117	.750	-9.2793	4.1166
	Kolkata	6.25581	2.58117	.077	-.4421	12.9538
*. The mean difference is significant at the 0.05 level.						

TABLE NO. 20 – RESULT OF POST-HOC TEST

Based on the table, the following post hoc comparisons can be made:

1. **Chennai vs. Delhi:**
    - Mean Difference: -1.83721
    - Std. Error: 2.58117
    - Sig.: 0.892
    - Lower Bound: -8.5352
    - Upper Bound: 4.8607

The mean difference between Chennai and Delhi is not significant at the 0.05 level. There is no strong evidence to suggest a difference in the effectiveness of the Commercial Court Act 2015 between these two locations.

2. **Chennai vs. Kolkata:**
    - Mean Difference: 7.00000*
    - Std. Error: 2.58117
    - Sig.: 0.037

- Lower Bound: 0.3021
- Upper Bound: 13.6979

The mean difference between Chennai and Kolkata is significant at the 0.05 level. There is evidence to suggest that the effectiveness of the Commercial Court Act 2015 is significantly higher in Kolkata compared to Chennai.

3. **Chennai vs. Mumbai:**
    - Mean Difference: 0.74419
    - Std. Error: 2.58117
    - Sig.: 0.992
    - Lower Bound: -5.9538
    - Upper Bound: 7.4421

The mean difference between Chennai and Mumbai is not significant at the 0.05 level. There is no strong evidence to suggest a difference in the effectiveness of the Commercial Court Act 2015 between these two locations.

4. **Delhi vs. Kolkata:**

The mean difference between Delhi and Kolkata in terms of the effectiveness of the Commercial Court Act 2015 is 8.83721. This mean difference is significant at the 0.05 level, as indicated by the p-value of 0.004. The 95% confidence interval for the mean difference ranges from 2.1393 to 15.5352, with both bounds being positive. Therefore, it can be concluded that Kolkata exhibits significantly higher effectiveness in implementing the Commercial Court Act 2015 compared to Delhi. The evidence suggests that Kolkata's performance in utilizing the Act is notably better than that of Delhi.

5. **Kolkata vs. Mumbai:**

The mean difference between Kolkata and Mumbai is 6.25581. While the mean difference is positive, indicating higher effectiveness in Kolkata, it is not significant at the 0.05 level with a p-value of 0.077. The 95% confidence interval for the mean difference spans from -12.9538 to 0.4421, encompassing both positive and negative values. As a result, there is no strong evidence to suggest a significant difference in the effectiveness of the Commercial Court Act 2015 between Kolkata and Mumbai. Although Kolkata exhibits a higher mean score.

Based on the results of the post hoc analysis using the Tukey HSD test, a comparison of the mean differences in the effectiveness of the Commercial Court Act 2015 across the cities of Chennai, Delhi, Kolkata, and Mumbai was conducted. The analysis revealed that there is no

significant difference in the effectiveness of the Act between Chennai and Delhi, Chennai and Mumbai, and Delhi and Mumbai. However, there is a significant difference between Chennai and Kolkata, with Kolkata showing higher effectiveness. Additionally, there is a significant difference between Delhi and Kolkata, with Kolkata again demonstrating higher effectiveness. These findings suggest that the Commercial Court Act 2015 has varying degrees of effectiveness across the cities, and Kolkata stands out as the city with the highest effectiveness

Effectiveness of Commercial Court Act 2015: Profession Wise

The Table No. 21 provides an overview of the "Total Score" for each profession. The mean scores indicate the average effectiveness rating for each profession, with Legal Professionals having the highest mean score (67.1250) and Ordinary Litigants having the lowest mean score (62.1500). The standard deviations show the variability in scores within each profession, with Legal Professionals having the smallest spread of scores (9.82980) and Academician/Research Associate/Policy Maker having the largest spread (13.66251).

Descriptives								
Total Score of all statement								
	N	**Mean**	**Std. Deviation**	**Std. Error**	**95% Confidence Interval for Mean**		**Minimum**	**Maximum**
					Lower Bound	**Upper Bound**		
Academician/Research Associate/policymaker	40	62.4500	13.66251	2.16023	58.0805	66.8195	26.00	79.00
Legal Professional	40	67.1250	9.82980	1.55423	63.9813	70.2687	48.00	88.00
Ordinary litigant	40	62.1500	13.26370	2.09717	57.9081	66.3919	22.00	84.00
Total	120	63.9083	12.47922	1.13919	61.6526	66.1640	22.00	88.00

TABLE NO. 21: OVERVIEW OF TOTAL SCORE OF EFFECTIVENESS OF COMMERCIAL COURTS ACROSS DIFFERENT PROFESSIONS

The Table No.22 provides ANOVA output, the results of the analysis conducted on the effectiveness of the Commercial Court Act 2015 across different professions, including Academician/Research Associate/Policy Maker, Legal Professional, and Ordinary Litigant.

ANOVA					
Total Score of all statement					
	Sum of Squares	**df**	**Mean Square**	**F**	**Sig.**
Between Groups	622.617	2	311.308	2.034	.135
Within Groups	17909.375	117	153.072		
Total	18531.992	119			

TABLE NO. 22: RESULT OF ANOVA (ANALYSIS OF VARIANCE) FOR THE TOTAL SCORE OF EFFECTIVENESS OF COMMERCIAL COURTS ACROSS DIFFERENT PROFESSIONS

The following hypothesis have been formulated for the analysis.

Null Hypothesis (H0): There is no significant difference in the perception of effectiveness of commercial courts under The Commercial Court Act 2015 among the professions of Academician/Research Associate/Policy Maker, Legal Professional, and Ordinary Litigant.

Alternative Hypothesis (HA): There is a significant difference in the perception of effectiveness of commercial courts under The Commercial Court Act 2015 among the professions of Academician/Research Associate/Policy Maker, Legal Professional, and Ordinary Litigant.

Based on the provided ANOVA results in Table 22, since the significance level (Sig.) of 0.135 is greater than the conventional significance level of 0.05, we fail to reject the null hypothesis. Therefore, we do not have sufficient evidence to conclude that there is a significant difference in the effectiveness of the Commercial Court Act 2015 among the professions examined.

3.10.4. Interpretation and Conclusion

The average assessment of the effectiveness of the Commercial Courts Act among all respondents is indicated by a mean score of 63.95 out of total possible score of 100. This mean

score suggests a moderate level of perceived effectiveness among the respondents. The average scores of awareness and access are 15.53 and 15.33 out of total possible score 25. It suggests a moderate level of awareness and access. The mean score of process and alternative dispute resolution are 16.68 and 16.41 respectively. The moderate mean score suggests that the respondents have a satisfactory level of understanding and familiarity with the concepts and principles of Alternative Dispute Resolution and process as stated in the Commercial Court Act 2015. Based on the findings, it can be inferred that the effectiveness of the Commercial Court Act 2015 differs among the cities, with Kolkata emerging as the city where it is most effective. The available evidence does not support the conclusion that there is a notable difference in the effectiveness of the Commercial Court Act 2015 among the analysed professions.

In conclusion, the Commercial Courts Act, 2015 has proven to be an effective legislation in enhancing the efficiency and effectiveness of commercial courts. The establishment of specialized commercial courts has addressed the unique needs and complexities of commercial disputes, leading to faster resolution of cases and improved business environment.

One of the key strengths of the Commercial Courts Act is the provision for a dedicated forum to deal exclusively with commercial matters. This specialization has allowed judges to develop expertise in commercial law, leading to more informed decisions and reduced chances of error. The Act also introduced a threshold for commercial disputes, ensuring that only significant cases are heard in these specialized courts, thereby streamlining the judicial process. Additionally, the Act has facilitated the use of alternative dispute resolution mechanisms, such as mediation and arbitration, for the resolution of commercial disputes. This has not only provided parties with more flexible options but has also helped in reducing the burden on the courts and promoting a consensual approach to dispute resolution.

While the Commercial Courts Act, 2015 has demonstrated significant positive outcomes, there is always room for improvement. Continuous training and capacity building of judges and court staff, as well as the further integration of technology, can help in enhancing the effectiveness of commercial courts even further. Overall, the Commercial Courts Act, 2015 has brought about a positive transformation in the adjudication of commercial disputes. By creating specialized courts, implementing strict timelines, promoting alternative dispute resolution mechanisms, and leveraging technology, the 2015 Act has contributed to the expeditious resolution of commercial cases, instilled confidence in businesses, and fostered a more conducive environment for commercial transactions.

The empirical analysis in this Chapter regarding the effectiveness of commercial courts under the Commercial Courts Act, 2015 provides valuable insights into their impact on the resolution of commercial disputes, showing that there is still scope for improving its functioning across different cities. While specific studies on the Act's implementation may be limited, certain indicators and research provide a broader understanding of its effectiveness.

- **Reduction in Case Backlog**: One key measure of effectiveness is the reduction in case backlog. Empirical evidence from jurisdictions that have implemented similar specialized commercial courts suggests a significant decrease in pending cases. For instance, the introduction of commercial courts in Singapore led to a substantial reduction in case backlog, with cases being disposed of more swiftly and efficiently. The author has elaborated on the same in Chapter IV.
- **Expedited Dispute Resolution**: The Commercial Courts Act, 2015 introduced strict timelines for the resolution of commercial cases. This emphasis on speedy justice has been supported by empirical evidence, indicating that the Act has resulted in faster dispute resolution. Timely resolution is particularly crucial for commercial disputes, as it allows businesses to resume operations or plan future activities with certainty.
- **Specialized Expertise:** The Act's provision for specialized commercial courts has facilitated the development of expertise among judges in commercial law matters. Empirical evidence demonstrates that specialized courts have improved the quality of judicial decisions by providing judges with a deeper understanding of the intricacies involved in commercial disputes. This expertise has contributed to more informed rulings and reduced chances of error.
- **Increased Predictability:** Predictability is essential for businesses as it enables them to make informed decisions and manage risks. The volume of cases discussed in Chapter IIIA has shown that the Commercial Courts Act has increased predictability in commercial litigation. Strict timelines and the introduction of case management techniques have provided businesses with clearer expectations regarding the duration and outcome of their disputes.
- A**doption of Alternative Dispute Resolution (ADR)**: The Act encourages parties to opt for ADR methods such as mediation and arbitration. Empirical evidence supports the effectiveness of ADR in commercial disputes, highlighting its ability to save time, reduce costs, and maintain business relationships. The availability and promotion of

ADR under the Act have likely contributed to a higher rate of settlement and reduced burden on the courts.

- **Integration of Technology:** The Act promotes the use of technology in commercial courts, facilitating digital filing, e-hearings, and electronic evidence presentation. While specific empirical evidence on the impact of technology under the Act may be limited, broader studies on the digitalization of court processes have demonstrated improved efficiency, reduced paperwork, and increased accessibility for litigants.

It is important to note that the specific empirical evidence on the Commercial Courts Act, 2015 may vary depending on the jurisdiction and the availability of studies. However, the general trends observed in jurisdictions that have implemented similar reforms provide valuable insights into the potential effectiveness of specialized commercial courts in expediting dispute resolution, enhancing expertise, and promoting business confidence. Overall, the Commercial Courts Act, 2015 has brought about a positive transformation in the adjudication of commercial disputes. By creating specialized courts, implementing strict timelines, promoting alternative dispute resolution mechanisms, and leveraging technology, the Act has contributed to the expeditious resolution of commercial cases, instilled confidence in businesses, and fostered a more conducive environment for commercial transactions.

CHAPTER IV – A COMPARATIVE OVERVIEW OF COMMERCIAL DISPUTE RESOLUTION FRAMEWORK: AN INTERNATIONAL PERSPECTIVE

CHAPTER IV – A COMPARATIVE OVERVIEW OF COMMERCIAL DISPUTE RESOLUTION FRAMEWORK: AN INTERNATIONAL PERSPECTIVE

4.1. Introduction: Importance of a comparative study of commercial courts in different countries

The era of globalization saw an unprecedented rise in transnational flow of goods, services, capital, technology, human resources, in terms of both volume and value. An inevitable outcome of business transactions is disputes. Unless these disputes were subjected to arbitration, mediation, or any other form of alternative dispute resolution, it was the domestic courts of a country that were called upon to resolve these disputes. (Odoki, 2010). Often, it was observed by litigants, legal practitioners, and even various governments that these domestic courts lack the flexibility and are incapable of understanding complex business disputes in a holistic fashion. Critiques of these domestic courts often owed it to pragmatism or legal tradition that the later was rigidly clung to, which made them in equipped to comprehensively reach a solution. (Dimitropoulos, 2021).

As a result of this, the business community has always preferred arbitration or mediation to resolve any commercial dispute to overcome the practical difficulties that the domestic courts entail. The lack of belief in domestic courts over their strength and expertise to handle complex commercial disputes, fear of corruption and protective judges presiding in the courts, unfamiliarity of a foreign litigant with local laws of a jurisdiction, inconsistent outcomes, preference of private conflict resolution to public trial etc. have often isolated the business community from accessing the domestic court system. (International Commercial Courts Review, 2022) Additionally in developing countries like India, the judiciary is pre occupied with large volumes of pending litigation, therefore to devote their attention to specializing or developing an expertise in solving commercial or business disputes initially did not cross their minds. However, due to the change in business environment globally, countries felt that it was essential to instill the business community's belief in domestic courts. Therefore, in the 1990s we see jurisdictions like UK, USA, and other parts of Europe come up with specialised commercial courts that exclusively resolve commercial disputes of a certain value and guarantee that resolution will happen timely and with the highest level of efficiency and expertise. (Ruckteschler & Stooss, 2019).

Due to the collective efforts of governments around the world to ensure free flow of trade, commercial disputes too started showing the 'cross border' nature. Therefore, the last ten to fifteen years, in UK, Middle East, other parts of Europe like Belgium, Germany, Netherlands etc., 'international commercial courts' have been established that offer tailor-made procedures for business-related disputes. In contrast to older commercial courts, like the Commercial Court in London, these international commercial courts are solely made to attract foreign litigants in the host country for resolving their international or cross border business disputes. One of the most notable reasons behind this global movement of creating commercial courts or international commercial courts was to modernize the justice system and introduce a new dimension to civil justice and global commercial litigation. (Dimitropoulos, 2022). While the general idea was to encourage specialization and labour division, to deliver a more innovative form of justice, the biggest critique that it has received from stakeholders that these courts have in a way led to the formation of a two-tiered justice system. This prominent criticism became a major roadblock to setting up the Belgium International Business Court in 2018, where many members of the judiciary called these courts as 'caviar courts'. The critiques pointed out that these courts would simply provide better treatment to high value business disputes where parties could afford to pay a higher court fee as compared to other disputes. This strikes at the very philosophy of making justice equally accessible to all. (Shiroor & Rajan, 2018).

India is fairly a new player in this entire scheme of things. The commercial courts in India have been established since 2015, more specifically since 2018, the year of the first amendment to the CCA, 2015. Despite the criticism from advocates of equal justice against these courts, all major jurisdictions in the world now have dedicated commercial courts. Even though the timelines for developing the same have been different, most countries have realized that commercial courts contribute significantly to improve the business climate and make the business environment look attractive to foreign as well as domestic investors. (Gu & Tam, 2018). Additionally, the courts have made doing business a lot easier, which has improved the EODB rankings of the World Bank for a lot of these countries. So, we can safely say that commercial courts are here to stay. Having said that, as a country that is still in the process of updating and reforming the new commercial dispute resolution framework (CCA,2015), there is ample opportunity for us to learn from how commercial courts are functioning in other jurisdictions. An overview of our own history as well challenges faced by other countries in setting up this framework will not only help us improve the commercial litigation practice but also identify any substantive legal reform, that the legislature ought to consider. (Jauhar, 2019).

Therefore, the objective of this chapter is to trace the point of similarities and differences between the workings of the commercial courts in other countries and identify how India as a jurisdiction can better implement the CCA, 2015 and make the functioning of the commercial courts effective in essence.

4.2. Parameters of comparison: Policies in different countries behind establishing commercial courts

For the purpose of this comparative study, the author has selected five major jurisdictions – UK, USA, France, China, Singapore. All these jurisdictions have consistently scored higher than India in the EODB rankings and performed very well in the 'enforcement of contracts' indicator. While in UK, USA, and France, we see commercial courts develop in 1980s, China, Singapore are relatively young players in this space. They are also jurisdictions, where international commercial court has been established. In Chapter II, the author has described how the first Commercial Court in England was established; which went on to initiate the wave of commercial law reform in India. In this section, the author intends to look at some of the major essentials or determinants that help running of commercial courts a success. These essentials have been identified from the CCA, 2015 and the author intends to compare how these countries have incorporated the same while designing their structure of commercial courts. The author has conducted the comparative study between the selected jurisdictions on the following parameters:

A) Hierarchy and jurisdiction of commercial courts
B) Scope of 'commercial disputes'
C) Different stages of disposal of a commercial dispute
D) Appointment and training of judges presiding over commercial courts
E) Assessing performance of commercial courts: periodic review

4.2.1. Hierarchy and jurisdiction of commercial courts – Parameter No. 1

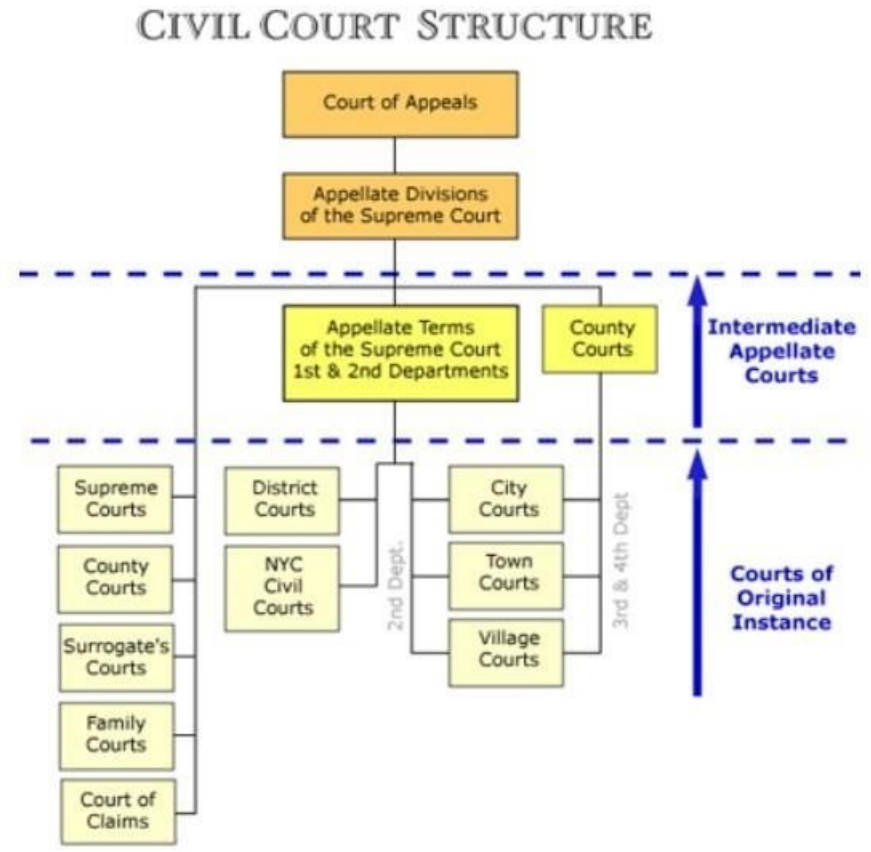

FIGURE NO. 4 – STRUCTURE OF CIVIL COURTS IN THE STATE OF NEW YORK

The United States of America follows a strictly federal constitution, where federal courts have a different hierarchy as compared to the state courts. The above fig. i) shows the structure of civil courts in the New York state. The New York Supreme Court is the state trial court with general jurisdiction that has branches in 62 counties outside New York city. Matters outside New York city are heard in County Courts. Apart from these, other superior courts include the Court of Claims, Family Court, Surrogate Court. Below these superior courts, lie the New York City Civil Court, other City Courts, District Courts in Nassau and Suffolk County and Town – Village Courts. Although civil and commercial disputes of a prescribed monetary value go to the local courts, a dedicated Commercial Division is popular as part of the New York State Supreme Court. (Judicial Administration Structure for IP Disputes: United States of America 2019).

In 1875, a Legislative Judiciary Committee heard a testimony that the legal tribunals in the New York were inadequate to speedily dispose of purely commercial and business disputes. This was picked up by a New York Time article that described “prolonged lawsuits” as

“tumours and cancers of businessmen.” Although in New Orleans, there was a functioning commercial court from 1839-1846, where technical complex disputes were often transferred to relieve the burden of existing courts. (Coyle, 2012). However, that practice did not extend to other states and a single court had little to contribute to developing commercial law jurisprudence in the country. The first notable commercial court was established though a pilot commercial court program initiated in New York (Manhattan) Supreme Court in 1993. This pilot program noted that business litigants in the 1990s had poor confidence in the state’s trial courts and would prefer either federal courts or alternative dispute resolution to address their business litigation. This pilot programme assigned business and commercial cases to a single judge for resolving the case in entirety. Apart from reducing expenses, expediting cases and clearing backlogs, the pilot programme essentially focussed on creating judicial expertise in solving complex commercial and business disputes. It also noted that early judicial involvement in any matter further promoted alternative dispute resolution programs and services. The pilot programme showed immediate signs of success and by 1993, four commercial divisions were started in the New York County. In November, 1995, the Commercial Division of the Supreme Court of New York was established. (Moses, 2005). By1998, the New York State Commercial Division's average disposition rate in contract cases was552 days, compared to an average of 648 days for contract disputes in 1992. By the end of 2000, that disposition time had fallen to 412 days, a 36 percent improvement from the pre-pilotdays. By 2002, the average time for disposition in contract cases brought within the Commercial Division was down to 364 days, a 44 percent decrease from ten years earlier. Appeals from this Commercial Division go to the New York Supreme Court Appellate Division, and from there to the New York Court of Appeals (New York’s highest court). (Tennille et al., 2010)

Similarly, in other states of USA, like New Jersey, Philadelphia, North Carolina, Nevada, Massachusetts, Delaware Chancery etc. too started with their commercial divisions roughly around the same time. While it is undeniable that every commercial division or court that started in each of these states has undergone its own evolutionary journey, the author chooses to not note in detail the historical development of each one of them. Rather, the objective of this section is to broadly look at how these commercial courts have defined their jurisdiction and assessed whether it has the authority to treat a dispute as a commercial or business dispute. (Dickerson, 2010).

Presently, there are 27 business courts which are essentially state trial courts established either by a statute or by a judicial order of the Supreme Court. They all have their individual jurisdictions largely drawn from the procedure rules followed at the respective trial courts. The only notable instance is however the Bankruptcy Court, which is a federal court dealing exclusively with bankruptcy claims or commercial claims in a bankruptcy under the USA Bankruptcy Code. Additionally, the United States District Court for the Southern District of New York, United States District Court for the Northern District of California are some of the key federal level trial courts. It is a leading court for insider trading actions and other types of securities litigation, as well as large antitrust class action lawsuits. Additionally, The Commercial Litigation Branch, USA Department of Justice addresses commercial claims; however, limits itself to claims brought on behalf of the United States and defends claims brought against the United States. (Applebaum, 2008).

Two prominent jurisdictional patterns are observed in these state business courts – a) disputes that fall within a defined case type and b) disputes that are so complex in nature that the novel legal issues in them need the expertise of the commercial bench judges. New York county's commercial division has a prescribed jurisdictional threshold to qualify a dispute as 'commercial' but a lot of cases largely get culled depending on the existing case load of the court. (Bach & Applebaum, 2004). Philadelphia and Orlando's business courts also have a similar design. In Florida however, the business court sub division expressly excludes disputes out of business transactions falling within the Uniform Commercial Code; while in Colorado, only commercial transactions without a consumer party came within the scope of commercial disputes. Thus, it is not entirely possible to do a one-to-one mapping of what types of claims are or are not within the jurisdiction of comparable business courts programs because there is no uniform nomenclature for the same. The second type, that is the complex jurisdiction business court is a model that focusses on a commercial dispute's complexity. (Polenberg, 2020). For example, in North Carolina business court, only recommendation and approval of the Chief justice of the Supreme Court can include business cases within the jurisdiction. Only those complex cases involving a novel legal issue that have broader ramifications on the North Carolina businesses with respect to corporate governance issues and some cases fall within certain statutory areas of North Carolina business law, can come before a business court. (Slights & Powers, 2015). Thus, a business tort or a typical commercial case under the Uniform Commercial Code might not come under the jurisdiction of the business court if it does not concern a cutting edge complex legal issue requiring guidance and expertise of business law

jurisprudence. In some other courts like New Jersey and Maryland, the ‘complexity’ component is vital for assessing whether a dispute is commercial or not; although the case is termed or designated as complex by lawyers. Similarly, Massachusetts' Business Litigation Session has a presumptive list of case types which describes complex commercial cases, but also includes a complexity component within that presumptive list. (Pollman, 2021). For example, shareholder derivative claims are presumptively included in the commercial list, breach of contract or business tort cases are included only if they have complex factual or legalissue that requires assistance of a commercial judge. In other places like Rhode Island and Nevada, it is completely left to the approval of the judge to decide whether a dispute can be termed a business dispute and needs to be tried out by the business court. Therefore, if the counsel files an application to seek assignment of his case as a business dispute, then it is left to the judge’s discretion to consider the same, if he feels that the parties of the dispute can benefit from enhanced case management. Interestingly, in Michigan and Delaware, the jurisdiction is entirely voluntary and depends on the will of the litigants, where the later choosesto have the matter resolved through a business court. Once the parties made that choice, there was no judicial filtering and analysis to decide whether the matter in question was complex ornot. (Dunworth & Rogers, 1996).

The jurisdictional parameters that are decided for the business courts in USA have certain set objectives behind creating a business court. For example, in Colorado, the business court has a broad jurisdiction and defines a ‘commercial’ case that can be tried by such court; as a result, commercial cases of all level of complexity would benefit from adjudication by experienced business jurists. This analysis reflects an objective that all business/commercial disputes be heard at every single step by judges who specialise in hearing business and commercial cases. Judges hearing these cases will continuously develop experience and knowledge in the substantive law; and in the process of passing judgements, develop a body of law for broad guidance and assistance in the business community. Judges will further improve their case management skills to address the cases before them. (Cohen & Carey, 2018). For example, a significant number of plaintiffs come to business courts seeking temporary restraining orders and preliminary injunctions that call for the rapid address of difficult matters, as well as cases posing long-term complex legal and procedural matters also come to them. In between these temporal extremes, these judges will presumably develop a greater facility in managing and resolving standard commercial disputes, as well. On the other hand, the complex business court lays more focus on resolving complex business disputes that stand as impediments to the

expeditious resolution of other cases on a court's overall docket. The complex business court model aims at producing a body of precedents that can provide guidance beyond the courtroom. This prevents future business disputes without the ‘complexity’ element since the business court would have determined the issue and reduced it to a more manageable form. (Towring, 2014).

Thus, a common factor in both the business courts models that the judges presiding these courts need to have the expertise and knowledge in terms of efficiency and procedure to solve a commercial dispute. Their expertise in solving commercial matters is given special emphasis and credit in the development of commercial court framework in the country, because it is these judges come to deeper understandings about the inner workings of the legal principles they face; the patterns in the conduct of cases; and the patterns of thinking and behaviour of the parties and counsel. This enhances their experience and understanding of business disputes and helps in rendering decisions in the same.

United Kingdom

In Chapter II, Section 2.4, the author has detailed the evolution of the commercial courts in England and how finally in 1895, after a long-drawn battle, Justice Mathew assumed charge as the first judge of the commercial list in the Queen’s Bench. As the work of the commercial court expanded, initially eight and at present, fifteen specialist judges assumed authority to preside over the commercial court. From the very first day, the court followed the practice of applying a flexible procedure to meet the requirements of a specific case before it. Till 1950, most of the disputes that came before the court were from the world of shipping and international trade. The Administration of Justice Act 1970 established the commercial court as a separate court and joined with the Admiralty Court (which was formerly part of the Probate Divorce and Admiralty Division). From the 1970s, aviation and financial disputes became a part of the court’s habitual work. In the 1980s, insurance disputes coming from banking and financial markets joined the more traditional business of the Court. (Chandran, 2022).

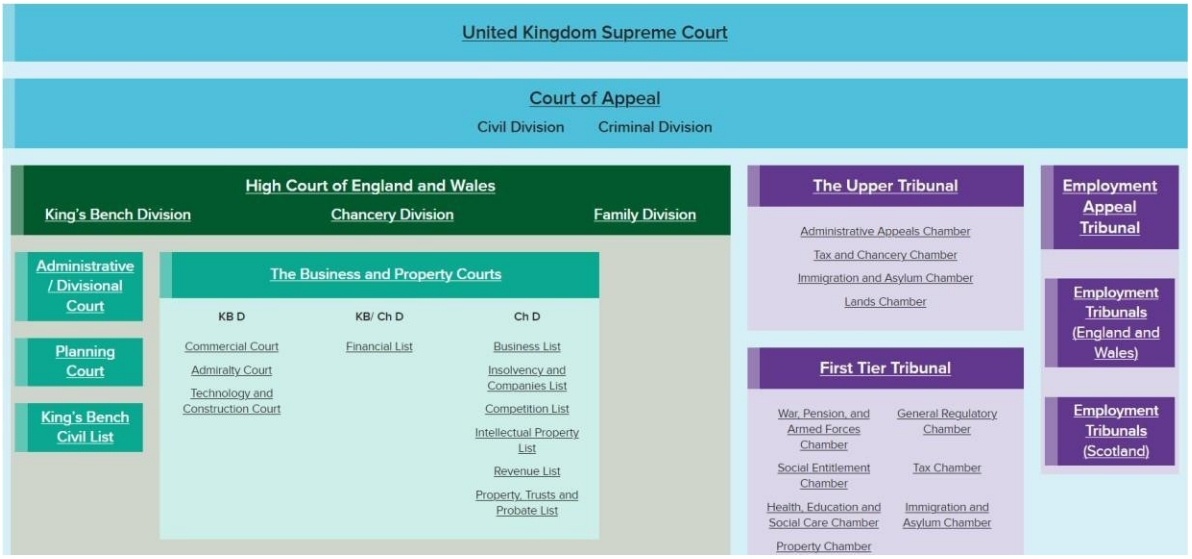

FIGURE NO. 5 – STRUCTURE OF COURTS IN UNITED KINGDOM

Currently, the structure of courts in UK looks as follows:

There is the UK Supreme Court as the apex court of the country. Below that lies the Court of Appeal – Civil and Criminal Division. Just below that, is the High Court of England and Wales that has three dedicated divisions – King's Bench Division, Chancery Division and Family Division. All three divisions hear appeals from other courts, as well as 'first instance' cases. Under these, there are Business and Property Courts. These are specialist courts that which decide business, commercial, property and other chancery disputes and technology and construction disputes, both domestic and international. Since the 1990s, over 75% of the cases coming to these courts were have had at least one foreign litigant. As part of business and property courts, there is the commercial court, the admiralty court and the technology and construction court under the King's Bench Division. Under the Chancery Division, there are various lists like the Business List, Insolvency and Companies List, Intellectual Property List, Competition List, Revenue List, Property, Trust, and Probate List. The Commercial Court specialises in resolving commercial and business disputes, that have an international business element in them. It draws its jurisdiction from Part 58 of UK Civil Procedure Rules, 1998 on the basis of whether a matter brought to the court falls under the scope of a 'commercial claim'. The Commercial Courts Guide which is a practical guide launched annually by this office serves as an assistance to litigants as well as practitioners and judges on procedures, jurisdiction, and case management techniques of commercial disputes. (Structure of the Courts & Tribunals System, 2023).

Apart from the Commercial Court under the King's Bench Division, there are Circuit Commercial Courts as part of Business and Property Courts that work closely with the Commercial Court. These circuit courts a cross disciplinary group of specialist courts within the High Court that resolve a wide range of business disputes brought all over the country and are benched by judges with specialist commercial law expertise. These courts are part of the King's Bench Division and are not county courts; therefore, the judges sit as additional judges of the High Court when they are hearing Circuit Commercial Court cases. Presently, the circuit commercial courts are established in the district registries of the High Court at Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, Newcastle, and London. As a result, even smaller commercial cases with regional connections can be tried at these circuit courts, that save ordinary litigants the additional costs of having to go to the Commercial Court at London for trial. (Guides: United Kingdom Legal Research Guide: Judicial Authority). Two types of claims come to the circuit commercial courts – A dispute that is suitable for a commercial court but is of lower financial value or requires a shorter trial, hence they are often heard by these circuit courts; secondly the value of the commercial dispute might deserve a trial at the High Court but due to the presence of a factual technical or legal issue, the matter requires the assistance of the specialist senior judge presiding over the circuit court. They often hear a broader range of business disputes but a lot less complex that those typically heard at the Commercial Court. These circuit commercial courts have their own procedure of practice, although largely based on that of a Commercial Court and draw their jurisdiction from Part 59 of UK Civil Procedure Rules, 1998. (Rab, 2021).

Apart from these strictly defined 'commercial claims', some disputes of commercial nature appear in Business List, Insolvency and Companies List, Intellectual Property List, Competition List, Revenue List, Property, Trust, and Probate List. All these lists have defined subject matter jurisdiction as well as claims of a certain value to be tried by the Chancery Division.

In 2015, the Financial List was set up which shares a cross jurisdictional set up between King's Bench and Chancery Division. It was launched to resolve financial claims of above fifty million dollars arising from the domestic and international financial markets: the equity, derivatives, FX and commodities markets etc.

In 2016, Lord Thomas, former Lord Chief Justice of England and Wales invited countries with an established commercial court practice and collectively launched the Standing International

Forum of Commercial Courts. The forum's primary aim is to establish best practices though collaboration and interaction between commercial courts globally and specialists presiding over them. Additionally, the forum expected member countries to collectively contribute to ruleof law concerning changing commercial practice. (The Standing International Forum ofCommercial Courts 2023).

France

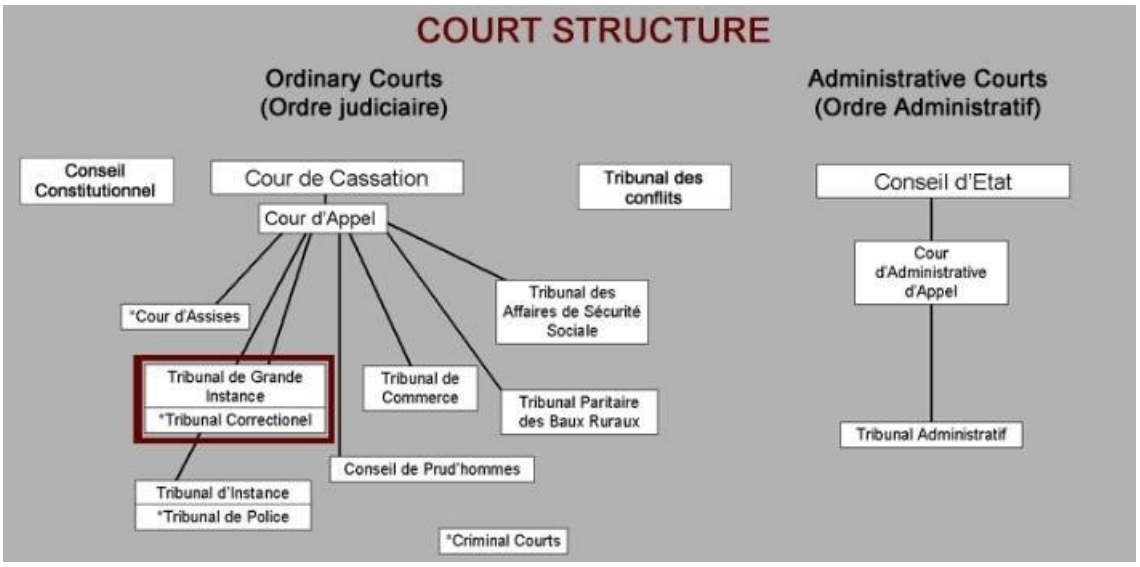

FIGURE NO.6 - STRUCTURE OF COURTS IN FRANCE

Just like USA and UK, in order to understand the jurisdiction of commercial courts in France, we need to understand the structure of judiciary in the country. There are two types of courts in France – ordinary courts that handle civil and criminal litigation and administrative courts that handle disputes of all nature but restricted to parties involved with the French government, local authorities, or any public institutions governed by public law.

With respect to ordinary courts, the lowest in the hierarchy are courts of general jurisdiction in the first instance. They have two branches – criminal courts which comprise of Tribunal de police (police court), Tribunal correctionnel and Cour d'assise (Jury court). In 2020, the courts of first instance and high courts were merged into a single jurisdiction: the judicial court – 'Tribunal Judiciaire'. The judicial court exercises general jurisdiction over civil and commercial disputes and exclusive jurisdiction over disputes over personal status, inheritance, and commercial leases. There is also a social chamber in the judicial court that deals with disputes related to social security. Within the judicial court, there are local chambers or courts where disputes and claims of value less than 10,000€. It is a mandate in the judicial court that

for disputes of value less than 5,000 €, conciliation, mediation or participatory procedure is attempted. (Harb & Berton, 2023).

Other courts in the first instance are specialised courts. One such prominent specialised court is the Commercial Court - Tribunal de commerce. All disputes except commercial disputes go to the judicial court of first instance.

Appeals from the first instance courts go to the Court of Appeal - Cour d'appel only in case of disputes who value is above 5,000 €. It has social, criminal, civil and commercial chambers. At the apex, against decisions of the court of appeal and some decisions of specialist courts, litigants go the Supreme Court - Cour de cassation. It is divided into four sections: a civil section (formally divided into three discrete civil sections); a commercial and financial section; an employment section; and a criminal section.

Therefore, the chief commercial court in France is the Tribunal commercial de Commerce. Commercial courts are controlled by the Conseil d'Etat (Council of State) who is the highest administrative court of France. The Council of State decides how many commercial courts will be established in the country, and also selects cities or towns where commercial courts are set up. While setting up commercial courts in different cities, the Council of State considers into account, the commercial importance of the cities so that the promptness and facility with which commercial cases are disposed of in these business centres of France may be said to depend directly upon the despatch with which the commercial courts deal with the cases coming within their jurisdiction. (Stolowy, 2017). The Tribunal of Commerce exercises original jurisdiction over commercial disputes arising out of ordinary commercial transactions and appellate jurisdiction over causes of a prescribed limit which were tried at the first instance by the Conseil de Prud'hommes (Council of prudent men). The disputes over which the commercial courts exercise jurisdiction are called 'Actes de Commerce' (Acts of Commerce). Hence, the commercial courts largely draw their jurisdiction from the Commercial Code of France. (Fuller, 1912). The author shall discuss the scope of the such commercial disputes in the next section.

There are currently 141 commercial courts in France that handle commercial disputes all over the country. Of these, the largest and most prominent is the Paris Commercial court established in 1792. It resolves over 6000 cases in a year. Presently, it has 12 chambers dedicated to litigation, where each of these chambers specialises in banking, distribution and franchising, construction, transportation and insurance, company law, unfair competition, money and

financial markets, the digital economy, and media etc. among other areas of commercial law. (Bailly & Haranger, 2022).

The National Council of Commercial Court created the Digital Court in France, an online access portal to all 141 Commercial Courts via a single address. This portal allows the litigant to create its own identity via registration in the Monidemum digital identity service and seek the jurisdiction of the Commercial Court online. Its aim is to make commercial justice accessible to all litigants with ease at any time. (Fages & Saarinen, 2022)

Further in 1995, an international chamber was opened in the Paris Commercial Court to deal with commercial disputes where the parties have chosen Paris as the preferred forum. In most of the cases, the defendant in the international chamber was a foreign litigant or the governing law chosen for the dispute at hand was a foreign law. In 2015, it merged with the chamber for European Union law created in 1997. The chamber exercises jurisdiction over economic and commercial disputes of international scope as far as European or foreign law is applied. The jurisdiction of the Paris Commercial Court International Chamber is drawn from the Protocol on Procedural Rules Applicable to the International Chamber of the Paris Commercial Court. (Contis & Aronowicz, 2019). In 2018, an international chamber was started in the Paris Court of Appeal. Decisions of the International Chamber of the Paris Commercial Court are appealed before the International Chamber of the Paris Court of Appeal. The purpose of the creation of the International commercial chamber of the Paris Court of appeal was to offer a full set of jurisdictions with two levels (the international commercial Paris court of first instance and the new international chamber of the Paris court of appeal) which is able to better adapt the French legal system to contemporary economic and international challenges. (Kramer & Sorabji, 2019). The aim was to facilitate access to French commercial courts for transnational disputes.

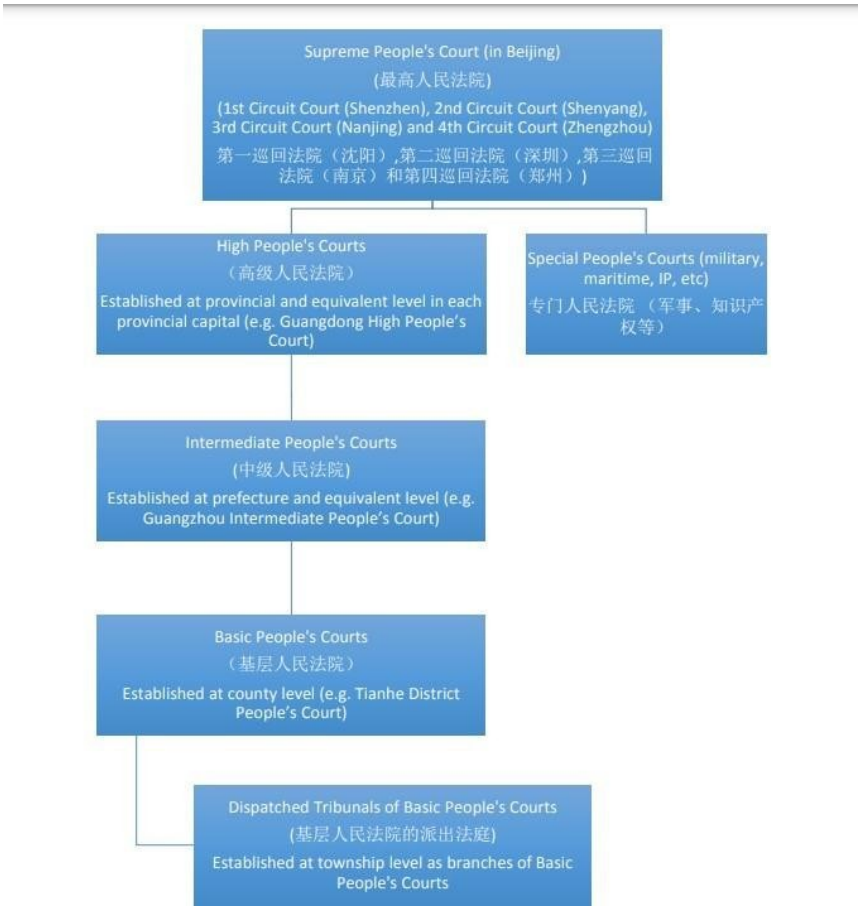

FIGURE NO. 7 – STRUCTURE OF COURTS IN CHINA

China

In China, the judicial system comprises of three parts – people's court system, people's procuratorate system, and the public security system. Under the Constitution and the Organic Law of the People's Courts of 1979, the people's courts are the judicial organs of the state through which judicial power is exercised. The court system in China is characterised by three levels of local people's courts, special people's courts, and the Supreme people's court.

Of these, the Supreme People's Court exercises jurisdiction as the court of first instance over all types of cases that have a major impact on the country and cases that the former deems necessary to address using its original jurisdiction. It also exercises appellate jurisdiction over cases decided by Higher People's Court and Specialist Courts. (Aragaki, 2022)

There are three levels of local courts – Basic people's courts, Intermediate people's court, and High people's court. According to the Civil Procedure Law in China, High people's court exercise original jurisdiction over cases that have a major impact on areas within its territorial jurisdiction. In 2015, the Supreme People's Court issued a notice on 'Adjusting the Standards

Applicable to the Jurisdictions of High People's Courts and Intermediate People's Courts over First-instance Civil and Commercial Cases' specifying how to judicially interpret 'major impact' of a case. According to that direction, all cases which have a prescribed value of RMB 500 million and RMB 100 million can be filed in the High People's courts of Shanghai and Xinjiang. The prescribed monetary limits are not intended to limit the jurisdiction of these courts and it clearly states that they can continue to exercise jurisdiction even over other civil and commercial cases that bear a significant impact and solve technical difficulties in the application of law. On the other hand, the High People's court exercises appellate jurisdiction over cases decided by the Intermediate people's courts in their territorial jurisdiction. (Aragaki, 2022)

Below the High People's courts, lie the Intermediate people's courts established in the prefecture cities. All civil and commercial cases that have a major impact on the prefecture cities come to these intermediate level courts. 'Major impact' essentially means those cases involving a large amount in dispute, cases with complicated circumstances, cases in which one side comprises a large number of parties, and other cases having some other major impact. Interestingly, even commercial cases where there is foreign element involved also come to these courts. Foreign element ordinarily means – i) where the party is a foreign litigant, ii) where the litigant is a Chinese national residing in a foreign country, iii) where the party is a legal entity incorporated in a foreign jurisdiction and finally where the subject matter of the dispute has a close resemblance with a foreign country. (Chiu, 1982)

The lowest level of court in the hierarchy is the Basic people's court which exercises general original jurisdiction over minor civil and commercial cases using simplified summary procedures. In order to ensure its judicial functions are carried out properly in remote areas, it established dispatches tribunals as branch offices at the township levels. These tribunals are not separate bodies and all judgements passed by them are authorised by the Basic people's courts. (Chiu, 1982)

Apart from these local courts of general jurisdiction, there are some specialist courts in China that play a key role in its judicial system. The Standing Committee of the National People's Congress of China reserves the right to set up these special courts and designate their power and functions. Some of the notable special courts are maritime courts, financial court, railway transport court, intellectual property courts etc. among others. These special courts mostly exist

as a parallel court system to that of local people's courts and often that gives litigants the option to choose their most favourable venue for resolving the dispute. (Cadiet, 2011)

Therefore, we can see that till early 2000s, the court system is China did not incorporate a separate and distinguishable commercial court. All domestic commercial disputes were treated at par with ordinary civil disputes that were addressed by the four level of courts in the country, depending on the 'significance' of the case and the value of the dispute. Although some categories of commercial disputes were resolved by the special intellectual property courts, maritime special courts, and the financial special courts; it would not be correct to say that a dedicated commercial court or commercial division in the local people's courts were established as exclusive forums that dealt solely with commercial cases. In 2021, the Beijing International Commercial Court was established as a special division of Intermediate People's Court. This is the second international commercial court established in a local court in China after the Suzhou International Commercial Court's establishment in 2020. (Cadiet, 2011)

Back in 2018, China's Central Government, the State Council released the Opinion Concerning the Establishment of the Belt and Road International Commercial Dispute Resolution Mechanism and Institutions, as an attempt to provide quick resolution of commercial disputes arising out of the BRI development context, by the Chinese judiciary. It suggested the establishment of an international commercial court in China that would use diversified ways of resolving commercial disputes by way of litigation, mediation, and arbitration together. Accordingly, two specialised commercial courts were established in Shenzhen, Guangdong Province (the "first CICC") and Xi'an, Shaanxi Province (the "second CICC") respectively. The CICCs were guided by the Fourth Civil Division of the Supreme People's Court and its directions under Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court. (Sun, 2020). The CICC came to be established as a one stop solution for all international commercial disputes that used innovative procedures incorporating alternative dispute resolution mechanisms into the conventional litigation process. These were specialised courts and permanent chambers of the Supreme People's Court that draw their jurisdiction from Procedural Rules for the China International Commercial Court of the Supreme People's Court (For Trial Implementation) and the Working Rules of the International Commercial Expert Committee of the SPC (For Trial Implementation). (Gu & Weixia, 2021). The CICC is a first instance court whose decision is final and binding; however, it might get case referrals from the Intermediate People's court or the Supreme People's court where they think that the case at hand will have a nationwide

impact. The prescribed amount in these cases is around 300 million dollars. Additionally, parties can incorporate a choice of court clause in contracts if the subject matter of the contract has some 'connection with China' (As per o Article 34 of China's Civil Procedure Law). This connection is considered to be established if the plaintiff or the defendant is in domiciled in China, the contract is signed or performed in China, or the subject matter of the dispute is located in China. (Pham, 2021).

Therefore, we can see that unlike France, UK and USA, when it comes to commercial dispute resolution through courts, China focusses solely on those commercial disputes that have an international component. They have therefore made concerted efforts to establish the Chinese International Commercial Court. However, for domestic commercial disputes, aside from some special maritime courts and intellectual property courts, there is no exclusive dedicated bench or division or court or list that resolves commercial disputes. Thus, China's Civil Procedure Law has not made any effort to determine 'commercial cases or claims' that come to its local people's courts. (Shan & Feng, 2021)

Singapore

The Supreme Court of Judicature Act, 1969 establishes the supreme courts of record in Singapore. The judiciary is composed of superior courts and subordinate courts. According to Section 3 of the Act, the High Court (General Division and Appellate Division) and the Court of Appeal comprise the superior courts of record. The General Division of the High Court hears both civil as well as criminal cases. Only civil cases whose claim amount exceeds 250,000 dollars can be filed in the General Division. It also hears appeals from subordinate state courts (District Court and Magistrate Court). There are some cases which can be exclusively heard by the General Division such as matters related to bankruptcy, admiralty, company winding up and insolvency etc. Additionally, there are specialised lists in the General Division that comprises of comprises docketed judges, and Assistant Registrars who manages the cases in consultation with the docketed judges. The lists primarily relate to – building and construction, shipbuilding, complex and technical cases; finance, security, banking, and complex commercial cases; company insolvency and trust; shipping and insurance; intellectual property;tort claims; revenue disputes etc. Appeals from the General Division lie to the Appellate Division of the High Court. (Gill et al., 2020)

The subordinate State courts include the District Court and Magistrate Court, the Coroners' Court, Small Claims Tribunal, Community Dispute Resolution Tribunal, Employment Claims

Tribunals. Further, there are some specialised District Courts and Magistrate Courts such as the Protection from Harassment Court, the Traffic Court, the Night Court, and the Criminal Mentions Court etc. All these courts entertain civil disputes of value less than 250,000 dollars. Appeals from these courts lie directly to the General Division of the High Court. (Phang, 2001).

An important and one of the most significant parts of the High Court General Division is the Singapore International Commercial Court (SICC) which was launched in 2015. It derives its jurisdiction under Section 18D of The Supreme Court of Judicature Act, 1969. SICC hears all matters that are i) international and commercial in nature, ii) that can be heard by the General Division of the High Court in its original civil jurisdiction (claims and thirdly, iii) any other action that is specified by the Rules of the Court. Apart from this, SICC can also resolve matters related to international commercial arbitration over which the General Division exercises jurisdiction but SICC's jurisdiction has been sought for relief; as well as matters relating to corporate insolvency, restructuring or dissolution under the Insolvency, Restructuring and Dissolution Act 2018, or under the Companies Act. (Yip, 2019).

Additionally, parties to a contract can exclusively choose SICC as the forum for resolving disputes via a jurisdiction agreement (Under Section 18F of The Supreme Court of Judicature Act, 1969). In that event, parties have to agree to carry out any judgement passed by SICC without any delay and waive their rights to approach any other court or tribunal outside Singapore against the judgement of the SICC. (SICC: Overview of the SICC)

Appeals from SICC go straight to the Court of Appeal. Section 29C (2) and Section 83(1) of the Supreme Court of Judicature Act 1969 read with the Sixth Schedule gives a list of situations where an appeal against the General Division of the High Court exercising original as well as appellate civil jurisdiction. Notable of these is the appeal that lies to this court against the decision of the SICC. (SICC: Overview of the SICC)

Thus, we can see from the above that, like China, Singapore too has a dedicated regime in the form of the SICC when it comes to resolving international commercial cases. Domestic commercial cases are treated similarly with other civil cases and subjected to the same pecuniary and territorial jurisdiction and court hierarchy as mentioned in the Supreme Court of Judicature Act 1969. The sole notable instance would be of the specialised lists that exist within the General Division of the High Court where specific judges are allocated to resolve commercial cases listed therein. Some of those lists comprise of dedicated complex commercial disputes, domestic intellectual property disputes etc. to name a few.

4.2.2. Scope of 'commercial disputes' – Parameter No. 2

United States of America

While discussing the previous parameter, the author mentioned that business courts in the USA are basically established as state trial courts or introduced as pilot programmes with a dedicated bench of judges to address a business dispute in toto, essentially to win over the business class litigants. Two models of business courts are seen across all 27 business courts established in different states – i) courts which require 'business disputes' to have an additional 'complexity' requirement and ii) courts which have established set jurisdictional parameters either through defining a list of case types or combined with minimum amount of claim or damages, irrespective of the 'complexity' requirement. Since, both these models are essentially established at the state level, each state has chosen to define the scope of 'commercial disputes' in their individual way. (1997). The author would like to shed light on some of those definitions for the purpose of studying this parameter.

For example, in the state of New York, Commercial Divisions are established in various counties as well as the New York Supreme Court. In New York County, the Commercial Division hears claims arising out of business dealings such as securities transactions, business sales, business agreements, trade secrets and restrictive covenants, breach of contract, breach of fiduciary duty, fraud, misrepresentation, business torts, and statutory violations arising out of business dealings. Additionally, it includes Uniform Commercial Code (U.C.C.) transactions, complicated commercial real estate transactions, shareholder derivative suits, commercial class actions, commercial bank transactions, internal affairs of business organizations or liability to third parties of officials thereof, accountant or actuarial malpractice, and complicated environmental insurance coverage litigation etc. The assignment of a claim as a 'commercial claim' was in accordance with Guidelines for Assignment of Cases to the Commercial Division, Supreme Court, New York County that was released in July 2001. (2013).

In 2006, the Commercial Division of New York adopted the state wise assignment of cases guidelines. Under Part 202.70 Rules of Commercial Division of the Supreme Court, commercial cases have different monetary thresholds in different counties and includes the following list of actions: (Section 202.70 Rules of the Commercial Division of the Supreme Court)

i) Breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g., unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings
ii) Transactions governed by the Uniform Commercial Code (exclusive of those concerning individual cooperative or condominium units);
iii) Transactions involving commercial real property, including Yellowstone injunctions, and excluding actions for the payment of rent only;
iv) Shareholder derivative actions -- without consideration of the monetary threshold;
v) Commercial class actions -- without consideration of the monetary threshold;
vi) Business transactions involving or arising out of dealings with commercial banks and other financial institutions;
vii) Internal affairs of business organizations;
viii) Malpractice by accountants or actuaries, and legal malpractice arising out of representation in commercial matters;
ix) Environmental insurance coverage;
x) Commercial insurance coverage
xi) Dissolution of corporations, partnerships, limited liability companies, limited liability partnerships and joint ventures -- without consideration of the monetary threshold; and
xii) Applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related injunctive relief

Similarly in Cook County, the Commercial Calendar was introduced which included the following types of actions - (i) breach of contract, including sale of goods (U.C.C), purchase of services, warranties and service contracts, sale of business, franchise, employment, indemnification, sale of real estate, commercial leases, construction, professional services; (ii) business torts and other tortious type claims, including professional negligence (except medical malpractice), fraud and misrepresentation, Consumer Fraud Act, tortious interference, breach of fiduciary duty/oppression, retaliatory discharge, miscellaneous statutory, securities, corporate and business law, not for profit; and (iii) collections, including notes, guaranties, and other collections. (Kuenster, 2007).

The North Carolina Business Court also has a very prominent Commercial Division that only hears complex commercial cases. Since there are no strict definitions of ‘complexity’, some of the cases that satisfy the ‘complexity’ component included contractual disputes whose outcome had implications for business and industry beyond the conflicts of the parties to the litigation.

Therefore, corporate domestic disputes, class actions, and paper or motion intensive cases that would provide predictability for others in the same business or industry in making their business decisions will be considered as 'complex' commercial cases to be heard by the Commercial Division. (Tucker, 2007).

Florida, Philadelphia and Colorado's business courts also follow a similar design. Therefore, even though most business courts in the US have presumptively adopted an approach of including all cases, it is not possible to do a one-to-one mapping of what types of claims are or are not in the 'commercial' claim category in business courts. Although there is no uniform nomenclature followed, a close look at each business court shows a virtual identity in the significant majority of case types. However, it needs to be noted that every single business court in the state has recommended that defining what constitutes a 'commercial' case is fundamental to the operation of a business court. Only then, can commercial cases of all level of complexity benefit from it and judges in the process of writing a judgement or an opinion will develop a body of law for broad guidance in the business community. (Applebaum et al., 2011).

United Kingdom

As mentioned in the previous parameter, the Commercial Court in UK is a specialised court under the King's Bench Division. Part 58 of UK Civil Procedure Rules, 1998, defines a commercial claim as a claim relating to:

(a) a business document or contract;
(b) the export or import of goods;
(c) the carriage of goods by land, sea, air or pipeline;
(d) the exploitation of oil and gas reserves or other natural resources;
(e) insurance and re-insurance;
(f) banking and financial services;
(g) the operation of markets and exchanges;
(h) the purchase and sale of commodities;
(i) the construction of ships;
(j) business agency; and
(k) arbitration.

The very first clause tells us all contractual claims or disputes arising out of business agreement or contract shall be heard exclusively by the Commercial Court. Unlike in USA, where the business courts in each state have chosen to broadly list all types of business agreements like shareholder agreements, joint venture agreements, franchisee agreements etc., UK has adopted a more concise definition encompassing all types of contractual disputes.

Further, the Chancery Division has a Business List, that also hears a wide range of national and international business disputes, sale and purchase of businesses, claims for professional negligence, claims for breach of contract etc. Along with that, there are other lists like the Companies Insolvency List, Competition List, Revenue List, Financial List etc. as the author mentioned earlier. The Financial List in particular is managed by both the Commercial Court as well as Chancery Division and handles financial disputes. One unique feature of this list is that it even admits cases where a definite cause of action within the purview of the claim is absent but the issues of the case issues affect the financial markets which need immediately relevant authoritative guidance. (Masood, 2019)

The Business and Property Courts of England and Wales Chancery Guide 2022 states that a claimant needs to file a claim in the specialist list that is closest to the principal subject matter of the dispute. Even if the different aspects of the dispute indicate that the claim may be issued in different courts, lists or sub-lists, the claimant must consider whether there are aspects requiring the expertise of a specialist judge and, if so, must select the court, list or sub-list in which the relevant specialist judges sit. For example, even if a land is for commercial use, a dispute concerning the same should be filed in the Property, Trusts, and Probate List instead of the Commercial Court. (Rea-Palmer, 2017).

Thus, we can see that unlike in USA, UK judiciary believes in a wider range of specialisation when it comes to handling disputes that are handled across a diverse section of business and property courts. Even if, there is a dedicated Commercial Court, a lot of business disputes are addressed by the Chancery Division specialist courts. It is ultimately upon the discretion of the claimant, to select the most appropriate specialist court and justify the same in the claim form. In conclusion, we may say that the Business and Property Courts in UK have a relatively broader range of disputes knocking at their door due to a large number of specialist courts. (Sendetska et al., 2021)

France

In the previous section, the author has described the hierarchy of the civil courts in France, specifically the Tribunal De Commerce or the Commercial Court. The jurisdiction of the Commercial Court is drawn from the French Commercial Code; the former exercises original jurisdiction over all commercial disputes. In districts where no Commercial Court is established by the Council of State, the Tribunal de Grande Instance hears disputes which otherwise would be within the purview of the Commercial Court. Article L 721-3 describes the scope of commercial disputes that the court hears – i) Disputes relating to commitments between traders, credit institutions, ii) Those relating to commercial companies, iii) Those relating to commercial acts between all persons and iv) Those relating to promissory notes issued in connection with commercial transactions. (Conner, 1905)

Further, Article L 110-1 (The French Commercial Code, 2009) defines commercial acts –

i) All purchases of movable and real property for the purposes of resale
ii) All operations as intermediary for the purchase, subscription or sale of buildings, businesses or shares of property companies;
iii) All companies involved in the rental of movables;
iv) All manufacturing, commission and land or water transport companies;
v) All supply, agency, business office, auction house and public entertainment companies;
vi) All exchange, banking, brokering, issuing activity and electronic money management operations and all payment services;
vii) All public banking operations;
viii) All obligations between dealers, merchants, and bankers;
ix) Bills of exchange between all persons

Under Article L 721-7, the Presiding Judge of the Commercial Court will hear commercial disputes arising out of movable and immovable property, aircrafts, vessels, water inland vessels etc. for protective measures

Thus, with respect to the scope of commercial disputes, the Commercial Court exercises original subject matter jurisdiction and territorially, hears all disputes arising out of commercial acts in the district, regardless of the amount of claim. From their decisions, a litigant can file an appeal to the commercial chamber of the Court of Appeal. (Houin, 1955)

The Paris Commercial Court has gained popularity in the recent years after opening of its International Chamber. Under the Protocol on Procedural Rules Applicable to the International Chamber of the Paris Commercial Court, 2018, Article 1 details out the jurisdiction of the international chamber. The article describes transnational commercial disputes as disputes relating to: (Houin, 1955)

i) International commercial contracts and the termination of commercial relations
ii) Transport
iii) Unfair competition
iv) Anti-competitive commercial practices
v) Transactions in Financial Instruments, Market Standard Master Agreements, as well as Financial Contracts, Instruments and Products (2018)

Additionally, parties to a contract, may select the Chamber as their forum for resolving disputes. Appeals from this Chamber goes to the International Chamber in the Paris Court of Appeal.

China

As mentioned in the previous section, there is no dedicated commercial court in China for domestic commercial disputes. They are treated at par with other civil disputes and the same rules of jurisdiction apply to them. This however does not conclude that specialist courts are not present in China. IP Courts were established in 2014 in the regions of Beijing, Shanghai and Guangdong province respectively. Under the Provisions of the Supreme People's Court on the Jurisdiction of Cases of Intellectual Property Courts in Beijing, Shanghai, and Guangzhou, these courts have original jurisdiction over all civil and commercial cases involving patents, new plant varieties, integrated circuit layout designs, technical secrets etc. In 2020, a fourth IP Court with similar subject-matter jurisdiction was established in Hainan. Similarly, from 2018 onwards, municipal intermediate people's courts have established divisions within themselves called IP Tribunals. In 2019, the Supreme People's Court established its very own IP Tribunal for hearing "technically complex" patent and other IP appeals from first-instance judgments rendered in the high people's courts, the new IP courts, and the new IP tribunals. (Mark, 2021)

In 2018, the Shanghai Financial Court was established. Under the Provisions of the Supreme People's Court on the Jurisdiction of the Shanghai Financial Court, the Financial Court hears disputes relating to securities, futures trading, trusts, insurance, bills, letters of credit, financial borrowing contracts, bank cards, financial leasing contracts, P2P lending, letters of guarantee,

financial institution bankruptcies, and finance-related arbitrations and judgments enforcement etc. Thus, all civil and commercial cases that are financial related are heard by this court. Aside from exercising original jurisdiction, it also exercises appellate jurisdiction over financial cases – judgements passed in basic people's courts. (Updates on China's specialized IP courts and tribunals 2019)

In 2017, the Internet Courts were established in China as specialist courts that exercised jurisdiction over disputes relating to contracts executed through e-commerce platforms.

As a jurisdiction, when it comes to establishing an exclusive forum for addressing commercial disputes, China has concentrated more on transnational and cross border commercial disputes and therefore, two dedicated International Commercial Courts (CICC) in Shenzhen andXi'an—Shenzhen. Since both the CICCs are judicial tribunals of the Supreme People's Court,overseen by the Fourth Tribunal of Supreme People's Court, the Provisions of the Supreme People's Court on Several Issues concerning the Establishment of International Commercial Court was adopted at the 1743rd session of the Judicial Committee in 2018. (2018). Article 2 of the Provisions broadly determines the scope of commercial disputes that these courts hear.

The following types of cases are within the purview of the CICC (Chaisse & Qian, 2022):

i) International commercial cases of first instance where the value of the dispute is minimum 46 million US Dollars or 300 million RMB and where the parties choose the jurisdiction of the Supreme People's Court by an agreement.
ii) International commercial cases of the first instance subject to the jurisdiction of the higher people's court which the later deems should be heard by the Supreme People's Court and it fixes it.
iii) International commercial cases of the first instance that have a major impact nationwide.
iv) Applications made for arbitration preservation, revocation, or enforcement of international commercial arbitration awards

Thus, we can safely say that CICC is a "one-stop" platform for cross-border commercial dispute resolution, especially for litigants, and serves as an excellent judicial body to approach,aside from alternative dispute resolution mechanisms. We can also see, that unlike in USA, UKand France, China has not focussed on defining what encompasses the ambit of 'commercial disputes. It has kept it to the discretion of the Supreme People's Court and assigned a certain claim value to establish whether or not CICC will have jurisdiction over the said dispute.

Singapore

In Singapore, civil and commercial litigation is governed by the Supreme Court of Judicature Act 1969 (1969) and the Rules of Court 2021. The General Division of the High Court exercises original civil jurisdiction under Section 16. Section 17 gives a list of specific cases where such civil jurisdiction is assumed.

i) Jurisdiction over law relating to matrimonial disputes
ii) Jurisdiction over law relating to matters of admiralty
iii) jurisdiction over law relating to bankruptcy or to companies
iv) Jurisdiction to appoint guardian of minors, infants, mentally disordered persons etc.
v) jurisdiction to grant probates of wills and testaments, letters of administration of the estates of deceased persons
vi) Lastly, jurisdiction to record a mediated settlement and grant the applications provided for in the Singapore Convention on Mediation Act 2020 Act in respect of international settlement agreements.

Although the Supreme Court of Judicature Act 1969 does not set any prescribed monetary limits for a claim heard by the General Division, mostly civil and commercial disputes of value higher than SGD250,000 go to the High Court. This is simply because the State Courts in Singapore can only hear disputes of value not exceeding SGD250,000.

Unlike in China, where CICC is a judicial chamber of the Supreme People's Court, in Singapore, the Singapore International Commercial Court (SICC) is a division of the General Division of the High Court as established under Article 18 of the Supreme Court of Judicature Act 1969. However, just like China, Singapore too concentrates on transnational commercial dispute resolution as compared to domestic and local commercial disputes which are treated at par with other civil disputes.

The jurisdiction of the SICC is governed by section 18D of the Supreme Court of Judicature Act 1969. Under the SICC Rules 2021, Rule 1(1), SICC however does not assume any jurisdiction in matters where parties seek relief in the form of a prerogative order (which includes a mandatory order, a prohibiting order, a quashing order, or an order for review). Under Order 2 Rule 1, a claim can be said to be 'commercial' if –

i) The subject matter of the claim arises out of a commercial relation.

Under the previous Rules of Court 2014, Order 110, Rule 1, there was a long list of transactions, the subject matter of which was considered commercial. These included y trade transaction for the supply or exchange of goods or services, distribution agreement, construction works, factoring or leasing, merger of companies, investment agreement, joint venture agreement etc. to name a few. However, we should note that the new Rules of Court, 2021 under Order 1 Rule 2, it specifically states that the new rules do not apply to apply to proceedings in SICC. Therefore, the ambit of a 'commercial relation' remains broad, although some guidance might be taken from the previous list.

ii) The subject matter of the claim is in relation to an in personam intellectual property dispute.

iii) If the parties to the dispute have agreed to treat the nature of the dispute as 'commercial'.

Similarly, only disputes relating to parties who do not have any place of business in Singapore and rather have it in other states are regarded as disputes of international nature.

Under the previous Rules of Court 2014, Order 110, Rule 1, there was a long list of transactions, the subject matter of which was considered commercial. These included y trade transaction for the supply or exchange of goods or services, distribution agreement, construction works, factoring or leasing, merger of companies, investment agreement, joint venture agreement etc. to name a few. However, we should note that the new Rules of Court, 2021 under Order 1 Rule 2, it specifically states that the new rules do not apply to apply to proceedings in SICC. (Chua, 2020).

Aside from that, under section 18D (2) of the Supreme Court of Judicature Act 1969, SICC (being a division of the General Division of the High Court) has jurisdiction to hear any proceedings relating to international commercial arbitration that the General Division of the High Court has power to hear. Further, since SICC is an international court, even if the subject matter of the dispute is connected to a jurisdiction other than Singapore, or has connecting factors to Singapore; SICC can go ahead and assume jurisdiction, if the parties can provide a written jurisdiction agreement. Therefore, in presence of that agreement, SICC will not go into examining whether or not the subject matter of the dispute has connecting factors to Singapore on the present day. (Chua, 2020)

Not only that, the Supreme Court of Judicature Act 1969 stipulates that parties who submit their jurisdiction to SICC also agree to submit to its exclusive jurisdiction, to carry out any

SICC judgment without undue delay and to waive any recourse to any court or tribunal outside Singapore against any SICC judgment and the enforcement of such a judgment. The vast array of international banking, commercial and financial disputes that SICC can accommodate makes it a far more favourable forum as compared to the commercial courts in London or USA. (The, 2017).

4.2.3. Different stages of disposal of a commercial dispute – Parameter No. 3

United States of America

As previously discussed, the business courts in USA are state trial courts, therefore every state has its own civil procedure rules that govern the different stages of disposal of a 'business' or a 'commercial' dispute.

For example, in the state of New York, Part 202.70 Rules of the Commercial Division of the Supreme Court states that a 'commercial claim' must meet the prescribed pecuniary thresholds and the scope of a 'commercial case' in order to be eligible for the Commercial Division. The author has described both these jurisdictional requirements in the previous section. We can broadly look at the following steps (Renck & Thomas, 2014) that are followed in the adjudication of a 'commercial' claim:

i) As per the rules, a party within 90 days of serving the complaint, may seek assignment of a case to the Commercial Division by filing a Request for Judicial Intervention (RJI). He needs to attach an addendum in that regard. The parties may also submit to the exclusive jurisdiction of the Commercial Division of the Supreme Court by including such consent in their contract.

ii) The New York Supreme Court uses a system of Differentiated Case Management where cases are assigned to track upon filing of RJI. These tracks give us an idea of the target time frame for the disposal of each case. Although judges can extend the time lines in each individual case, DCM still works as an internal standard for measuring the productivity and efficiency of litigants, counsels, and the Commercial Division as a whole.

iii) Once a case is assigned to a Commercial Division, **a preliminary conference** is held within 45 days of such assignment. Notice of such conference should be sent by the court to the parties at least 5 days in prior.

iv) Prior to the conference, counsel of both parties shall discuss about the resolution of the case, wholly or in part, any electronic discovery pertaining to the dispute and the scope of expert disclosure, any voluntary and informal exchange of information that parties might desire to get an early resolution of a case and the use of alternative dispute resolution mechanism that may be used resolve some or all the issues in litigation.

v) In some cases, parties file for accelerated adjudication procedure of the Commercial Division by a written agreement. In an accelerated process, all pre-trial proceedings, including all discovery, pre-trial motions, and mandatory mediation, shall be completed and the parties shall be ready for trial within 9 months from the date of filing of a Request of Judicial Intervention.

vi) Parties are further encouraged to request for immediate trial or pre trial evidentiary hearing so that a factual issue material to the disposition of the case can be resolved.

vii) At the preliminary conference, parties need to submit the details of the cause of action, issues identified and type of motions that are anticipated. Additionally, a statement that they have considered alternative dispute resolution mechanisms provided by the Commercial Division and/or private ADR providers also needs to be shared.

viii) Before the conclusion of the preliminary conference, the Commercial Division will ask the parties to clearly and concisely the produce a document stating the issues in the dispute.

ix) The preliminary conference order may contain provisions for early disposition of the case, a comprehensive discovery schedule, a date for filing the note of issue and a trial note.

x) The next important step after discovery and document review is deposition by parties. In a commercial case, the number of depositions taken by the plaintiff or the defendant can be 10. Accordingly, a notice of subpoena is issued.

xi) Parties may also apply for a confidentiality order, if they believe the facts of the case are confidential, given the nature of the dispute. Further, they will submit a motion statement and a prayer for a summary judgement.

xii) The next steps include the discovery and examination of documents using technology-assisted review. The trial schedule along with the proposed length of the trial is set at this stage.

xiii) **Mandatory Settlement Conference** (MSC) – In every commercial dispute, parties must participate in a court mandated settlement conference. There are four tracks of the MSC: a) Parties may agree to have the MSC before the assigned judge, b) The Commercial Division may refer the case to the Judicial Hearing Officer/Special Referee, c) The court may refer the case to the ADR coordinator or other designated court official in the judicial district, of a neutral selected from the roster of neutrals or mediators and lastly, d) The parties may engage a private neutral. If the settlement is reached by the MSC, then a date shall be provided by the parties by which the settlement will be documented.

xiv) Following the MSC, there is a **pre-trial conference**, where parties in good faith try to identify matters not in contention, resolve disputed questions without need for court intervention and further discuss settlement of the case. At this stage, witnesses are identified and called to testify.

xv) Thereafter, the court will conduct virtual evidentiary hearing and remote depositions. At the end of the trial, the final judgement will be passed by the jury.

A very important stage of disposal of a 'commercial' claim is the **'Rule of Staggered Court Appearances'** under Rule 34. It is mechanism introduced to avoid a litigant or his counsel to wait for the matter to be called by the court. Thus, every appearance is given a time slot for making oral arguments on a motion. This helps the court to avoid ex parte communication and to dispose of the case within designated timelines without missing a date. (Strong, 2021)

Additionally, parties can also opt for **'Accelerated Adjudication of Commercial Disputes'.** The process requires parties to mutually agree to waive off defenses based on *forum non conveniens* or personal jurisdiction, give up their right to ask for interlocutory appeal, more than 7 discovery requests and not ask for trial by jury or punitive damages. If both parties consent to the above, the entire dispute would be resolved in 9 months only. (Strong 2021)

Aside from the Commercial Division in New York Supreme Court, PART 208. Uniform Civil Rules for The New York City Civil Court tells us that a Commercial Claim can also be filed in the New York city civil court and describes similar procedure under Section 208.41.

The second model of business court seen in USA requiring a 'complexity' or 'technical' component in a commercial case is found in the state of North Carolina. The North Carolina Business Court Rules were enacted in July, 2022 to try every civil case designated as a mandatory complex business dispute or assigned to a Business Judge. Unlike usual stages of

applying for initiating the case or filing an application asking for jurisdiction of a commercial court, the plaintiff in this case must first seek to designate an action as a complex business case to the to the Chief Business Court Judge, the Chief Justice of the Supreme Court of North Carolina, and, as practicable, all parties. Only, when the Chief Justice of the Supreme Court of North Carolina issues an order in that regard, can the action be classified as a mandatory complex business case. Like in New York, the Business Court in North Carolina too emphasizes on 'Case Management' under Rule 9, where Case Management Conferences and Reports need to be completed in a timely manner. Another similarity, is the requirement of mandatory mediation under Rule 11 where complex business cases are subject to the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions. (Tucker, 2007)

Just like New York and North Carolina, other state courts also have their commercial divisions or business courts and individual civil procedures as the author briefly described while discussing the jurisdiction parameter. Three very important takeaways can be pointed out from the different stages of disposal of a 'commercial' dispute as we have seen from the procedural rules – i) Mandatory Mediation ii) Designated time slots and timelines for making appearances and applications and iii) Case Management Conference and Reports which help a case in adhering to the prescribed timelines. Even though the Rules do not have an upper limit within which the disposal needs to be completed, since the length of the trial is at the discretion of the judge, every step of the way starting from the day the application for designation of the commercial dispute to the deposition as well as making oral arguments are subject to separate timelines that need to be followed by both parties as well as the presiding judge. (Slights & Power, 2015).

United Kingdom

The author discussed in the previous section that the Commercial Court in UK is a specialist court under the King's Bench. Proceedings in the Commercial Court are stipulated under the Civil Procedure Rules (CPR) and Practice Directions. The Commercial Court Guide, 2022 (2022) gives us an overview of the list of stages a commercial dispute goes through in the court before getting disposed of (Lord Hamblen, 2020).

i) The case begins with the claimant filing a claim form detailing the particulars of a claim, the subject matter of the dispute, value of damages he wishes to claim (statement of value) and his identity particulars under Part 7 of CPR. Other

documents that are required at this stage such as any application, witness statement, exhibit to the witness statement, signed consent order etc. can all be filed electronically under the Electronic Working Scheme (CE-File)

ii) Claim Forms issued in the Commercial Court are then served by the claimant, who after such serving must file a certificate of service within 21 days, unless the defendant to the proceedings has filed acknowledgments of service within that time. (Part 6.17 pf CPR)

iii) If the defendant wishes to dispute the Court's jurisdiction or contend that the Court should not exercise its jurisdiction, he needs to file an application asking for adequate relief, within 21 days of being served. Against such application, the Court may give time to the defendant to serve and file a statement of case.

The Commercial Court often hears applications where an order has been passed to transfer a case to a Commercial Court. Such transfers may happen at any stage of a proceeding but its usually made after a pre-trial timetable has been fixed at the Case Management Conference.

iv) All proceedings in the Commercial Court are subject to a Case Management Conference. Some of the key features of the Case Management Conference include – exchange of statement of cases between parties within fixed timelines, case memorandum, approval by court of critical ground issues, proposals for disclosure and expert evidence, a pre-trial check list and timetable, estimated length of trial etc.

v) The next step is disclosure of evidence which supports the respective party's cases. A Disclosure Review Document (DRD) needs to be submitted to be approved by the court. At this stage the party may also file an application requesting the other party to prove authenticity of any document(s) at the trial, the disclosure of which was made in the DRD.

vi) Once all the documents and evidence have been disclosed by the parties, the parties at this juncture need to take into consideration as to how much of disclosed material will be required at trial and introduced as evidence, whether expert evidence will be required, whether length of estimated trial remains appropriate etc.

vii) Thereafter any other applications for security of costs, expedited applications, applications for introducing additional evidence, for disposing off the case my

consent, applications objecting any of the issues as well as applications for interim injunctions can be can be filed by the parties.

viii) At any stage of the dispute, parties may opt for Negotiated Dispute Resolution (NDR) which includes mediation and conciliation but not limited to the same. A NDR starts if the judge of the Commercial Court invites parties in appropriate cases to resolve the dispute or some issues in the dispute. During NDR, a hearing can be adjourned or the proceedings can be stayed. An order providing for NDR, can include an order as to costs incurred by parties in using or attempting to use NDR, if the case is not settled. Aside from NDR, the court might also fix a date for bilateral negotiations between parties and their legal representatives if the court feels it's more cost-effective and productive route to settlement.

ix) After evidences are taken including witness statements, at the final stage, the trial starts. A trial can be of four kinds – a) either be an expedited trial in case of sufficient urgency and importance, b) shorter trial scheme c) flexible trial scheme and lastly d) a trial of issues.

Expedited Trial (ET) – The application for needs to be made after issue and service of the claim form but before service of particulars of claim. The court would take into the state of emergency or urgency in the dispute, procedural history of the dispute, and if the expedition is fair to all the parties in the dispute.

Shorter Trial Scheme (STS) - Practice Direction 57AB – Shorter and Flexible Trials Schemes stipulates provisions relating to STC. An application opting for STS or if it is being considered by the designated judge in the dispute at the first case management conference. The claim letter should clearly indicate and notify the other party of the applicant's intention to opt for STS. Additionally, a brief summary of the dispute and identification of the anticipated issues, a full statement of all relief or remedies claimed and detailed calculations of any sums claimed will be attached with that application. The length of the trail in STS shall in no circumstances exceed 4 days. Strict timelines should be adhered to throughout the proceedings and the judgment within six weeks of the trial or (if later) final written submissions.

Flexible Trial Scheme (FTS) – In this type of trial, parties by agreement, adapt trial procedure to suit their dispute. The procedures primarily include pre-trial disclosure, witness evidence, expert evidence, and submissions at trial. The FTS also allows the court to identify issues based on written submissions and evidence.

Just like STS, an application for FTS also needs to be filed at the first Case Management Conference.

Trial of issues – Sometimes, the Commercial Court judge conducts a separate trial of some issues, even if other issues are heard by another court. For example, where liability of parties is tried first in the Commercial Court, the parties may choose to ask an arbitrator to decide questions of damages.

x) Another important aspect of a commercial court proceeding is the emphasis that is put on use of information technology in trials including use of electronic bundles.

Apart from these, some commercial cases of lower financial value are heard in Circuit Commercial Courts. The Circuit Commercial Court Guide 2022 describes the stages of disposal of a commercial dispute. Since, there is no substantial difference between a mechanism in which a case is disposed of in the Commercial Court from the Circuit Commercial Court, the author would not elaborate on the Practice Directions for the Circuit Commercial Court.

Just like the Commercial Court, other lists in the Chancery Division like the Companies and Insolvency List, Intellectual Property List, Competition List, Financial List etc. all have their specialist practice directions and court guides which refine and explain aspects of procedure and claims are heard by judges specifically assigned to those courts.

From the above overview of commercial dispute dissolution procedure, we can deduce two things that makes the Commercial Court in UK stand out and different from USA. Firstly, since UK is a unitary state, the Commercial Court as part of the Business and Property Court comes directly under the King's Bench. There are no local courts which have dedicated commercial benches created by state legislature except the Circuit Commercial Court. Further, the Negotiated Dispute Resolution is encouraged to be opted for resolving commercial disputes by parties, however it is not mandated as part of a claim disposal. It is completely on the discretion of the judge or the parties who may or may not be interested to use mediation and conciliation in solve their dispute. Thirdly, there are four types of trial that litigants may choose from to resolve their dispute, by opting for briefer, simpler and more flexible procedures. Such pliable and adjustable procedures make the Commercial Court look like a very desirable forum to both domestic as well as foreign business litigants. (Holland, 2006).

France

The author discussed previously that, the commercial courts in France or the Tribunal De Commerce is the first instance court that hears disputes between traders, credit institutions and commercial companies, as well as disputes over commercial deeds.

The Civil Procedure Code of France (CPCF), Article 854-871 (David, 1973) details out the procedure before the Commercial Court. This procedure also applies to other civil matters which go to the Commercial Courts. The Law on the Modernization of the Justice System in the 21st Century in France made it mandatory for all parties coming to the Commercial Court to opt for a free conciliation service if the value of the claim exceeded 4000 dollars. If we take an overview of the CPCF, the proceedings before the Commercial Court take place as per the following steps:

i) In Commercial Courts, parties are not mandated to be legally represented by a counsel unless the value of the dispute does not exceed € 10,000.
ii) If the parties of the dispute, reach an amicable solution and simply need the commercial court to validate it, then they initiate a mutual agreement procedure. However, if they both go to the judge to settle the dispute, they need file a joint request. If one of the parties is not happy with the solution reached and wants to approach the court, the procedure is done by assignment in court.
iii) The subpoena or summons is drawn by the applicant or his lawyer. In order for the dispute to be admissible, the subpoena must contain the identification of the parties, subject matter of the application with a statement of arguments, enumeration of the documents on which the application is based accompanied by a statement etc. The summons will be filed by the judicial officer which will indicate the date and time of the hearing and need to be issued to the opposing party at least 15 days before the date.
iv) The next step is the investigation of the case – During investigation, the judge arranges for mutual exchange between parties. The judge, where he might deem appropriate will assess if there is a possibility of a compromise and may even appoint a judicial conciliator to reach a solution. If such compromise does not seem possible, then at the end of the investigation, the hearing date in the application will be finalized or a new hearing date will be proposed.
v) In the Commercial Court, written briefs are not a mandate, if there is no legal representation. In French commercial trials, witness cross-examination, reading of depositions, hearing of expert witnesses, jury deliberations etc. do not take place.

vi) Expert determinations play an important role in commercial court proceedings. The CPCF contains provisions for experts appointment. These officials are appointed to perform a fact-finding mission which are submitted to adversarial debate in court and often used by the judge to reach his conclusion or decision.

vii) In the Commercial Court, judgements are read openly in court (only the dispositive part of the judgement). The reasoning is communicated to the parties later. The judgement copy needs to be retrieved by the prevailing party who will submit it to the losing party by way of signification. Appeals from the Commercial Court go all the way up to the Supreme Court of Civil and Commercial matters on limited grounds - error of law, incompetence of the court, formal defects of procedural orders and judgments sanctioned by nullity, lack of reasons, or denaturation.

The French Commercial Court has been in practice since 1792. Although it is slightly hard to estimate the average case disposal time in a commercial dispute, mostly it is seen that the Case Management is the responsibility of the court itself. Unlike UK and USA, there are no dedicated provisions to it, but the procedural law has in some ways identified timelines withinwhich each step of the dispute starting from filing summons to hearing at trials to filing additional evidence is subject to timelines. A procedural judge however is appointed only in the Court of Appeals who sets the timetable and mandatory time limits; unfortunately, in the Commercial Court, parties have no direct influence over case management and the period between the filing of the dispute and the hearing is therefore not supervised. Additionally, we should also note that, unlike in UK and USA, even though Article 121 of the CPCF states thatthe mission of a French Commercial judge should be to conciliate the dispute amicably, it largely depends on his discretion as to whether he thinks the matter should be conciliated, during the investigation of the case. As mentioned previously, only those disputes who value isabove 4000 dollars go through a mandatory free conciliation. (Klimaszewska, 2011).

Since, a major litigant in the French Commercial Court are commercial companies, the later can also initiate preventive or negotiation procedure by requesting the President of the Commercial Court. The President thereafter passes an order ruling on the subject matter of the negotiation (for example, assistance granted by financial institutions or the renewal of a contract by a major contractor), appointment of a professional to conduct the same and the time period within which the negotiation needs to be completed. The negotiation is either unsuccessful where there is acknowledgement of failure, or if it is successful, then an agreement is concluded at the end of the procedure. (Reece & Hannotin, 2018)

Conciliation is only reserved for those companies who have not been in cessation of payment for more than 45 days. If an agreement is reached in conciliation, then the same should indicate that the debtor company is not in cessation of payments. The court will then approve the agreement on three conditions – a) the debtor company is not insolvent or not in cessation of payment, b) the agreement ensures sustainability of the company and c) the interest of the creditors. (Easterbrook, 1989).

Additionally, commercial companies who face business difficulties without attaining the insolvent status can also come before the Commercial Court to adopt a safeguard procedure that will include a plan to revive the company out of the difficulties. Once they come to the court voluntarily to adopt this process, the company is protected from the litigation of creditors for a period of maximum 12 months. Although the company can exit at any stage, but if the draft plan is ready, the Commercial Court would need to approve the same. Going forward, if the company does go for receivership procedure or judicial liquidation, the Commercial Court plays a major role in supervising and governing both the processes. (Easterbrook, 1989).

Aside from the above, the Commercial Court in Paris as well as the Paris Court of Appeal have international chambers which host a lot of foreign commercial litigants every year. The Protocols establish the Procedural Rules that parties must follow if their dispute is resolved by the international chamber. Once a judge in designated, in the first conference he would ask both parties to record their mutual consent to proceed in the court. After briefs are filed, the judge will ask them to personally be present at the hearings and set a date for examination of documents, and witnesses if any. Ruling on the evidentiary and administrative issues, the judge will finally set a procedural timetable, including strict timelines within which expert examination, third party submissions, oral pleadings etc. should happen. Just like the Paris Commercial Court, the International Chamber in the Paris Court of Appeal follows a similar procedure under Protocol on Procedural Rules Applicable to the International Chamber of the Paris Court of Appeal. One key feature of both these chambers, that they are both bilingual. Proceedings can be both in French as well as English. Parties can appoint additional assistance for their translation facilities. (Park et. al., 2003)

Therefore, in conclusion, we can point the following key features that makes the French Commercial Courts stand out –

i) Negotiation and Conciliation opportunities for litigants at every stage of a proceeding.

ii) Mandatory timelines to be followed particularly for resolving commercial disputes that are foreign or international in nature.

iii) Participating in the proceedings without any legal representation.

iv) Role of the Commercial Court in preventive or safeguard insolvency procedures.

China

In China, the Chinese Commercial Courts are the specialist courts that address international commercial cases. The Procedural Rules for the China International Commercial Court of the Supreme People's Court (For Trial Implementation) state the step-by-step process of disposal of commercial suits. (Julien & Xu, 2021)

i) The commercial suit is initiated with the plaintiff submitting a statement of claim along with relevant evidential materials in support of the claim. The plaintiff's application should also be accompanied by a written agreement choosing the jurisdiction of the first Chinese Commercial Court at Shenzhen, Guangdong or the second Chinese Commercial Court at Xi'an, Shaanxi. Other than that, the High People's Court in China may also transfer cases to these Commercial Courts.

ii) All copies of the claim statement, evidentiary materials, pretrial diversionary procedures questionnaire and the confirmation of address for service are then delivered to the other parties by the CICC. The pretrial diversionary procedures questionnaire is a type of document that reflects how background research on what drafters have done in other jurisdictions and is often required by courts.

iii) Once the litigation documents are serviced to the defendants, the Case Management Office initiates a Case Management Conference within seven working days from the end of the service. The CICC emphasizes on opting for a Pre Trial-Mediation by the parties which needs to be completed within the next twenty days.

iv) Unlike, other jurisdictions, however the pre trial mediation is not a mandate and parties can choose to not opt for it. If the parties however, consent to mediation, it is then conducted by the mediation institution from the list of international commercial mediation institutions announced by the Supreme People's Court, or the by one or more members of the CICC Expert Committee. Once a mediation settlement agreement is reached, it is sent to the Case Management Office. But if the mediation fails to reach a settlement, the litigation procedures continue.

v) Thereafter, a pre trial conference will be held which will include a list of agendas, namely, clarifying the plaintiff's claim and defendant's defense opinion, determining if the trial should be public, arranging for evidence exchange, conducting mediation, summarizing issues of the dispute etc. among other things. This conference is presided over by the collegial panel or one judge designated by the collegial panel in consultation with expert members on specialized legal issues relating to international treaties, international commercial rules, and extra-territorial laws etc.

Thereafter, trial procedures follow as set out The Law of Civil Procedure of the People's Republic of China.

One important thing to note about CICC procedures is that even though the former emphasis on case management conference prescribing deadlines for completion of pretrial processes, the trail procedures in CICC follow the same timelines as given in The Law of Civil Procedure of the People's Republic of China. No separate rules or compliances are required for commercial cases in CICC once they move to trial. Further, the pre trial mediation in CICC is not a compulsory requirement for parties who want to avail services of the court. It is left to the discretion of the parties as to whether they want to go for litigation procedures straight away. (Tao & Zhong, 2019)

Article 11 of Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court (2018), states that an International Commercial Expert Committee along will be set up which will help build, along with selected international commercial mediation institutions and international commercial arbitration institutions, a dispute resolution platform where mediation, arbitration, and litigation efficiently come together to create a "one-stop" international commercial dispute resolution mechanism. Where parties submit their dispute to arbitration by an international commercial arbitration institution, they shall file an application to CICC for an order on the preservation of property, evidence, or conduct, before or after the arbitration proceeding begins; even an application for enforcement or challenge of an arbitral award lies to the CICC. (Cai & Godwin, 2019).

Singapore

In Singapore, the SICC Rules 2021 describe the various stages of disposal of a commercial suit.

i) Proceedings in SICC start with a claimant's application that contains a concise summary of the material facts giving rise to the claim, any alleged harm suffered by the claimant, the cause of action against the defendant and the relief sought.

ii) After the applicant is served to the defendant, the later files his statement within 28 days.

iii) A very important aspect of a proceeding before the SICC is the Case Management Conference. The Case Management Conference will involve discussions on the preliminary and real issues of the dispute, possibility of alternative dispute resolution mechanism to resolve such dispute and submission of the Case Management bundle.

iv) The Case Management Bundle contains the most recent versions of the claimant and defendant's statements, witness statements, a pre hearing or a pre-trial timetable, a trial checklist and a trial timetable (If SICC proceedings lead to trial).

v) Once a claim is contested or a counterclaim is filed, the SICC will decide that the same will be decided by one of the three adjudication tracks - the pleadings adjudication track; the statements adjudication track; or the memorials adjudication track. The pleadings adjudication track is like a writ action under the Rules of Court. It involves the filing of pleadings (i.e., statement of claim, defence, reply, etc) and generally culminates in a trial of the dispute. The statements adjudication track includes originating summons under the Rules of Court in force, which involves the filing of witness statements, and generally culminates in a hearing on submissions. The memorials track involves the filing of memorials which are generally required to set out in full detail the parties' respective statements of facts, legal arguments, reliefs claimed, and be accompanied by witness statements, expert reports (if any) and supporting documents.

vi) Thereafter, documents are produced and examined, interrogatories are conducted and evidences are submitted. In SICC, the Rules allow a party to file an application asking for usual evidentiary standards to not apply as per the Singapore law (Singapore are the Evidence Act 1893, the Rules of Court 2021 and the common law of the country), and instead apply rules of evidence in any other foreign law or jurisdiction.

vii) Along with the final adjudication order, SICC also has the power to grant a freezing order (interim measure) on the assets of a party either in Singapore or otherwise.

viii) Since SICC is a part of the Singapore Supreme Court and is a division of the General Division of the High Court, it is considered a superior court of law, it gets enforced in the same manner as the judgements under the General Division of the High Court. There are at present four ways in which a judgement rendered by SICC is enforced – a) under The Hague Convention on Choice of Court Agreements 2005, b) by way of registration in the courts of certain countries/territories under the Reciprocal Enforcement of Commonwealth Judgments Act 1921 and Reciprocal Enforcement of Foreign Judgments Act 1959, c) enforcement under the common law cause of action on a debt; and d) enforcement under a civil law procedure.

One of the most notable features of the SICC is that the hearings can be conducted remotely through video conferencing and since the court caters to many foreign litigants who may be based out of Singapore, this feature becomes an extremely convenient option for them, since they can attend the proceedings without having to come to the country. This feature makes SICC a truly globalized, international, and modern commercial court whose access is not limited to physical presence of litigants. Just like France, UK and China, SICC too follows a Case Management Conference to ensure that timelines are strictly followed and there is swift dissolution of commercial disputes that come before it. However, what makes the Case Management in SICC unique is the determination of adjudication track suited to each commercial dispute. Thus, before trial commences, the parties are aware during the Case Management Conference, about the type of adjudication processes that would best suit their as well the interest of the dispute. (Yip, 2016). Although, alternative dispute resolution mechanisms are encouraged for the parties to adopted and not mandated as a part of SICC proceedings, the later and the Singapore International Mediation Centre (SIMC) have collaborated to establish a litigation-mediation-litigation (LML) framework with a view to promoting the amicable resolution of international commercial disputes. This framework allows parties who adopt LML provisions in their contract to refer disputes that have commenced in SICC, to SIMC for mediation and then conclude proceedings in the SICC on the conclusion of the mediation. Once a matter goes to SIMC, the SICC will put a stay on the Case Management process for a period of 8 weeks and not proceed with pretrial processes except pass an order granting interim relief to a party. (Bell, 2018).

One of the most concerning challenges of the SICC is the possibility of enforcing its judgements in other jurisdictions. Enforceability of outcomes is the key reason why business parties favour international commercial arbitrations. To solve this problem, Singapore has

signed the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters 2019 which states that judgment by the chosen court must be recognised or enforced in Contracting States. While most European nations have signed and ratified the Convention, there are many others who have not yet done so. For enforcing Singaporean judgements in those countries, the litigant has to go through their respective domestic procedures which may not end up being favourable. Therefore, to make SICC more desirable and relevant as an international forum, Singapore non-binding 'Memorandum of Guidance' with the Dubai International Financial Centre and the Supreme People's Court in China concerning the reciprocal enforcement of money judgments. (Stamboulakis et. al, 2019)

4.2.4. Appointment and training of judges presiding over commercial courts – Parameter No. 4

United States of America

As we have seen in the previous sections, Commercial Courts are established at the state level or as divisions of a state court in USA. While looking at the ambit of commercial disputes that come before these courts, the author has looked at the Commercial Division of the New York Supreme Court, the North Carolina Business Court, the Delaware Chancery Complex Commercial Division etc. to name a few.

In 1993, when the Commercial Division experiment first evolved in New York, four justices of the State Supreme Court were assigned commercial cases and their respective court rooms were called Commercial Parts. The Commercial Parts initiative was studied by a 1995 Report that suggested the creation of a separate division to handle commercial matters, including New York's role as a center of commerce. The Report further added that the unique attributes and complexity of commercial cases require special judicial treatment of a commercial court. Based on that Report, Chief Judge Judith S. Kaye, along with Hon. E. Leo Milonas and Robert L. Haig, Esq. created the Commercial Courts Task Force, which recommended the establishment of the Commercial Division of the Supreme Court in areas of the State with significant commercial litigation. (2012)

In 2012, on the 20th anniversary of Commercial Division of the New York Supreme Court, the Chief Judge constituted a Task Force to ensure that New York judiciary helps the State retain its position as the preeminent financial and commercial center of the world. It recommended that, in order to convince the business world that the Commercial Division is committed to

delivering good quality of commercial justice, the Governor needs to form a special screening committee, which identify the best qualified set of potential nominees and assign all six new Court of Claims judges. It further recommended that a panel of Special Masters comprising of experienced commercial litigators who are no longer in practice but willing to serve and Judicial Hearing Officers (former justices) need to be appointed to these Commercial Divisions. (2012)

In general, method and manner of judicial appointments in State Courts (Berkson, 1980) vary widely across the country. Although each state's constitution identifies its own guidelines, for appointing judges, there roughly five ways of appointment that can be seen through the country:

i) Partisan Elections – People elect the judges from the list of candidates on the ballot alongside a label designating political party affiliation.
ii) Non-Partisan Elections - People elect the judges from the list of candidates on the ballot, however, there is no label designating any political party affiliation.
iii) Legislative elections: Judges are appointed by the state legislature.
iv) Gubernatorial appointment: Judges are appointed by the governor of each state. In some cases, it also warrants the approval of the state legislative body.
v) Assisted appointment, also known as merit selection or the Missouri Plan: A nominating commission (Governor-controlled Commission or Bar-controlled Commission or Hybrid Commission) reviews the qualifications of judicial candidates and submits a list of names to the governor, who appoints a judge from the list.

Similarly, for training judges, each state is free to develop its own programme to keep them updated with latest developments in the 'commercial' law space. The 2012 Task Force reviewing the New York Commercial Division, suggested that an Institute on Complex Commercial Litigation needs to be established to increase Commercial Division Justices' engagement with the Bar. The Institute will organise seminars and conferences for Continuing Legal Education, but also venues to promote greater engagement among Commercial Division Justices, practitioners, scholars and students.

For example, The Delaware Supreme Court adopted the Mandatory Continuing Legal Education Rule for members of the Bar, including judges in 1987. In North Dakota, the Judicial Branch Education Commission provides innovative education and training programs to guide and inspire a unified Judicial Branch in an ever-changing environment. (1987)

At the centre, the judicial branch of the United States government has a research and education agency of its judicial branch called the Federal Judicial Centre. The Chief Justice of the United States chairs the Centre's Board, which also includes the director of the Administrative Office of the U.S. Courts and seven judges elected by the Judicial Conference. It provides education and training for judges and court staff, including in-person programs, video programs, publications, and Web-based programs and resources, to enrich and continuously improve federal judicial history.

In 2005, in order to train the specialist judges in the Commercial Courts and promote them as effective forums of dispute resolution, a group of judges working with complex commercial litigation cases founded the American College of Business Court Judges (ACBCJ). The college invites judges from all business courts in the country to deliberate upon essential issues that come up in business disputes like e-discovery, public access to court records, mortgage securitization, procedural challenges in trade secret cases, corporate misconduct, evolving forms of corporate governance, insurance coverage issues, principles of aggregate litigation, cross border discovery etc. These judges establish relations amongst themselves that facilitate collegial cooperation in multi-jurisdictional litigation, including orders for shared discovery and coordinated scheduling etc. and often share best practices followed in business courts across the country. (2023)

Aside from that, if we talk about training of judges in USA, the most noteworthy of all is the National Judicial College which started as an entity of the American Bar Association. The College serves as one of the few unique forums where judges from across the nation and around the world can meet to improve the delivery of justice and advance the rule of law through a disciplined process of professional study and collegial dialogue. By offering an average of 100 courses/programs annually with more than 8,000 judges attending from all 50 states, U.S. territories and more than 150 countries, the NJC seeks to further its mission of making the world a more just place by educating and inspiring is judiciary. With the growth of online education, more than 10,000 judicial officers are accessing 30 to 50 web events each year. It continues to receive financial support from the American Bar Association, State of Nevada, U.S. Department of Justice and the University of Nevada, Reno. To this date, it organises seminars and dialogues amongst the business community in order for the judges of the various state business courts to get better insights and understanding of intricate issues and challenges of a business dispute. (NJC history 2023).

United Kingdom

In the United Kingdom, the Commercial Court is part of the Business and Property Courts in England under the High Court. Until 2006, justices were appointed by the Lord Chancellor who was a government minister. He derives his authority from Sections 25 to 31 and Schedule8, of the Constitutional Reform Act 2005. The Lord Chancellor convened a Selection Commission comprising of the Chair who the President of the Court, a senior judge nominatedfrom any other court in UK, one member each from Judicial Appointments Commission for England and Wales, the Judicial Appointments Board in Scotland, and the Judicial Appointments Commission in Northern Ireland and one lay member. Although the Lord Chancellor was a political minister, he had a statutory duty to consult the senior members andjudges before selecting or rejecting a candidate. (2005)

The above manner of appointment was subject to harsh criticism, since it gave a member of the government the sole responsibility for appointing judges. It was also stated that judges were appointed in the image of existing judges rather than solely on merit from a pool of widely drawn eligible candidates. The new system of selection happens through the new Judicial Appointment Commission, consisting of 14 members – 6 judicial members, 2 professional members with a prescribed qualification, 5 lay members and 1 non-legally qualified judicial member. It is governed under The Judicial Appointments Commission Regulations 2013. The Commission is chaired by a lay person and although some judges are appointed as members, they are merely there in representative capacity and not in majority. The Commission on its website advertises vacancies that come in various benches and encourages candidates to apply to become a part of the country's judicial machinery. (Woodhouse, 2007)

The training of judges in England happens through the support of the Judicial Office. The latter is a branch of the civil service, independent from the machinery which supports the Government, and supports the judiciary as the third arm of the state. It provides policy, legal and handling advice and operational support on a wide range of matters along with assistance with justice sector reform, judicial education and training, communications and human resources. The Judicial Office established the Judicial College in England. (Judicial College 2022). The Judicial College is solely responsible for training judges, magistrates, and members of the tribunals under the Tribunals, Courts and Enforcement Act 2007. The college provides seminars and programmes of continuing education to cater to the differing needs of the circuit and district benches, and also the breadth of the civil jurisdiction of the High Court (including

the Business and Property Courts). Further, it aids with programmes organised by European, Commonwealth and international judicial training institutions and participates in exchange programmes which enables judges from Europe to experience the work and training of the UK judges and vice versa. The summary of various reports and activities that the Judicial College organises are all made available online for the normal litigants to see and assess how far UK's justice system in taking consistent interest in keeping their justice machineries, more particularly, the commercial justice machineries, up to date with evolving times. (Rozenberg, 2012)

Last but not the least, Standing International Forum of Commercial Courts, an initiative started by the UK, often meets with its members to discuss issues and areas of improvements that the respective countries are undertaking in their justice systems, so that commercial justice served to litigants in Europe can be valuable in the true meaning of the term.

France

One of the most unique features of the French Commercial Court or the Tribunal De Commerce is the panel of judge presiding these courts. Under the Commercial Code of France, Article L.723-1, the judges are appointed by an electoral college comprising of commercial delegates or former judges in other commercial courts. Under Articles 713-6 to 713-8, commercial delegates are officials who are elected for a period of five years in the district of each chamber of commerce and industry.

The following persons can participate in the election of commercial delegates:

i) Traders entered in the Commercial and Companies Register in the district of the chamber of commerce and industry.
ii) Company directors registered in the trades register and the Commercial and Companies Register in the constituency.
iii) The spouses of the above two categories who are involved in the business and not engaged in any other gainful employment.
iv) Master mariners or merchant marine captains in command of a vessel registered in France whose port of registry is situated in the district, inshore pilots working in a port situated in the district, aviation pilots domiciled in the district who command an aircraft registered in France.
v) Commercial companies through a representative

vi) Executives employed in the commercial, technical or administrative management responsibilities in those commercial companies

In order to be part of an electoral college, the candidates need to satisfy the following eligibility criterion:

i) They have to be above 30 years of age and meet the condition of nationality as per the electoral laws of the country.
ii) They have not received a criminal conviction for dishonourable conduct, lack of integrity or an offence against public decency
iii) They are not personally subject to or do not work in a commercial company that is subject to judicial restructuring or liquidation proceedings.
iv) They have not been declared bankrupt in the last 15 years prior to their election
v) They have not been prohibited under the French Penal Code from entering into an industrial or commercial transaction or occupation in a commercial company. (Conner, 1905)

Therefore, broadly we can see that judges of the France's Commercial Courts are elected from the business community who hold senior positions in business activity like, business entrepreneurs, general counsels for major corporations, senior managers in engineering, trade, insurance, banking and financial services etc. Since they are business men, they understand the specific needs of the business community and are well versed with its rules and practices. Their experience of the business world reflects a thorough knowledge of its technical as well as commercial aspects. The head of the treasury of a multinational corporation, or bank, can easily comprehend the intricacies of complex financial transactions, and similarly, the chief engineer of a construction company will value the technical specifications applicable to an important industrial project. (Segonzac, 2021)

Since, the Commercial Court in Paris has an international chamber, the judges in these courts have experience of working in other English-speaking countries and the proceedings in these chambers are bilingual (English/French). (Vialard, 2018)

Law 2016-1547 of 18 November 2016 on modernising the justice system for the 21st century added subjection 2 in Article 722-17 which makes it mandatory for all elected commercial judges to undergo initial training and continuing training organized under conditions set by decree. In the event, they do not take that training, his appointment will be set aside or he would be deemed to have resigned. (2016)

Ordinance No. 58-1270 of December 22, 1958 on the organic law relating to the status of the judiciary made it mandatory for the judges in France, both career judges and magistrates to undergo training in the National School for the Judiciary. It was set up by the French President Charles de Gaulle and the father of the current French Constitution, Michel Debré. It organises seminars and custom training courses for judges during service and even initial training programmes before they get elected.

China

Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court 2018, established two dedicated International Commercial Courts in China, as the author has described earlier. Article 1 clearly tells us that the CICC is a permanent adjudication organ of the Supreme People's Court. Therefore, judgements passed by CICC will have the same status as that of Supreme People's Court. Article 4 of the Provisions tells us that judges in CICC are appointed by the Supreme People's Court from practicing senior judges who possess a rich experience of working with international treaties, international usages, and international trade and investment practices, and are effluent in Chinese and English as working languages. However, all proceedings in CICC are in Chinese and even though it is an international commercial court that caters to foreign litigants, only Chinese nationals are eligible to be appointed in the CICC bench. (Tirkey, 2023)

Although foreign judges cannot preside over the CICC, they can form part of the International Commercial Expert Committee provide expert legal advice, and will guide judges sitting on the CICCs in ascertaining the content of foreign laws. Additionally, they also help in mediatingcases when parties choose to mediate their disputes in CICC. Under The Working Rules of the International Commercial Expert Committee of the Supreme People's Court (For Trial Implementation), 2018, the Expert Committee members provide advisory opinions on complex legal issues concerning international treaties, international commercial rules, finding and applying foreign laws involved in cases heard by the International Commercial Court. (Du, 2020)

The Judges Law of the People's Republic of China, was adopted at the Second 19th Meeting of the Thirteenth National People's Congress of the People's Republic of China on April 23, 2019. This statute details the manner of appointment, removal, duties and responsibilities of judges presiding in the Basic People's Courts, Intermediate People's Courts and Supreme

People's Courts in China. Therefore, this law equally applies to the judges of CICC, since the later is a part of the Supreme People's Court of China. (1995)

Under The Judges Law, Chapter IX, it is compulsory for all changes presiding over any bench in the Chinese judicial system to receive training. Judges should be trained in a political, theoretical, and professional manner. The results of these trainings shall be the basis of appointment and promotion. In that regard, we must mention The National Judges College (NJC) which is a government-sponsored institution directly under the Supreme People's Court. NJC's primary goal is to offer education and training programs for Chinese judges. Therefore, if the Supreme People's Court feels, it may ask the CICC judges to undertake any of these trainings during service. To strengthen the training of the judiciary, the Supreme People's Court issued the National Court Education and Training Plan, 2019-2023. This plan emphasised on judicial capacity training with a focus on the standardization of trial execution, litigation mediation, retrieval of similar cases, unified judgment standards, and reasoning of judgment documents, etc. Strengthening capacity of the judiciary in the CICCs or all other courts in China, would help China serve as a desirable forum of resolving commercial disputes arising out of the 'Belt and Road' initiative, one of the most significant infrastructure projects in the country.

In 2015, The Opinion of the Supreme People's Court on Providing Judicial Services and Safeguards for the Construction of the "Belt and Road" by People's Courts was released. Most disputes arising out of the BRI initiative are commercial disputes. Article 15 of the Opinion states that Chinese judges need to be trained for increasing their professional capacity and improving overall judicial quality. Similarly, it should be an objective to collaborate with universities to develop training and teaching plans to train and prepare a pool of international legal practitioners. (2015). This is part of the Supreme People's Court's 2019-2023 National Court Education and Training Plan.

Singapore

As per the Constitution of Singapore 1965 and the Supreme Court of Judicature Act (Chapter 322) 1969, Singapore is a country with a unicameral legislature where the President is the Head of the State and the Prime Minister is the Head of the government. All judges in the Supreme Courts of record – the High Court and the Court of Appeal are made by the President in concurrence with the Prime Minister. The SICC is a part of the General Division of the High Court. Under the Supreme Court of Judicature Act, 1969, the President of SICC is designed by

the Chief Justice from Supreme Court Judge, a Senior Judge or an International Judge. Every proceeding in SICC is either heard by a single judge or a panel of 3 judges.

Unlike China, the Commercial Court in Singapore allows foreign nationals to serve as its part time judges. Like other domestic judges, they too are appointed formally by the President in consultation with the Prime Minister and the Chief Justice. There are no prescribed qualifications for international judges in the SICC Rules 2021 or the Supreme Court of Judicature Act 1969.Therefore, it is upon the Chief Justice's discretion to make recommendation for the appointment of an international judge and assign them to an international commercial dispute on an ad-hoc basis. They are primarily prominent lawyers in foreign jurisdictions who serve to bring a wealth of experience and expertise to the workings of the SICC and enhance the standing of the SICC as an international court. (Huo & Yip, 2019). They are however subject to Judicial Code of Conduct for International Judges Of The Supreme Court Of Singapore 2020. (2020). So far, there has been a total of 16 international judges appointed in SICC. Most of them are retired judges who have significant judicial experience in English and Australian law practice. This is an unsurprising trend since Singapore shared its common law heritage and jurisprudential links with both England and Australia, therefore, former English and Australian judges are more suited to adjudicate upon disputes at SICC. Similarly, if an appeal lies from a SICC judgement, it is heard either by a single judge or a panel of 3 judges out of which at least one is an international judge. (Report of the Singapore International Commercial Court Committee, 2013).

As a jurisdiction, Singapore takes the training of its judiciary very seriously. In 2015, Chief Justice Sundaresh Menon launched the Singapore Judicial College within the Supreme Court of Singapore. Its objective is to institutionalise and pull together the various judicial education programmes that had been developed over time and enhance the ability of the courts to discharge their judicial functions. The college will also organise educational programmes and offer technical assistance for judicial officers or judges from other jurisdictions and encourage international interactions. Even judges of subordinate state courts that often resolve civil and commercial disputes of domestic nature undergo training under Judicial Education Board set up in 2010. The Board conducts induction programmes for new judges, continual training for judges in service and helps in building a learning community of judicial practice. (Singapore Judicial College Annual Report, 2015).

4.2.5. Assessing performance of commercial courts: periodic review – Parameter No. 5

United States of America

In USA, each state has identified its own mechanisms of reviewing performance of its trial courts. This review helps them improve the court system and the litigation culture permeating those courts, so that as a business destination, these states can keep flourishing. For example, in New York, The Division of Technology & Court Research (DoTCR) publishes regular data and statistics on various courts under the New York Unified Court System. It comes up with a State Case Load Digest every year. There are also separate spaces where one might find the civil summons data in a year. Although there are not any separate distinguishable data available for the Commercial Division, one may look at the data including the Annual Report to understand how well the Division is performing. (Court Data and Statistics, New York State Unified Court System)

Additionally, since 1975, The Conference of State Court Administrators (COSCA) and the National Center for State Courts (NCSC) publish the State Court Guide to Statistical Reporting which helps in comparing the different state court caseload statistics. A good representation of state courts caseload in a jurisdictional, regional, or national context helps policy makers get useful insights for making budgetary and court management decisions. (State Court Guide to Statistical Reporting 2023)

However, to monitor the performance of the Commercial Division, Judge Lippman created Task Force on Commercial Litigation in the 21st Century. On the basis of this Task Force's Report, a Commercial Division Advisory Council was created. The Council comprised of individuals from around the state of New York who possessed rich experiences and ideas that will play a critical role in helping the Commercial Division more effectively serve the needs of the business community in today's challenging, constantly evolving litigation environment. (Lipton & Judith, 2012).

Similarly, in Delaware, the Delaware Court of Chancery also publishes statistical information on its website along with the Delaware Chancery Court Review.

United Kingdom

In the United Kingdom, the judiciary of England and Wales annually releases the Commercial Court Report. This Report gives an overview of the Commercial Court's work and decisions making in the last one year and gives its readers an idea of the recent initiatives and projects

that the judiciary has undertaken to improve the service it provides to its users. Alongside that, it also reviews performance of the London Circuit Commercial Court and the Financial List, managed jointly by the King's Bench and Chancery Divisions. It also provides a detailed description of the volume of new claims, hearings, arbitration applications, disposals etc. that helps one compare how well the Court has performed in comparison with previous year. Additionally, it provides information about new judges' appointment, or continuation of older judges and separately identifies how many foreign litigants access this court. This data helps one understand how relevant and trusting this forum is to global litigants and how the English judiciary should improve looking at the response it receives from them. (Aikens, 2009)

In order to ensure that the Commercial Court resolves disputes in a way that it serves the interests of national as well as international commerce, it largely depends on constructive suggestions and advice of its litigants and practicing professionals, for its improvement. To streamline this flow of information and channel of communication, the Commercial Court User's Committee was formed by the Lord Chancellor in 1977 under the chairmanship of the judge in charge of the Commercial List, then Mr Justice Kerr. The Committee provides a direct link between the commercial users of the court and the court itself, for the purpose of improving the service the court offers. Any user, litigant, or practitioner may write to the Secretary to the Commercial Court Users Committee, suggesting any improvements, comments on its Practice Directions, procedural rules, the Commercial Court Guide etc. The Committee also meets quarterly to discuss progress areas and any other concerns that it deems fit. The minutes of meetings of this Committee is also available for the public/litigants to view on the website. (Kerr, 1978)

France

In France, there are a total of 141 Commercial Courts; of these the Paris Commercial Court is the most popular one. Since the Commercial Court in Paris and the Paris Court of Appeal have international chambers, they have dedicated websites and registries detailing the different functionalities of the courts. Since the Paris Commercial Court also addresses applications from insolvent companies, company registration, companies suffering from poor financial health, they have a distinguished Registry Office called Greffe Du Tribunal. It also takes out quarterly barometers of the Paris Commercial Court on its website. The Barometer shows the quarterly status of the number of pending proceedings before the court and the total number of judgments that were delivered against the same. It also reflects the number of summary judgements

delivered and its rate of increase or drop as compared with the previous quarters. Finally, it also states the total number of conciliation proceedings that were opened during the quarter and the number of them that were successful. (2022).

Aside from that, the Registry of every Commercial Court or Tribunal De Commerce publishes an annual activity report of the court, to give an idea to litigants about the performance of the court. For companies who access the Commercial Court, the later maintains the statistical information about the total number of insolvency applications, proceedings conducted, judicial liquidation orders etc.

Additionally, once a litigant accesses the Digital Court and creates his account, he can progress the monitoring of any case. The litigants can very easily follow their cases in real time and to directly receive the decisions rendered.

China

In China, the Procedural Rules for the China International Commercial Court of the Supreme People's Court (For Trial Implementation) does not make it mandatory for CICC to publish any statistical information regarding the number of proceedings that it addresses in a year. However, on 28 Dec. 2022, Beijing Commercial Court held a press conference to report its work on 'Enforcement Cases Involving Applications for Recognition and Enforcement of Foreign Arbitral Awards and Court Judgments' in recent years, and released ten typical cases. This Report gave the litigants some form of an insight on how the Beijing Commercial Court is performing. Although the infographics in the website of the Supreme People's Court reflect the achievements of China's courts in the last decade, there are no data on the recently established Commercial Courts. In 2021, China released an annual report on international business arbitration, which quoted that 208,711 financial cases were handled nationwide in 2021, accounting for 50.18 percent of total cases, while the number of real estate cases reaching 37,162, accounting for 8.94 percent. However, the report was silent on commercial cases that have come in front of the CICCs. (Li et al., 2023).

Singapore

In the previous section, we saw that the SICC is an important forum for resolving international commercial disputes, and provides a strategic advantage to businesses operating in the Asia-Pacific region. Since it is a part of the General Division of the High Court, the later maintains case load statistics yearly. The same reflects the number of cases filed before the General

Division in that particular year and the number of cases disposed off in that year. Further, SICC comes up with a Newsletter that highlights the events undertaken by it including webinars, symposiums, previous reviews, interviews of judges every month. Additionally, it publishes case summaries and judgements on its website. One may also find important information on a specific commercial case, by contacting the SICC Registry. (Yip, 2016).

Therefore, even though we do not have an exact figure on the total number of commercial disputes that SICC handles each year, its performance can nonetheless be monitored through the above information of the cases made public on its website.

4.3. Lessons to learn for India

As compared to the above jurisdictions, India as a country is new to the commercial dispute resolution space. Until 2015, it concentrated mostly on developing alternative dispute resolution framework, since most domestic as well as foreign litigants chose arbitration or mediation to resolve commercial conflicts. Not too many commercial litigants came to civil courts in the country to get their disputes resolved. In fact, it would not be wrong to say that Indian civil courts were particularly unpopular among commercial litigants who were looking for a fast resolution of their disputes. The author has talked at length about our courts' backlog problem and how the same triggered the enactment of CCA, 2015 in Chapter II. The two Law Commission Reports of 2003 and 2015 which were the primary tools for enacting the CCA, 2015 mention that the Commission studied the Commercial Courts in various countries before deciding on the framework of the 2015 Act. Even other countries' ease of doing business reforms and attempts to improve the commercial dispute resolution space helped the Indian Parliament to introduce the 2018 Amendment to the 2015 Act. This Amendment introduced a lot of new mechanisms like the Pre Institution Mediation, assistance of Commercial Courts in arbitration related litigation etc.

However, its been 8 years since the passing of this Act. The author has studied five different countries – USA, UK, China, France, and Singapore on different parameters. The objective of this section is to understand where India can learn and improve its commercial courts from these frameworks.

- **Hierarchy and Structure of Commercial Courts**

India is quasi federal constitution. As per the 2018 Amendment to the CCA 2015, Commercial Courts are established in at the district level as Commercial Courts as well in High Courts as Commercial Divisions and Commercial Appellate Divisions. The structure of these courts and

their positioning in the Indian judicial structure varies from cities where High Courts enjoy original civil jurisdiction as opposed to those cities where the High Courts do not enjoy original civil jurisdiction. In USA, since it is a federal constitutional system, has Commercial Courts, more popularly referred to as Business Courts at the state level. It is the states in USA, who establish the framework of business courts and decide their jurisdiction to handle disputes. The only Federal level court that could be referred to as the Business Court is the US Bankrupcy Court. Similarly, in UK, the Commercial Court is a part of the Business and Property Courts in England, which is a branch of the latter's High Court. In France, it is a specialist first instance court that is established separately from its civil court, while in China and Singapore, its part of its Supreme Courts. In all these jurisdictions, the Commercial Courts are positioned differently however, we ought to capture the focus all of these countries have made towards making this court a specialist forum of commercial disputes. For example, UK not only established the Commercial Court separately from its other civil courts but also introduced separate lists like the Company List, Intellectual Property List, Financial List, Business List all of which come under the umbrella of Business and Property Courts of England. When you categorise commercial or business disputes into different lists, each dispute is going to get attention of the judges and resources allotted to the lists. Thus, a Financial List judge will only hear disputes coming under the Financial List. Similarly, in Singapore, France and China, the Commercial Courts are established as completely separate first instance courts who have dedicated judges and judicial resources which assist in giving quick resolution of commercial disputes. Unfortunately, in India, our Commercial Courts are established as part of the district courts or High Court Divisions, and often judges of these civil courts preside over these Commercial Courts as judges. This has the probability of taking away the most important objective of establishing this framework – establishment of special forums. Thus, the author would like to conclude that even if Commercial Divisions run in our country as part of High Court or there are Commercial Courts at the district level, they should be completely independent from other civil courts in the true sense. (Tiba, 2016)

- **Scope of Commercial Disputes**

Each of the jurisdictions mentioned above has described the scope of 'commercial disputes' and by extension, stated the type of disputes that can be handled by the commercial courts. In USA and China, we have seen that their courts at the first instance determine the 'complexity' component of a commercial dispute or assess if the same will have a major impact on the economy of the country, therefore only some types of commercial disputes that are ought to create a significant precedent is subject to the attention of the business or commercial court.

UK however, has forums other than the Commercial Court which entertains commercial disputes; for example in the Business List, business disputes go to the Chancery Division. Therefore, the Commercial Court in UK handles commercial disputes, however a vast volume of the same is entertained by King's Bench and Chancery Division as well. Interestingly, the Commercial Courts of France not only entertain commercial claims but also assist in bankruptcy, insolvency and liquidation of commercial companies, which in India is exclusively handled by the National Company Law Tribunal (NCLT). Singapore and China's Commercial Courts make it very clear that they solely resolve commercial disputes that have an international component. China further does not describe what encompasses a commercial claim and only states that if a dispute concerning commercial relations will have a major judicial impact. UK and France too have an international chamber reserved for foreign litigantsand transnational commercial disputes. The definition of 'commercial' disputes in all these jurisdictions is not vastly different from the definition provided under the CCA, 2015. France only adds disputes from anti-competitive commercial practices and unfair commercial practices can also come to their Commercial Courts. (2015). What is common in all of the studied jurisdictions however is that their Commercial Courts have a dedicated international chamber for exclusively resolving transnational business and commercial disputes. One can argue that India might develop a similar framework in the coming years, once the CommercialCourts established under the CCA, 2015 have performed as per the expectations of the legislation and its stakeholders. But we should not forget however is that in today's world, most commercial disputes are transnational or international in nature, therefore dedicating a specificjudge or a bench for them would not harm, rather benefit the commercial dispute resolution scenario in the entirety. If the Arbitration and Conciliation Act, 1996 could make a distinction between domestic and international commercial arbitration in its provisions, since having an efficient regime for the latter, only increases our judiciary's popularity; then we can make the same effort and reform with respect to our Commercial Courts. (Frisby, 2023). Another distinguishing feature in these international Commercial Courts, particularly in China and Singapore is that parties can choose to treat a dispute as a 'commercial dispute'; however, in India, a Commercial Court can only admit a dispute as a commercial dispute provided it falls within the list provided under Section 2(c) of CCA, 2015. (Sherwani, 2016).

- **Stages of commercial dispute resolution**

India has adopted the best practices when it comes to stages of trial in disposing off a commercial dispute. Like most of the jurisdictions mentioned above, the CCA, 2015 has put a

lot of emphasis on Pre-Institution Mediation and Case Management. Every single stage of the dispute resolution process is subject to strict timelines so that all commercial disputes irrespective of complexities can be resolved within a designated timeframe. Since, our model of commercial courts is largely based on that of UK, we may be willing to adopt the different types of trial - an expedited trial in case of sufficient urgency and importance, b) shorter trial scheme c) flexible trial scheme and lastly d) a trial of issues as followed by the UK Commercial Court. These trials are suited to the specific type of commercial dispute and further contribute to solving it faster without too many procedural formalities. Most commercial disputes in today's business environment are transnational in nature. In 2019, Hague Conference on Private International Law announced the conclusion of a new international convention, the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the Judgments Convention). Signatories to this Convention must ensurethat judgments passed in civil or commercial matters in other contracting States are enforced in their jurisdiction, without review of the same in merits. USA and EU (except Denmark andUkraine) have ratified the same. This ratification automatically makes the commercial courts of these countries an attractive forum since the latter caters to a cast number of foreign litigants.Although India has a relatively new commercial court structure, it too witnesses a lot of international commercial disputes. Therefore, ratifying this Convention and makingcommercial dispute resolution easy for the foreign commercial parties will significantlyincrease India's chances of becoming a global investment destination with excellent judicial infrastructure. (Bookman & Erie, 2021)

- **Appointment and training of judges presiding over commercial courts**

With the exception of France, all of the other mentioned jurisdictions appoints judges of their respective Commercial Courts from the members of their judiciary. It is pertinent to note that every single judge presiding over the commercial court is a specialist experienced with solving complex commercial disputes. The CCA, 2015 makes it mandatory for the Chief Justice to only appoint those judges while constituting the Commercial Court or Division, who have experience in commercial matters. Further, it gives responsibility to the State government to establish the necessary infrastructure and training facilities to the Commercial Court judges to improve the quality of justice served. While these provisions are worthy of appreciation, India has not been able to streamline the training process like USA with the Judicial Training college, National Judicial College in UK, Singapore Judicial College etc. There have been some workshops and training conducted prior to establishment of commercial courts in 2015, but no

institution has been established who can specifically train these judges of the commercial courts. France, lets the business men with commercial expertise man the benches of its Commercial Courts; although a similar practice cannot be adopted in India, completelyignoring the constitutional values. What we do learn from these countries, is the emphasis theyput on ensuring that commercial court judges are experts in commercial matters and monitoringthat the expertise continues through the course of that appointment. A viable suggestion for India could be that they make it mandatory for a judge to complete training in commercial lawand practice before presiding over the bench of a commercial court. Otherwise, in the absenceof such rigorous and strict requirement, it would not be possible for these judges to stand up tothe expectation of the CCA, 2015 and its litigants, and we would eventually end up filling up seats in the Commercial Courts with ordinary civil court judges. (Verma, 2022)

- **Assessing performance of commercial courts: periodic review**

In the above jurisdictions, all commercial courts are subjected to strict monitoring of its functional and operational capacities. India too has made it mandatory under the CCA, 2015 for all Commercial Courts and Divisions to upload all data pertaining to the disputes it handles on its website. Under The Commercial Courts (Statistical Data) Rules,2018, it is a mandate to publish and disclose statistical data regarding the number of suits, applications, appeals, or writ petitions filed in the respective court, in a uniform format. While this data gives us an idea of the monthly caseload of the courts, and compare how well the same is improving since the day of its establishment, there is no concerted effort by the government to analyse this data and give actual feedback on how the court has been performing every month. (2022, July 17). It isleft to the litigant or the viewer on the website to compare the data month wise and draw any conclusion. In UK, the Commercial Court in London comes up with an Annual Report and a Commercial Court Guide, which includes commentaries and suggestions from experts on how the same has performed in the last one-year basis the case data that is uploaded. Subjective feedback of a similar nature can help a country like India to make accurate and specific changes in the existing structure and manner of things. It is only then; can we say that our Commercial Courts are monitored on a real basis. (Buscaglia, 1999)

4.4. Conclusion

In conclusion, the author would like to state that a comparative analysis of any domestic framework with that of other countries actually helps us understand where we stand in the

global perspective of things. Just as a study of commercial court models were important and taken up by the Law Commission in 2003, before coming up with the first model of Commercial Divisions in India, similarly, this analysis should be done on a periodic basis to assess how well India is doing as a jurisdiction when thought of as a destination of commercial dispute resolution. The analysis has helped the author understand and identify areas for improvement that we can make to our commercial courts. India has believed in the principle of 'easier enforcement of contract' since 2014. A major determinant of that is the range of efforts that countries have made to improve and better the commercial dispute resolution spacein their economies. (Murrell, 2001). The only way to identify why India is lagging behind thesecountries in the World Bank Report, even though some of these countries like Singapore, Chinaetc have new commercial courts, is to see and carefully observe how these courts are functionating. Through identifying these loopholes, we will be able to better work towards improving the 'ease of doing business' in the country. The objective of this Chapter was to answer that very question of why we are not number one on the World Bank Report, so that theauthor can carefully elaborate on suggestions in the final part of his thesis.

CHAPTER V - CONCLUSION AND SUGGESTIONS

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The objective of this Chapter is to draw the important conclusions of the study conducted in the previous Chapters and suggest significant areas of improvement. Through these conclusions and recommendations, the author will prove the two hypotheses, drawn at the beginning of this thesis. Additionally, the conclusions of each chapter aim to show that the research objectives have been achieved and the research questions have been answered.

5.1. Overview of the benefits of the Commercial Courts and Commercial Divisions under The Commercial Courts Act, 2015

The Commercial Courts Act, 2015, aimed to expedite the resolution of commercial disputes in India by establishing commercial courts at various levels and enhancing the jurisdiction of existing courts. (Khaware, 2023). Some of the fundamental benefits of this legislation are as follows:

- **Increased Efficiency in Dispute Resolution:** The Commercial Courts Act, 2015, has shown promising signs of increasing the efficiency of commercial dispute resolution in India. By setting specific timelines for the disposal of cases and mandating pre-institution mediation, the Act has helped in reducing the backlog of cases and provided a predictable framework for businesses. (Kent, 2023)
- **Enhanced Investor Confidence:** The Act has had a positive impact on investor confidence in India. The establishment of specialized commercial courts and the speedier resolution of disputes have made the business environment more favourable for domestic and international investors, encouraging foreign direct investment and fostering economic growth. (Bureau, 2023)
- **Challenges in Implementation:** Despite its significant potential, the Act has faced some challenges in its implementation. These includes inadequate infrastructure and resources, procedural complexities, and varying levels of efficiency across different courts. Addressing these issues is crucial to fully realize the Act's objectives. (Arora, 2018)
- **Role of Technology**: The successful implementation of the Commercial Courts Act, 2015, heavily relies on leveraging technology to improve case management, document

handling, and communication among stakeholders. Emphasizing the adoption of technology could further streamline the dispute resolution process. (Lee, 2018)

- **Expanding the Scope**: While the Act has focused on commercial disputes, its success may encourage policymakers to consider expanding its scope to cover other areas of law to ensure a more comprehensive and efficient justice system.
- **Global Comparisons:** Research into similar legislation and commercial courts in other jurisdictions have provided valuable insights into best practices and potential improvements for the Indian commercial courts. (Blair, 2019)

5.2. Chapter wise findings drawn from the study

In the following section, the author will explore the conclusions that are drawn from each Chapter to test the hypothesis and answer the associated research questions and objectives simultaneously.

5.2.1. Chapter I – Introduction

The author begins this thesis by exploring the scope of 'commercial law' and thereby, 'commercial disputes', referring to its jurisprudential foundation. The jurisprudential history points out one very important facet of evolution of commercial law – its relevance being routed to secure property rights and enforcement of contracts. Historical experts pertaining to commercial law have written that this body of law developed in order to cater to a very specific section of the working class in the 1600s – merchants. (Berger, 2023). It was the mercantile practices, rules, regulations, and customs which made up the initial body of commercial law practice. This body of commercial law developed as a branch of civil law with its own norms and practices suited to the mercantile community and litigators, and eventually got recognised by the judicial community. (Winship, 1990). Amongst other norms, one of the most significant features of this 'commercial law' was the fast-paced procedures it incorporated to resolve the disputes. Further, jurists have confirmed that commercial law practice laid importance on 'certainty' of rules and established norms. This is because the merchant community could not afford to be governed by a set of norms that were not predictable in nature when used to resolve disputes. (Pihlajamäki, 2018). Once recognised by the judicial community, these set of rules went on to establish specialised 'merchant courts' that used commercial law and norms to amicably solve commercial disputes of 'merchants' and other 'commercial' litigants. (Lis,

1996) Therefore, historically, commercial law developed simply as a branch of civil law, that incorporated expedited procedures to resolve disputes amicably between merchants who wished to maintain their commercial relationship, even after such resolution. (Kadens, 2004). The author in this Chapter, thereby looks at the place and status of 'commercial law' in the traditional court system of India – civil courts and criminal courts. Up until 1991, the Indian government did not dictate any specific development that would exclusively benefit the commercial or business community in India, particularly with respect to their business disputes. It was only after the 1991 policy of liberalisation, globalisation and privatisation, which majorly sparked the number of commercial disputes in the country, that the Indian governmentstarted contemplating establishing specialised 'commercial courts' solely dedicated to disposal of 'commercial disputes'. (Garavaglia, 1991). Countries from whom India expected to invite investment and set up strong commercial ties mostly has well established commercial dispute resolution system in courts. The investors from these countries showed a trend of avoiding the Indian courts for disputes that arose rose out of commercial relationships or transactions in India. (Forbes, 2001). In order to boost their confidence and cater to their need of expedited dispute redressal, the Law Commission proposed setting up Commercial Divisions in High Courts in the country. Although it would not be correct to say that there were no previous attempts to streamline the commercial dispute resolution in the country. Tribunals such as NCLT, NCLAT, IPAB, SAT etc. dealt with a fair amount of commercial litigation; as well as attempts were made to make arbitration easy and accessible to commercial parties under the Arbitration and Conciliation Act, 1996. Initially, since these commercial courts were only designed to address commercial disputes that happened to be of a high specified value, the initiative of the Law Commission faced opposition and objection. (Mondaq, 2015). The biggest criticism of these courts was that the Law Commission discriminated between commercial litigants and ordinary litigants, and placed the former at a subsequently advantageous position by providing them access to expedited procedures. The critics went on to state that since most commercial parties were wealthy litigants, these courts only addressed elitist concerns. (Chaudhari & Amin, 2019). These criticisms however could not stand the test of time and after almost a decade later, the CCA, 2015 was successfully enacted. Alongside addressing the concern over effective commercial dispute resolution, it brough India to a good rank in the World Bank's ease of doing business index. The Statement of Objects and Reasons of the 2015 Bill, stated that one of the primary objectives of introducing the Bill was to improve the litigation culture in the country which will go on to improve Indian judiciary's image to the world. In the light of the same, the author finds it imperative to examine the performance and

contribution of these commercial courts to improve the commercial dispute resolution scene in the country. (Singh, 2020).

5.2.1.1. Findings:

1. The jurisprudential history of commercial law tells us that this body of law distinguishes itself by incorporating two fundamental elements – expedited and flexible procedures and predictable outcomes, both of which largely suit the business community. Therefore, any specialised court or dispute resolution forum aiming to cater to the business class and commercial community, largely have to incorporate these two elements.
2. Additionally, the older commercial courts or merchant courts ensured that the disputes between the parties were resolved amicably, so that their commercial relationship can continue unhinged after such resolution. A commercial court set up in today's time also needs to incorporate the same philosophy.
3. It has been eight years since the enactment of the CCA, 2015. The initial model of commercial courts that was suggested aimed to introduce a minor reform by setting up Commercial High Court Divisions which could later transform into a structural reform of the subordinate court structure on the civil side. But after 2018, in order to come within the purview of the World Bank study, more commercial courts were set up at the district level. Unfortunately, no corresponding budgetary allocation for such a radical cultural transformation of these new lower courts was done.
4. While enacting the CCA, 2015, the legislature could not provide a logical rationale of drawing a distinction between civil and commercial disputes, aside from the value. The pecuniary value, too, has sharply, gone down from 2015 to its 2018 amendment. The broad definition of 'commercial disputes' under the legislation is not only superfluous but also can negate a subject matter assessment while determining whether a dispute is a 'commercial dispute'. This finding has been further investigated and elaborated by the author in Chapter III of the thesis.

5.2.2. Chapter II - Historical Evolution Of Commercial Dispute Resolution in India

In the second chapter of the thesis, the author begins by exploring the evolution of commercial law particularly in England. In the early 1800s and 1900s, the jurists and legal experts in

England univocally agree that commercial law developed due to the efforts of the then merchant community. These merchants over the years through a trial-and-error process established a market system, and the institutional arrangements that best served such market economy prevailed. Therefore, philosophers and jurists of this era believed that the development of commercial law in England should be credited solely to the efforts of the merchant community who were entirely capable of creating and enforcing their own law. (Coombe Jr, 1999). It was not the coercive power of nation states that created this new branchof legal system. The author has moved ahead to explore the commercial rules and practices inancient Greece and Rome. Those markets were governed by commercial codes and commercialtreaties signed between the nation states and merchants involved in trade and commerce. Mostly those rules and codes were based on local customs and varied between nation states. Interestingly, it was the presence of foreign merchants in these markets that led to the codification of commercial rules. The development of commercial law in England however took time till the 13th century to take pace. (Kadens, 2015)

The author moves forward to describe the importance of commercial justice in today's times. At an age where the power of currency has replaced the power of the sword, it is the economic power of a nation that secures its position in the world. Therefore, to maintain social bias, and to take care of the economic interests of the society, it is pertinent for nations to have in place an efficient commercial dispute resolution system, that determines and reviews the actions of private agents and state. This dispute resolution machinery needs to create an institutional environment conducive to robust commercial activity. It not only wins the confidence of the foreign litigants but also prevents a home-based entrepreneur from getting caught up in litigation hassle for years. (2021)

The primary objective of Chapter II is to study the historical evolution of the Commercial Courts Act, 2015 and how the same has largely drawn from the experience of commercial law jurisprudence that developed in United Kingdom over the past two decades. Therefore, the next section traces the development of the early commercial courts of England and the series of reforms that the English common law system underwent to establish the commercial court that we see today. The reforms tell us that a commercial court became an urgent necessity in England, since most commercial litigants preferred having their disputes resolved through arbitration and showed very little confidence in the common law court system. However, the three most important attributes of a commercial court or a commercial dispute resolution forum even in the early stages of its developments were – expedition, predictable outcomes, low cost

of litigation. (Browne et al., 2022). The early scholars of commercial law further pointed out that there is no hard and fast definition of the word 'commercial' and it is only the circumstances of a particular dispute that determines whether the same has a commercial flavour or not. The success of the commercial court in England translated itself to other British colonies, wherein in India, the High Court Original Side Rules incorporated a 'Commercial List'. The author goes on to find that the Commercial List did not prescribe any shorter timelines and easier enforcement mechanisms, and simply gave the judges, discretion to dispose of matters within the existing drill of the same provisions for ordinary suits. (Prasad, 2021). Therefore, the incorporation of commercial list can hardly be called a development in the commercial litigation space. Further on, the author studies the various reforms suggested by the Law Commission and statutory committees that highlighted the growing concern over pending cases in the judiciary and recommended ways in which justice could be administered in faster efficient ways. Moving forward, the author specifies the glaring impact of the 1991 policy which introduced administrative law reforms for eliminating constraints to effective decision making and finally, judicial reforms for faster dispute resolution and easier enforcement of contracts. (Chandran, 2022). Even though, statutory tribunals by then had come up to resolve delays in specific domains, the Parliament and the Supreme Court were convinced that the tribunals could not decide any substantial questions of law. Therefore, they had little contribution towards resolving judicial delays and pendency clogging the justice system. In fact, they were themselves struggling with delays, inefficiency in administration, lack of staff, lack of infrastructure etc. Simultaneous reforms were made the commercial court in the United Kingdom. The commercial court that was established in 1889 was struggling with the initial promise of swift and inexpensive litigation and instead became sclerotic and expensive; driving commercial litigants to take recourse to alternative dispute resolution procedures like arbitration. (Wagh et el., 2023). Even in India, the economy struggled with the increasing commercial disputes post 1991. Tribunals were not sufficient to deal with them and the Parliament strongly felt that the civil courts of the country needed ardent transformation to deal with the crisis at hand. On top of that, they were constantly criticised by the foreign courts and litigants which was pushing further away India's dream of reaching a good rank in the EODB Index.

The author then goes highlight the various challenges that an economy faces in the absence of a strong contract enforcement regime. This is the first research question and research objective of the author. The author states that a strong and efficient contract enforcement regime in the

form of a commercial court or dispute resolution forum not only provides relief to aggrieved contractual parties but encourages other to stick to their contractual obligations in fear of court fees and fines. Aside from establishing an inefficient legal system, it also increases overall risk to return ratio; due to increased legal costs and disposal time. (Lenin, 2020). For example, banks are unwilling to provide loan to businesses since recovering it back though the legal regime could be a tedious task. Other indirect costs, like excessive vertical integration of businesses and growth of indirect channels of dispute resolution, must be borne by the economy. These informal methods of dispute resolution could subsequently these middle menand facilitators with undue power and influence, thereby increasing corruption in the economyand undermining the rule of law. (Singh, 2022). The term 'contract enforcement' is used by theWorld Bank as determining one of the indicators of 'ease of doing business' and has never beenused by the Law Commission in India. But the judicial environment over the years and fear fora poor contract enforcement regime pushed the Law Commission to come up with The Commercial Division of High Courts Bill, 2009 in 2003. After battling the oppositions of the Rajya Sabha in 2009-2010, in a second Report, the Law Commission proposed The Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015. With this, the Parliament was convinced that it is sending a very clear signalto the foreign investors about the scale of reforms India is undertaking to make business smoothand easy for them; so that all commercial contracts entered by them, can easily be enforced without getting caught up in the slow inefficient judicial system. One of the most notable pointsof discussion in this historical journey of commercial reforms was fixation of the pecuniary value of a commercial dispute. The Standing Committee which reviewed the 2015 Bill noted that the definition of 'commercial dispute' must essentially include a list of legislations whichdeal with commercial transactions, must be of a value of two crores irrespective of the critics of the Rajya Sabha in 2010 and should give a choice to litigants as to whether they want to treattheir dispute as a commercial dispute. Most importantly, the committee recommended that a pilot study needed to be done where vacancies in various District courts and High Courts of the country, need to be taken note of, before the Bill is enacted. None of these recommendationssaw the light of the day and the CCA, 2015 became a reality before it. (Tiba, 2016).Unfortunately, the Indian government was not satisfied with simply bringing forward this historic reform. Rather, in 2016, India's score on the EODB Index did not improve as the WorldBank study only captured commercial courts at the district level that were of much lower valuethan 1 crore. Therefore, in 2018, the first amendment to the CCA, 2015 was brought which reduced the value of commercial disputes to 3 lakhs only. This immediately increased the scope

for commercial litigants who were facing disputes of much lower value to knock the doors of the newly established commercial courts. Unfortunately, in 2020, two years later, even the World Bank withdrew its EODB Index.

5.2.2.1. Answering Research Question No.1/Research Objective No. 1

This historical study of the evolution of the commercial court in India shows us that the existing civil courts in the country were incapacitated to deal with commercial disputes due to inadequate procedural swiftness, lack of judicial resources and poor litigation attitude persisting amongst litigants and judges. These were the primary challenges for establishing an efficient contract enforcement regime, which answers the author's first research question. Overcoming these challenges required a significant policy change and change in attitude of how commercial disputes were perceived in the country. An efficient commercial dispute resolution system was essential for entrepreneurs to thrive and run their businesses smoothly. This need gave shape to the Commercial Courts Act, 2015, as we see today.

5.2.2.2. Findings

1. The commercial law in ancient Europe developed largely due to the efforts of the merchant community. According to the merchants, rules governing their disputes needed to ensure that an institutional resolution framework needs to be in place, which was flexible, swift and predictable. It is this philosophy that got translated to the beginning of commercial courts in England. Merchants couldn't risk affecting their business relationships between them and the opposite parties even in the case of a dispute arising. Therefore, commercial court or merchant courts devised ways to solve the disputes amicably.
2. A strong dispute resolution framework forms the backbone of an effective contract enforcement regime, which is conducive to robust commercial activity. Therefore, in order to overcome challenges of delays, lengthy procedures, pending litigation which make enforcing contracts difficult, countries need to ensure that their justice system is equipped with speedy and easy processes of resolution of disputes. The CCA, 2015 started on this notion back in 2003 when Law Commission proposed setting up commercial courts for the first time. When the CCA Bill, 2015 was first presented, one

of its Statement of Object and Reasons was to change the litigation culture in the country.

3. The CCA, 2015 draws heavily from the jurisprudential history of the Commercial Court in the UK. The changes that have occurred and the manner in which the English Commercial Court have also reflected itself in its Indian counterpart.
4. The Commercial Lists in High Court Original Side Rules did not satisfactorily create any difference in the commercial litigation space. That vacuum along with the 1991 policy, gave an even bigger push to the enacting of the CCA, 2015.
5. The Standing Committee in Rajya Sabha that reviewed the CCA Bill, 2015 suggested that a list of legislations should be included in the definition of 'commercial dispute'. They further stated that the pecuniary value of the same should be fixed at 2 crores, which makes the ambit and scope of the commercial court's jurisdiction, very niche. Additionally, a pilot study on existing vacancies of High Court and District Court judges was recommended. None of these suggestions were followed or even mentionedin the CCA, 2015.
6. The 2018 Amendment to the CCA, 2015 reduced the pecuniary value of the commercial dispute from 1 crore to 3 lakhs and established commercial courts at every district and some below-district level. It was mainly aimed towards coming under the World Bank study of EODB. In 2020, that study was terminated on grounds of data irregularities. Even though it vastly increased the volume and scope of disputes that could now come to the commercial court, no additional appointment of judges or other resources were done. Putting such a heavy emphasis on an external index for the legislative policy makers, pushes back the effort of commercial dispute resolution, which is a national concern.

5.2.3. Chapter III A - The Commercial Courts Act, 2015: An Assessment

In the previous Chapters, the author has studied how commercial courts have historically played a pivotal role in promoting fair and efficient resolution of commercial disputes in a fast-paced business world. These specialized judicial bodies have always aimed to address the unique complexities and intricacies of commercial transactions, ensuring a conducive environment for businesses to operate and thrive. With a focus on expediency, expertise, and commercial acumen, commercial courts tend to offer businesses a reliable and effective forumto resolve their disputes. The judges of older merchant courts with specialized knowledge in

commercial law and procedures have facilitated the swift and accurate adjudication of cases, reducing the time and cost involved in resolving disputes. Moreover, the enforceability of commercial court decisions, both domestically and internationally, enhances investor confidence and encourages cross-border trade and investments. This enforcement capability ensures that businesses can rely on the legal system to protect their rights and interests, irrespective of the jurisdiction in which they operate. (Reerink et. al., 2019)

The author in this Chapter has studied the CCA, 2015 and attempted to conclude whether its provisions do sufficient justice to the demand of commercial dispute resolution in the country. The success of any commercial statute especially one establishing new forums of commercial dispute resolution is contingent upon ensuring its practical implementation and the impact it has on the business environment. The assessment of the CCA, 2015 therefore has been done on the basis of the body of precedents that these commercial courts have produced in the last few years. That said, the author has also looked into how these commercial courts have dealt with arbitration related litigation. (Holder, 2023).

The author begins the Chapter by exploring the scope of 'commercial disputes' under the CCA, 2015 and how the same has been perceived by the judicial community in the last 8 years since its enactment. Since the definition of 'commercial dispute' under the Act is broad based and includes an inexhaustive list of agreements which may rise to commercial disputes, the author has looked at how High Courts, Supreme Courts and Tribunals have looked at 'commercial disputes' as a specific category of disputes even before the enactment of the 2015 Act. Even though specialised tribunals, High Courts often addressed commercial matters, them not being specialised forums, cannot be said to have catered to the needs of the business community. It was in 1985, when the Supreme Court in the famous case of ***LIC v. Escorts India Limited***., observed that commercial courts often waste the time and judicial resources of the court since it rarely involves issues of public interest. It in a way encouraged corporate giants to not come knocking doors of the country's apex court, since the disputes involving corporate entities rarely brought forward any worthwhile legal principles. In similar cases like these, the author has noted that courts felt reluctant to delve upon any issue or dispute that had a commercial angle. (Garimella & Ashraful, 2019)

However, the legal and economic climate in the country slowly led to the establishment of these specialised forums for commercial courts. Since, these courts were part of the civil court divisions at the High Court level or often presided over by the ordinary civil court judges at the

district level, the first set of challenges and petitions the commercial courts faced was on the basis of jurisdiction. (Chandran, 2022)

The jurisdiction of the commercial court was decided to be based upon the twin requirements – one, if the dispute was of 'commercial' nature and seconds, if the same was of specified value. In states where the High Court does not enjoy original civil jurisdiction, the State Civil Courts Act does not make the High Court as one of the classes of the Civil Court and further does not vest ordinary original civil jurisdiction to it. Therefore, even under Article 227, it cannot entertain commercial disputes. (Chandran, 2022)

IPR disputes, however, that are stipulated to lie at a court not below a district court will be entertained by the Commercial Division in the High Court, even if they do not have a stipulated value. The only difference is that they will not get the benefits under the CCA, 2015 even after being addressed by the Commercial Division. This stance was however refuted by the latest judgement which stated that all IPR disputes would be presumed to be of prescribed value and continue to be treated as commercial disputes by Commercial Divisions or Commercial Courts at district level. If the state High Court, does not enjoy original civil jurisdiction, then the IPR disputes either go to the Commercial Court at the District level, irrespective of value; or if it is a transferred suit, it would continue to disposed off by the respective High Court or Commercial Appellate Division. In both cases, the faster remedies of CCA, 2015 can be accessed and applied by the parties. (Ramasubramanian, 2015).

CCA, 2015 expediates the entire process of dispute resolution by prescribing a single window of appeal under Section 13. Section 8 additionally bars any revisions, applications and petitions against an order or decree of the commercial court. This bar was however declared to not override the supervisory jurisdiction of the High Courts either under Article 103 or Article 227. The Supreme Court judgement explaining the scope of Section 8 directed that High Courts should exercise this power carefully and withdraw from interfering with decisions as much as possible.

With respect to the different categories of disputes that the commercial courts in our country have seen, we can note the following types of disputes (Chandran, 2022) under Section 2(1)(c):

- Disputes arising out of mercantile documents, like financial transactions of fixed deposits, or a recovery of money based on the strength of a failed joint venture agreement. Therefore, if the transaction in business was based on a mercantile document, the same can be called a commercial dispute for all purposes

- Disputes arising out transactions having a commercial flavour, where both parties derived some benefits off each other
- Disputes arising out of a financial and not an operational lease
- Disputes arising out of export import of merchandise and services
- Admiralty suits
- Disputes arising out of transactions like a sale, lease or financing of any of the four categories – aircrafts, aircraft engines, aircraft equipment and helicopters etc.
- Disputes arising out of contracts under The Carriage by Road Act, 2007, Carriage of Goods by Sea Act, 1925, Multimodal Transportation of Goods Act, 1993 etc having a commercial flavour
- Disputes arising out of construction or infrastructure contracts. The Deputy Chairman of the Planning Commission in India defined the scope of 'infrastructure' under Sub-Committee of the Committee on Infrastructure Report. The same can be used as context for understanding the scope of this category of commercial disputes.
- Property disputes where the immovable property is exclusively used for commercial purposes and actually used for the same, in stead of being ready or likely to be used for it.
- Disputes arising out of various agreements as per the list provided under Section 2(1)(c)
- IPR disputes as discussed by the author in the previous paragraph
- Disputes arising out of insurance, reinsurance policies

Aside from mentioning the specified value of the dispute, the CCA, 2015 also guides us as to how this value will be calculated:

- If the dispute relates to recovery of money, then the valuation depends on the amount of money the plaintiff wishes to recover
- If the dispute relates to immovable property, then the market valuation of the same
- If the dispute relates to an arbitral award at the time of enforcement, then the value is the claim or counterclaim set out in the statement of a claim.
- The valuation of a commercial dispute however has to be done under CCA, 2015 without intentionally defeating the provisions of The Court Fees Act and The Suit Valuation Act.

In the next portion of the Chapter, the author has elaborated upon the different stages in dispute resolution like institution of plaint, to recording evidence etc. where the CCA, 2015 has

amended the CPC, 1907 to fast track the entire process of resolution. The biggest contribution to the same is the insertion of mandatory pre-institution mediation, which makes it compulsory for all parties to try to amicably resolve their disputes before resorting to litigation. The mandate can only be avoided in cases of urgent relief, although it is not prescribed as what amounts to an urgent relief and whether the defendants gets to opt for the mediation, even if the plaintiff deems the matter to be urgent.

Additionally, the CCA, 2015 specified strict timelines every step of the litigation by amending the CPC, 1907 to ensure all dispute resolutions are fast tracked. It ensures all pleadings are specified and identifies the details in litigation, mandatorily accompanied by a statement of truth. Further, all written statements needed to be filed within 30 days from the date of service of summons which can be stretched to a maximum of 120 days. In the absence of the same, the court will either impose costs on the defendant or forfeit his right to file. Aside from pleadings, the CCA, 2015 also has some rigid provisions with respect to discovery, where costs can be imposed on either party if they fail or do not wilfully disclosed relevant documents. The Supreme Court observed that if the commercial courts start considering entertaining applications for late filing of documents under the pretext of 'interest of justice,' they would face the same consequences as other civil courts in the country. Another important contribution of the CCA, 2015 to the CPC, 1907 is that of summary judgement, which can be delivered without recording oral evidence, and before issues are framed in a commercial suit. Before 2015, ordinary civil courts also had the power of declaring a summary judgement at any stage of the trial. In one of the judgements, the court, while explaining the scope of a summary judgement, clarified that modern commercial transactions and contracts heavily rely on instant and electronic evidence, providing clear insights into the parties' intentions before contract signing. As a result, there is minimal need for extensive explanations during proceedings or trials. Consequently, the CCA, 2015, specifically under Order XIII-A, empowers the court to render a summary judgment based on the submitted pleadings and evidence. This efficient approach gives investors the perception of a swift and responsive legal system, where litigation does not pose a significant obstacle. Regarding the timing of filing an application for summary judgment, Rule 2 explicitly states that such an application can be made to the commercial court only before issues are framed. Additionally, the proviso to Rule 2 specifies that after issues are framed in a suit, the applicant cannot file an application for summary judgment, and the court cannot consider it. However, in the case of K.R. Impex v. Punj Lloyd, the Delhi High Court regarded this provision as directory rather than mandatory. The Court emphasized that while

entertaining applications for summary judgment after the framing of issues should be discouraged, one must not lose sight of the primary objective of the CCA, 2015, which is the prompt resolution of commercial suits. Therefore, if a commercial suit is suitable for summary judgment, the Court should not be restricted from considering such an application solely due to the framing of issues. (Ramasubramanian, 2019)

One of the primary aims of the CCA, 2015, when introduced as a Bill, was to transform the litigation culture in India by establishing a system in commercial courts where proceedings would be controlled by the court rather than the litigants. In line with this objective, Justice Bhandari highlighted in the case of Ramrameshwari Devi v. Nirmala Devi (2011) that every trial court should create a comprehensive schedule and fix dates for all stages of the suit, starting from the filing of the plaint to the judgment pronouncement. It was emphasized that the court should adhere to this schedule as much as possible, and any interim applications should be disposed of between the fixed dates of hearings. To further advance this vision, the Law Commission, in its 253rd Report, recommended the introduction of 'Case Management Procedure' under Order XV-A of the CPC (Code of Civil Procedure). The Commission noted that leaving the litigation process entirely to the parties might lead each party to pursue strategies that serve their interests, potentially resulting in an unfair and protracted resolution of disputes. However, by implementing effective standards for prompt disposal, continuous monitoring, and periodic assessment of performance, the courts could adjudicate civil disputes for the benefit of the larger community. Although the above principles were intended for all civil disputes in general, the CCA, 2015, was the first notable endeavour to timely control the process of litigation in pursuit of its objectives. (Prasad, 2021)

The CCA, 2015, brought a completely new approach to costs for commercial disputes by replacing Section 35 and eliminating clause (2) from Section 35A of the CPC (Code of Civil Procedure). This amendment was inspired by the UKCPR, Part 44. A key objective of establishing commercial courts in the country was to transform the litigation culture, and one effective method of achieving this is through the imposition of costs. The aim is to discourage treating litigation as a luxury where parties engage in battles with little or no consequence. With limited resources in our courts, it becomes essential to use them wisely. The cost regime introduced by the CCA, 2015, seeks to instil discipline in litigants and thereby influence the overall litigation culture in the country. (Kumar & Kumar, 2020)

The next portion of this Chapter is to answer the third research question – how effectively do the commercial courts deal with arbitration related litigation? The role of commercial courts in an arbitration related litigation comes into the picture when arbitral awards need to get enforced by the commercial court. If that enforcement takes an unusually long time, then the litigants cannot enjoy the fruits of a favourable award. Under the CCA, 2015, applications arising out of the ACA, 1996 are transferred to the designated Commercial court or Commercial Division and immediately after that, subjected to the fast-track procedure under the Act. The biggest anomaly raised in this regard was regarding the jurisdiction of the court in arbitration award execution petitions. After a series of conflicting opinions, it was decided that all execution petitions would be heard by a principal court of original jurisdiction which is either a High Court or a Principal District Judge, as per Section 2(1)(e) of the ACA, 1996. Therefore, either the Commercial Division or the Commercial Court at the district level should hear the arbitration petitions. In 2018, Commercial Courts below the level of a district judge were also established, it is however unclear, as to whether they can execute arbitral awards. Similarly, if the arbitration is an international commercial arbitration, the 2015 Act mandates the execution of the award by the Commercial Division in High Court, which is not created in those High Courts that do not enjoy original civil jurisdiction. Lastly, Section 13(1) and 13(1-A) of the CCA in 2015 include a provision stating that all orders made under Section 37 of the Arbitration and Conciliation Act from 1996 can be contested through an appeal. However, Section 37(2) of the Arbitration and Conciliation Act from 1996 prevents a second appeal from being filed for an order issued under Section 37. The Supreme Court's decision in the case of BGS SGS Soma JV v. NHPC Limited established that the right to appeal fundamentally follows the rules of the Arbitration and Conciliation Act of 1996, whereas the process of appeal is determined by Section 13 of the CCA in 2015. Thus, from the above, we know that commercial courts play a very vital role in enforcing arbitral awards quickly. If the existing glitches are not removed, the effectiveness of arbitration will also get compromised. (Krishnaswamy & Aithala, 2020)

The last portion of this Chapter talks about the infrastructure challenges in the existing commercial courts. The author concludes that not only do we need more trained judges, more initiatives from the government training those judges manning these commercial divisions, we also need more commercial courts in number, established at every single district and division of the High Court catering to commercial disputes and implementing the CCA, 2015 in spirit. Additionally, the author explores the statistical information of commercial courts data, which does not exhibit a favourable trajectory. Despite expectations for an upward trend, the figures

paint a different picture. These courts, designed to expedite commercial litigation and foster a more efficient business environment, seem to be facing challenges in achieving their intended goals. Rather than a clear rise in the resolution of commercial disputes, the data suggests a lacklustre performance. Delays in case disposal, inconsistent verdicts, and a backlog of pending cases underscore the difficulties these courts encounter. Such a scenario raises questions about the efficacy of these specialized judicial bodies in truly advancing commercial justice. It becomes crucial for stakeholders to delve deeper into the underlying reasons behind these statistics and explore potential remedies that can steer these courts toward a more positive trajectory, aligning with the initial aspirations of improving the commercial litigation landscape. (Misra, 2017)

Lastly, the author concludes by exploring how the impact of withdrawing the World Bank EODB hit the commercial dispute resolution framework development in India. The EODB Index was an international benchmark for assessing the business environment in various countries, that played a significant role in motivating governments to streamline their judicial processes, especially those related to commercial dispute resolution. With its removal, there is a potential risk that the incentive for countries to prioritize the efficiency and effectiveness of their commercial courts might diminish. (Syed & Warraich, 2019). The absence of a globally recognized measure could lead to a decreased focus on enhancing the functionality of these courts, potentially resulting in slower case resolutions, increased backlogs, and a decline in the overall ease of doing business. Moreover, the EODB Index acted as a tool for attracting foreign investment by showcasing a nation's commitment to a conducive business environment. Without this external yardstick, international perceptions of a country's commercial justice system might become less clear, affecting investor confidence and economic growth. In light of these implications, it becomes imperative for governments and stakeholders to find alternative means of evaluating and improving commercial court efficiency to ensure that the withdrawal of the EODB Index does not hinder progress in this crucial domain. (Parikh & Shah, 2021)

5.2.3.1. Answering Research Question No.2 & 3/Research Objective No. 2 & 3

The findings below show us that the journey towards effective implementation of the Commercial Courts Act of 2015 is undeniably a work in progress. These findings therefore help the author in answering the second research question of the author – the commercial courts

established under CCA, 2015 have played a pivotal role in addressing the existing contract enforcement challenges, which are inherent to the business landscape. These courts have also handled a fair share of arbitration related litigation while enforcing these awards and have therefore attempted to effectively deal with the same under the fast-track provisions of the CCA, 2015. Despite these promising provisions, there remains a significant distance to cover in order to fully realize its intended impact. The fundamental objective of any reform in civil law revolves around achieving expeditious justice. Embedded within this goal is the necessity to ensure swift resolution of commercial disputes, particularly those involving substantial legal claims. This focus on commercial disputes is crucial because commerce serves as the cornerstone of the economy. Nonetheless, for the aspiration of establishing these Commercial Courts and Commercial Divisions as exemplary judicial institutions to materialize, the government must allocate additional resources for infrastructure and appoint new judges dedicated to this purpose. It's impractical to assign the same judges who handle regular civil cases to preside over Commercial Courts and manage cases from across the district. This would inevitably hinder their ability to meet the specific timelines outlined in the CCA, 2015, which ultimately stands as the primary objective of the legislation.

5.2.3.2. Findings:

1. There is an existing ambiguity regarding the jurisdiction of commercial courts over IPR disputes. While the CCA, 2015 Act states that only commercial disputes of the prescribed value of three lakhs can go to commercial courts, a recent judgement has stated that all IPR disputes should be presumed to be of prescribed value and subject to the jurisdiction of these courts. No such amendment has however been made in the Act itself, where for IPR-commercial disputes in particular, the specified value would not be taken into account.
2. Although all IPR disputes have been held to be commercial, there is no valuation methodology mentioned in any of the IPR statutes. It is pertinent for every commercial dispute to have a specified value. Section 12 (d) of CCA, 2015 states that the specified value of the IP suit should be based on the market value of the subject matter IP and not that of the reliefs claimed. Therefore, a plaintiff cannot undervalue a suit and avoid the rigours of the fast-track procedures under the law. Unfortunately, this is in contradiction to the Supreme Court's observation in ***Bharat Bhusha Gupta v Pratap Narain Verma and Anr*** where it said that *"the market value of the immovable property involved in the*

litigation might have its relevance depending on the nature of relief claimed but, ultimately, the valuation of any particular suit has to be decided primarily withreference to the relief/reliefs claimed". Thus, even if, all IPR-commercial disputes comeunder the auspices of the CCA, 2015, there needs to be a determined methodology for their valuation which is in tandem with valuation of other property disputes.

3. The second proviso to Section 7 states that all cases which are transferred under Section 22(4) of the Designs Act, 2000 and Section 104 of the Patents Act, 1970 to the High Court will be heard by the Commercial Division. However, not all High Courts (those which do not exercise original civil jurisdiction) have a commercial division. There is no mention of where these transferred suits would go from such High Courts. Although the same has been pointed out by one of the latest judgements, the CCA, 2015 is silent on the same and courts have not come up with a solution for this lacuna.
4. The CCA, 2015 has been popularised on the ground that it resolves commercial disputes on a fixed fast-tracked timeline. One significant step in doing that is to restrict entertaining appeals, and therefore, under Section 8, revisions, applications and petitions against any interlocutory order passed by the commercial court including the order of jurisdiction are barred. Section 13 also provides only one window of appeal to the litigants. The Supreme Court in multiple judgements however have declared that the same bar does not apply to power of High Courts under Article 227 and Article 136. However, since the power to exercise Article 227, is upon the discretion of the High Court, in the event a commercial dispute comes to it, there remains a possibility that the High Court will interfere with the purposes of the CCA, 2015.
5. The statement of objects and reasons of the CCA, 2015, in its Bill Form, does not indicate that a wide interpretation can be given to the term 'commercial disputes' The Supreme Court has observed that if a judge sits to decide if a transaction is required to be fixed into the one of the ambits of one of the categories of 'commercial dispute' as given in Section 2(1)(c), then it would lead to unnecessary wastage of time in every single matter. If too wide a meaning is given to a dispute while entertaining the same and deciding upon its 'commercial' essential, then it would defeat the purpose of CCA, 2015 and every other suit merely because it is high value and seeks the special disposal procedures would come knocking the doors of the Commercial Court and clog the system. Thus, as far as possible, we can say the intention of the legislature is to exhaustively define commercial disputes under the provision of Section 2(1)(c), under the 22 specified categories.

6. The commercial courts since 2015 have developed a rich body of precedents for disputes pertaining to categories i), vii) ix) under Section 2(1)(c). While it tells us, that litigants in these types of disputes are regularly accessing the commercial courts, it also leads us to interrogate why rest of the nineteen categories have not seen any significant judgement from either the commercial courts or its superior courts.
7. Although the CCA, 2015 mandates pre-institution mediation for all commercial disputes, the same can be avoided if the plaintiff contemplates urgent relief. The Delhi High clarified that the plaintiff's contemplation cannot be equated with his entitlement of urgent relief and it can be decided subsequently by the commercial court, if the mediation could be avoided or not. There are two instances that the author notes:

   A) The remedy available with the defendant if he feels that the relief seeked by the plaintiff is not urgent.

   B) Even if the commercial court sits to decide whether the relief seeked is urgent and mediation can be avoided, the parties basically get involved once again in litigation, which was the one outcome the pre-institution mediation provisions aimed for them to avoid.
8. Recently, pre-institution mediation was declared to be mandatory by the Supreme Court for every commercial dispute. However, the Supreme Court or the CCA, 2015 does not speak of the consequences of the non-compliance of this provision. Some High Courts have rejected the plaint for not going for mediation and asked the plaintiff to file a fresh suit, while others have simply directed the plaintiff to mediate before starting the litigation proceedings. Therefore, there is no consistent consequence that parties face, if the mediation is not opted for, and that in a way defeats the mandate of the CCA, 2015.
9. The CCA, 2015 incorporates strict timelines for resolution of commercial disputes. These provisions have also received immense challenges from litigants who have showed resistance to complying the timelines. However, the body of precedents discussed by the author in this Chapter, show us, that all Commercial Courts, High Courts and even the Supreme Court have exceptionally ruled in favour of complying such timelines. One of the objectives of the CCA, 2015 was to change the litigation culture in the country, so far the judiciary and the CCA, 2015 have showed their support in implementing that objective.
10. If an order is passed by a Commercial Court (below the level of a District Judge) and then it is taken to the Commercial Appellate Court (District Judge), where the latter

remands the case to the Commercial Court for fresh disposal, under Order XLIII, Rule 1(u), an appeal can lie from an order remanding a case. However, if we consider this in conjunction with Section 13(1), it becomes evident that an appeal is only feasible from a Commercial Court to a Commercial Appellate Court. Consequently, Section 13 serves as the avenue for lodging an appeal against an order issued by a District Judge functioning in their original capacity as a Commercial Court. There exists no recourse against an order for remand passed by a District Judge of a Commercial Appellate Court. It is worth noting that despite the introduction of Commercial Appellate Courts in 2018 and the subsequent amendment, Section 13(2) remained unaltered. The restriction on a secondary appeal likely does not encompass or apply to appellate judgments made by a Commercial Appellate Court.

11. There are contradicting provisions in ACA, 1996 and CCA, 2015 over which court is the principal court of jurisdiction that will enforce the arbitral award passed in a domestic or international commercial arbitration. Because of conflicting opinions on High Courts on this matter, in 2018, commercial courts below the level of a district judge, in places where High Courts had no original civil jurisdiction were created that could exercise territorial jurisdiction over the arbitration and eventually enforce its awards. No amendment was however made to Section 10(3), CCA, 2015 in that regard. It continues to state that the principal civil court of original jurisdiction in a district is the Commercial Court, established at the district level, which will handle enforcement of the award, if it exercises territorial jurisdiction over the arbitration. Thus, even if the Supreme Court addressed the anomaly, in the absence of a statutory amendment the lacuna is persisting. Similarly, for international commercial arbitrations, if the same needs to be enforced by the Commercial Division, which unfortunately existing in only those High Courts that exercise original civil jurisdiction. CCA, 2015 is silent on those arbitrations some of these awards can be enforced by High Courts which do not have a commercial division.
12. The 253rd document from the Law Commission heavily drew from the findings of the Sub-Committee under the National Court Management Systems Committee (NCMS), which was led by Justice Badar Durrez Ahmed; that gathered input from various High Courts and international practices to establish fundamental, standardized norms for Court Management Systems at a national level. It proposed that the technological setup of Commercial Divisions should be robust, involving processes like trial computerization. To achieve this, the foremost step was suggested to be a 25% increase

in the number of benches nationwide. Judges presiding over these commercial courts were advised to possess substantial experience in handling commercial litigations. These judges would be recruited through a well-defined process and offered higher salaries. Additionally, specialized training extending six months was recommended for Commercial Courts' judges at either the National Judicial Academy or pertinent State Judicial Academies, aimed at ensuring their ongoing professional development. However, despite these comprehensive recommendations in the Law Commission Reports, they weren't fully incorporated into the CCA, 2015. The provisions concerning infrastructure were only briefly addressed. The absence of legally binding requirements regarding infrastructure and judicial appointments has highlighted the fact that many High Courts and State Governments have essentially rebranded existing courts as commercial courts without implementing the detailed recommendations from the Law Commission Reports.

5.2.4. Chapter III B - The Effectiveness Of Commercial Court: An Empirical Analysis

In this part of the Chapter, the author moves on to explore the effectiveness of The Commercial Courts Act, 2015 through an empirical analysis. The Select Committee of Rajya Sabha while reviewing the Commercial Courts Bill in 2015 had suggested that a pilot study of the existing civil courts that handle commercial matters should be done which would give the legislature an idea about the type of institutional machinery required to handle commercial disputes in the country. The pilot study would also help design the first model of commercial courts. We have seen in the previous chapter, that not a lot of emphasis was put on these recommendations and the budgetary allocation for these courts was not specifically done. As a result, a lot of existing civil courts were renamed as commercial courts and the presiding judges functioned both a civil and commercial judge.

For the empirical analysis, the author conducted the study of stakeholders who access these courts – practicing advocates, ordinary litigants, policy associates, academicians expert in commercial law in the top four commercial cities of the country – Bombay, Delhi, Chennai, Kolkata. Since, no such study was conducted after the CCA, 2015 came into force, the author has studied various literature and reports of studying the effectiveness of public institutional machineries. The reports have helped the author understand how effectiveness of these commercial courts can be calculated. In 2011, UNCTAD released a report on the characteristics of a public regulatory body – competition agency that can make it effective. A year later, OECD also released an Expert Paper on indicators of good regulatory performance. The World Bank

too during the time Doing Business Report was active conducted a questionnaire-based study of the courts in various economies that dealt with commercial disputes. Based on the above literature, the author designed a questionnaire incorporating four components – awareness, access, process and alternative dispute resolution. Aside from that, the author has discussed the requirement outlined in the Commercial Court (Statistical Data) Rules of 2018 for commercial courts to regularly publish information on their website about commercial cases. The author has also examined this data from the last half-year and assess the performance of these courts, including their efficiency in resolving cases, utilization of pre-litigation mediation, and implementation of case management procedures.

The statistical data analysis shows that, in contract to the commercial courts in Delhi, Mumbai, and Chennai, the ones located in Kolkata are experiencing notably lower activity. From the number of newly initiated commercial cases to the instances of pre-litigation mediations conducted, the dedicated commercial courts in Kolkata are lagging behind their counterparts in terms of numerical performance. This discrepancy can largely be attributed to their higher pecuniary jurisdiction, which excludes commercial disputes valued below 30 lakhs from utilizing these specialized commercial courts. Another contributing factor could be the scarcity of commercial disputes within the state, potentially due to distinct economic conditions. Nonetheless, these commercial courts have been furnished with dedicated infrastructure and judges, aligned with the objectives of the Commercial Courts Act (CCA) of 2015, similar to their counterparts in Delhi and Mumbai. Consequently, it's imperative to ensure that all commercial disputes can avail the advantages offered by these courts and, by extension, by the provisions of the CCA, 2015. It's noteworthy that the consolidated statistical reports hardly provide any information from the commercial courts in Siliguri and Darjeeling. This emphasizes the need to investigate the functionality of these courts. The state government must keep in mind that their obligations under the CCA, 2015, in establishing these commercial courts, will only be fulfilled when these judicial bodies are operational and advantageous to commercial litigants throughout the state. Without such functionality, these efforts would remain theoretical reforms, offering no benefits to any stakeholder after the extensive seven-year endeavour of enacting this statute by the government. (Bharucha et al., 2011)

In the statistical reports of all the states, one common notable thing was the low success of pre-institution mediation. Although the judges of various High Courts and even the Supreme Court of India spent a considerable amount of time deciding whether the pre-institution mediation under Section 12A of CCA, 2015 is compulsory or not in commercial dispute resolution, the

ground reality of it shows that the same is rarely opted for by litigants and even if it is done, it hardly is successful in solving the dispute. Several factors contribute to the lack of success in pre-institution mediation efforts. One primary reason is the parties' reluctance or inability to engage in constructive dialogue before formally filing a lawsuit. This can stem from a lack of awareness about the benefits of mediation, mistrust between the parties, or the perception that mediation might be a time-consuming process with uncertain outcomes. Additionally, power imbalances between the parties or a history of acrimony can hinder open communication and productive negotiations. In some cases, the absence of a skilled and neutral mediator who can effectively facilitate discussions and guide parties towards consensus can undermine the mediation process. Furthermore, complex legal issues or disputes involving multiple parties can make it challenging to find common ground through mediation. Overall, unsuccessful pre-institution mediation can result from a combination of psychological, practical, and logistical barriers that hinder the parties' willingness and ability to collaboratively resolve their disputes before resorting to formal legal proceedings. (Todorović & Harges, 2021)

The empirical analysis of the responses collected through the questionnaire helps us in answering three fundamental questions about the effectiveness of the commercial courts:

- What is the cumulative efficiency rating of the commercial courts instituted according to The Commercial Courts Act of 2015?
- Does the efficiency of the commercial courts vary across the four major Indian metropolitan areas (Delhi, Mumbai, Kolkata, and Chennai)?
- Do individuals involved in commercial litigation, but from varying backgrounds (Legal Experts, Academics/Researchers, Policy Makers, Regular Litigants), hold distinct perceptions regarding the efficiency of the commercial courts?

5.2.4.1. Answering Research Question No.2/Research Objective No. 2

In this Chapter, the author has quantitatively tried to assess the effectiveness of commercial courts and whether the same has been successfully contributing to combatting contract enforcement challenges discussed in Chapter II. The assessment is both based on the response of stakeholders and their perception of these courts as well as the statistical information available on them. The outcome helps us achieve the second research objective of the author.

5.2.4.2. Findings:

1. The mean score of 63.95, out of a possible 100, indicates the average assessment of how effective the Commercial Courts Act is among all survey participants. This score suggests a moderate level of perceived effectiveness according to the respondents. In terms of awareness and access, the average scores are 15.53 and 15.33, respectively, out of a maximum of 25 points. These scores also suggest a moderate level of awareness and access. The mean scores for process and alternative dispute resolution stand at 16.68 and 16.41, respectively. These moderate mean scores imply that the participants possess a satisfactory understanding and familiarity with the concepts and principles of Alternative Dispute Resolution and the legal process as outlined in the 2015 Commercial Court Act. From the collected data, it can be deduced that the effectiveness of the 2015 Commercial Court Act varies among different cities, with Kolkata emerging as the city where it is perceived to be most effective. However, there is insufficient evidence to support the notion that there is a significant distinction in the effectiveness of the 2015 Commercial Court Act among the analyzed professions.
2. Although the mean score of effectiveness of commercial courts in Kolkata is relatively higher as compared to other cities, it is to be considered that the effectiveness of commercial courts is profoundly influenced by the perceptions held by both lawyers and litigants involved in the legal process. A positive perception of these specialized courts can catalyze efficient dispute resolution and enhance overall trust in the legal system. When lawyers perceive commercial courts as fair, knowledgeable, and equipped with expertise in handling complex commercial matters, they are more likely to engage actively and advocate for their clients' interests. Litigants, on the other hand, are more likely to opt for commercial courts when they perceive them as timely, unbiased, and capable of delivering swift and equitable judgments. This mutual perception between legal professionals and those seeking legal remedies establishes a virtuous cycle: a well-regarded court attracts skilled lawyers and litigants, leading to improved case handling, reduced backlog, and ultimately, increased satisfaction with the judicial process. Thus, the symbiotic relationship between the perception of lawyers and litigants plays a pivotal role in shaping the effectiveness and reputation of commercial courts within the broader legal landscape.
3. The statistical data shows that commercial court activities have been inconsistently reported. This deficiency hampers our ability to accurately assess their efficiency, backlog reduction, and overall impact on business and economic activities. Inadequate data not only obstructs evidence-based policymaking but also erodes public trust in

these courts' capabilities. Addressing this issue requires a concerted effort to modernize data collection methods, streamline reporting processes, and ensure transparency in order to effectively measure and improve the performance of commercial courts, thereby fostering greater confidence in the justice system as a whole.

5.2.5. Chapter IV - Comparative Overview Of Commercial Dispute Resolution Framework: An International Perspective

To better assess the contribution of commercial courts, the author in Chapter IV. Looked at the best practices of commercial courts followed across the globe. The countries that have been specifically chosen for the purpose of studying their commercial dispute resolution system through courts are – United States of America, United Kingdom, France, China, and Singapore. While USA, UK and France had commercial courts set up since the late 80s and 90s, and it was primarily the Commercial Court in UK that acted as the main model of commercial courtin the country, the Commercial Courts in China and Singapore are relatively new. Since Indiais very new to the commercial dispute resolution space in terms of setting up a commercial court, there exists a significant prospect for us to draw lessons from the operational dynamics of commercial courts in various other countries. (Themeli, 2019). By examining our own historical context alongside the obstacles confronted by other nations while establishing similar frameworks, we can not only enhance the practice of resolving commercial disputes but also pinpoint any necessary substantive legal amendments that should be taken into account by the legislative body. Thus, the aim of this chapter is to identify both commonalities and distinctions in how commercial courts function in different countries. Moreover, it seeks to delineate strategies through which India, as a legal jurisdiction, can more effectively implement the CCA, 2015, thereby ensuring the optimal operation of its commercial courts. (Yip, 2022)

In order to do a comparative study, the author has selected five parameters:

- Hierarchy and Jurisdiction of commercial courts
- Scope of ‘commercial disputes’
- Different stages of disposal of a commercial dispute
- Appointment and training of judges presiding over commercial courts
- Assessing performance of commercial courts: periodic review

The author has discussed each of these parameters in the selected jurisdictions and compared with Indian scenario. In the Section 4.3, Chapter IV, the author has captured the list of lessons

that India can learn as a new player in this space against each such parameter. The lessons to be learnt for India are the findings of this Chapter.

5.2.5.1. Answering Research Question No. 4/Research Objective No. 4

In Chapter IV, the author aims to point out that conducting a comparative assessment of domestic frameworks against those of other nations is a valuable tool for comprehending a country's standing in the global context. Similar to the significance of studying commercial court models, as undertaken by the Law Commission in 2003 before formulating the initial model of Commercial Divisions in India, this ongoing analysis is essential to evaluate India's position as a jurisdiction for commercial dispute resolution. Such periodic evaluations enable us to recognize areas that require improvement within our commercial court system. India has embraced the principle of facilitating contract enforcement since 2014, a principle closely linked to the measures countries adopt to enhance their commercial dispute resolution landscape. To fathom why India falls behind countries like Singapore and China in the World Bank Report despite their establishment of new commercial courts, it's crucial to observe and thoroughly study the operations of these courts. By pinpointing these gaps, we can effectively strive to enhance the overall business environment in the nation. The fourth objective of this thesis was precisely to address the question of why India doesn't top the World Bank Report rankings, thus laying the groundwork for the author to provide detailed suggestions in the final segment of their thesis.

5.2.5.2. Findings

1. In all the selected jurisdictions that the author has studied, it's crucial to acknowledge there has been shared emphasis of on developing these courts into specialized venues for handling commercial disputes. For instance, the UK not only created a distinct Commercial Court separate from its other civil courts but also introduced specific categories such as the Company List, Intellectual Property List, Financial List, and Business List. These fall under the overarching structure of the Business and Property Courts of England. By classifying commercial disputes into different lists, each dispute receives dedicated attention from judges and allocated resources based on the respective lists. This means that a judge on the Financial List, for instance, exclusively handles disputes falling under that category. Similarly, in Singapore, France, and China, the Commercial Courts function as entirely separate primary courts with designated judges

and resources. This setup facilitates swift resolutions for commercial disputes. Regrettably, in India, our Commercial Courts are integrated within district courts or High Court Divisions, often with judges from these civil courts presiding over Commercial Court cases. This situation risks undermining the core objective of establishing specialized forums. As a result, the author concludes that even if Commercial Divisions continue operating within our country's High Courts or if Commercial Courts exist at the district level, they must maintain complete independence from other civil courts to genuinely serve their intended purpose.

2. A shared characteristic among all the examined legal jurisdictions is the presence of a specialized international chamber within their Commercial Courts, exclusively designated for the resolution of cross-border business and commercial disputes. It can be contended that India might adopt a similar structure in the future, once the Commercial Courts established under the CCA, 2015 exhibit performance aligned with legislative and stakeholder expectations. What should be kept in mind, though, is that in the contemporary global landscape, a significant portion of commercial disputes holds transnational or international dimensions. Therefore, designating a specific judge or panel to handle such cases would not only be non-detrimental but would also enhance the overall efficacy of commercial dispute resolution. Just as the Arbitration and Conciliation Act of 1996 differentiated between domestic and international commercial arbitration through distinct provisions, thereby elevating the reputation of our judiciary by establishing an efficient regime for the latter, similar endeavours and reforms can be undertaken for our Commercial Courts. Another distinctive feature observed in these international Commercial Courts, particularly in China and Singapore, is the freedom for parties to categorize a dispute as a 'commercial dispute'. In contrast, in India, a dispute can only be classified as such within the confines of the categories listed in Section 2(c) of the CCA, 2015.
3. India has incorporated leading approaches in managing the trial stages for the efficient resolution of commercial disputes. Similar to the majority of the aforementioned jurisdictions, the CCA, 2015 places significant importance on Pre-Institution Mediation and Case Management. Each phase of the dispute resolution process is subject to rigorous timelines, ensuring that all types of commercial disputes, regardless of their intricacies, can be settled within specified timeframes. In today's business landscape, a substantial number of commercial disputes hold an international dimension. In 2019, the Hague Conference on Private International Law introduced a novel international

convention known as the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the Judgments Convention). Countries that sign this Convention commit to enforcing judgments made in civil or commercial matters by other contracting States, without reevaluating the merits of the case. The USA and the EU (excluding Denmark and Ukraine) have ratified this Convention. As a result of this ratification, the commercial courts in these countries gain appeal as they cater to a considerable number of foreign litigants. Despite India having a relatively recent establishment of its commercial court system, it also handles a considerable volume of international commercial disputes. Hence, by endorsing this Convention and streamlining commercial dispute resolution for foreign commercial entities, India's prospects of transforming into a global investment hub with a robust judicial infrastructure would be significantly augmented.

4. Except for France, all the mentioned jurisdictions select judges for their respective Commercial Courts from their judiciary's members. It's important to highlight that every judge overseeing the commercial court is a specialized professional with significant experience in resolving intricate commercial disputes. The CCA, 2015 mandates that, when forming the Commercial Court or Division, the Chief Justice mustexclusively appoint judges with a background in commercial matters. Additionally, the responsibility is placed on the State government to create essential infrastructure and training resources for the Commercial Court judges, aimed at enhancing the quality of justice delivered. While these provisions deserve commendation, India has encountered challenges in streamlining the training process similarly to countries like the USA with the Judicial Training college, the UK's National Judicial College, and SingaporeJudicial College. Although some workshops and training sessions were conducted before the establishment of commercial courts in 2015, there hasn't been an institutionestablished exclusively for training these commercial court judges. France allows business professionals with commercial expertise to preside over its Commercial Courts; however, adopting a comparable practice in India would conflict with constitutional values. What can be gleaned from these nations is their strong commitment to ensuring that commercial court judges possess expertise in commercialmatters and maintaining that proficiency throughout their tenure. A feasible recommendation for India could involve making it obligatory for judges to undergo training in commercial law and practice before presiding over a commercial court bench. Without such rigorous and stringent prerequisites, meeting the expectations of

the CCA, 2015 and its litigants would be challenging, and there's a risk of appointing regular civil court judges to Commercial Court positions.

5. In the aforementioned jurisdictions, a rigorous oversight is applied to the functioning and operational capabilities of all commercial courts. India has also mandated, under the CCA, 2015, that all Commercial Courts and Divisions must upload comprehensive data related to the disputes they handle onto their respective websites. According to The Commercial Courts (Statistical Data) Rules, 2018, it is obligatory to publish and disclose statistical information concerning the volume of suits, applications, appeals, or writ petitions filed in these courts, presented in a standardized format. Although this data provides insight into the monthly workload of the courts and facilitates comparisons to track improvements since their inception, the government hasn't actively undertaken a systematic analysis of this data to provide regular performance feedback for each month. Currently, it is up to the litigants or website visitors to assess the data on a monthly basis and draw conclusions. In the UK, the Commercial Court in London releases an Annual Report and a Commercial Court Guide, incorporating insights and recommendations from experts based on the case data made available. Similar subjective evaluations could assist a country like India in making precise and targeted adjustments to the existing framework and processes. Only then can it be stated that the monitoring of our Commercial Courts is conducted on a tangible basis.

5.3. Hypothesis Testing

HI: The Commercial Courts Act, 2015 has failed to satisfy the preliminary objective of functioning as specialised forums for resolving commercial disputes in the country in a timely and effective manner.

The author’s research encompasses the historical development of commercial courts in India spanning from 2003 to 2015. These courts were established under the CCA, 2015, with the primary goal, as outlined in the Statement of Object and Reasons of the CCA, 2015 Bill, being to enhance India's global reputation as a hub for resolving commercial disputes and to cultivate a more positive litigation culture within the country. The effectiveness of any judicial system hinges not only on its capacity to deliver swift justice but also on its ability to generate a substantial body of legal precedents in the realm of commercial law. In Chapter IIIA of the thesis, it is observed that over the past eight years since their inception, the commercial courts have indeed generated a substantial corpus of cases. These cases have significantly contributed

to our comprehension of the CCA, 2015, and have shed light on the judicial approaches adopted by various High Courts and the Supreme Court in interpreting and addressing 'commercial disputes' under the 2015 Act, spanning a multitude of critical issues. Chapter IIIA highlights that while the establishment of commercial courts was a positive move towards improving the efficiency of commercial dispute resolution, there are notable areas for improvement regarding the allocation of resources and the appointment of specialized judges to these courts. In Chapter IV, the author attempts to analyze the best practices observed in commercial courts in major jurisdictions. Additionally, Chapter IIIB reveals that the statistical data available on various commercial court websites is unsatisfactory when it comes to pre-institution mediation, expeditious dispute resolution, and timely reporting of resolved cases. Despite these challenges, the effectiveness of commercial courts is rated at 63 out of 100, with variations seen among the major economic cities in the country. Some states still handle commercial disputes through regular civil courts, while in others, the same civil court acts as a commercialcourt when such disputes arise. This creates difficulties in establishing a specialized forum capable of improving the litigation culture in the country. In conclusion, the author does not support the hypothesis that the Commercial Courts Act of 2015 has failed as legislation. It is undeniable that the creation of commercial courts has represented a significant step forward in enhancing commercial dispute resolution in India. However, it is acknowledged that there is still progress to be made in this regard.

H2: Delay in resolution of commercial disputes by these courts also affects the effectiveness of alternative dispute resolution as awards or settlements arising out of arbitration or mediation need to ultimately get enforced by Commercial Courts or Commercial Divisions of High Courts under The Commercial Courts Act, 2015.

In Chapter IIIA, the author noted the various challenges faced by the commercial courts in enforcing arbitral awards. One of the most notable findings in this regard is the conflict in the provisions of ACA, 1996 and CCA, 2015 regarding which court has the primary authority to enforce domestic or international commercial arbitration awards. Due to differing opinions among High Courts on this matter, in 2018, commercial courts below the level of a district judge were established in areas where High Courts lacked original civil jurisdiction. These courts were given the power to handle territorial jurisdiction over arbitration cases and ultimately enforce their awards. Notably, no changes were made to Section 10(3) of CCA, 2015 in this context. This section still designates the Commercial Court established at the district

level as the principal civil court with original jurisdiction to handle award enforcement, provided it has territorial jurisdiction over the arbitration. Consequently, even if the Supreme Court has addressed this inconsistency, the absence of a statutory amendment means the gap still exists. Similarly, in the case of international commercial arbitrations, enforcement may require the involvement of the Commercial Division, which is currently only available in High Courts with original civil jurisdiction. CCA, 2015 does not address this issue, meaning that some of these awards may be enforced by High Courts lacking a commercial division. This dilemma poses significant challenges in ensuring the enforcement of arbitration awards and allowing the involved parties to reap the benefits of a successful arbitration process, even if it has been conducted promptly. We can safely say that the effectiveness and swiftness of arbitration proceedings are heavily reliant on the speed at which commercial courts enforce these awards. Online statistical reports, referred to by the author in Chapter IIIB, indicate that the enforcement of awards often takes considerably longer than what was originally intended by the legislation. Questions arise about whether there are an adequate number of commercial courts in the country to handle both commercial litigation and the enforcement of awards that may be subject to legal challenges. If not, there is a pressing need to enhance the infrastructure available to these commercial courts. In many of these reports, the author has observed that the number of enforcement applications brought before commercial courts is relatively low. This raises concerns about whether these awards are indeed being enforced at the commercial court level through the provisions of CCA, 2015, or if they are being directed to ordinary civil courts as was the practice before. Both CCA, 2015 and ACA, 1996 hold significant importance in the realm of commercial legislation in the country. It would be advantageous for all parties involved if these statutes could work harmoniously with each other, creating the most favourable environment for resolving commercial disputes in the country. Consequently, the author concludes that the success of domestic or international commercial arbitration primarily hinges on the efficiency and competence of these new commercial courts established under the CCA, 2015.

5.4. Proposed Suggestions

1. The introduction of the CCA in 2015, which was initially conceived in 2003, sent a pessimistic message right from its inception. It conveyed the notion that the regular civil courts in the country lacked the capability to effectively handle specific types of disputes, particularly those of a commercial nature. It appeared that only certain

privileged litigants would enjoy the benefits of expeditious and high-quality resolution. Furthermore, even though the number of these commercial courts should have increased following the 2018 amendment, they still remained insufficient in proportion to the overwhelming caseload they faced. This resulted in the common citizen having to travel longer distances to access these courts, making it more challenging for them to pursue or defend their cases. The findings of Chapter I show that lack of authorised budgetary allocations for these commercial courts was a significant drawback since 2015. The judges and lawyers practicing in these regular courts were also at a disadvantage as they missed out on valuable experience and exposure, which in turn could affect the pool of experienced judges available to preside over these new-age commercial courts. Additionally, there was a possibility of a significant migration of lawyers from smaller regional courts to these commercial courts, as commerciallitigants often had deeper pockets. Given these concerns, the author recommends a significant overhaul and enhancement of the overall justice system instead of creating additional layers of complexity and segregation. The author has highlighted the requirement of additional judicial resources in Chapter II and Chapter III, as a pre- requisite to successful implementation of the CCA, 2015.

2. After the 2018 amendment, which lowered the threshold for commercial disputes from 1 crore to 3 lakhs, it naturally broadened the scope of the CCA, 2015 and led to an increased caseload for the commercial courts. Consequently, there was no declared mandate to establish additional commercial courts, nor was there a budget allocated for such expansion. As highlighted in Chapter II findings, the suggestions of the Select Committee of Rajya Sabha, which asked the government to conduct a pilot study to understand the existing vacancies in the civil courts at the district level and assess the requirement of commercial court judges, were not followed. Therefore, while the accelerated procedures introduced by the CCA, 2015 are a positive step towards enhancing commercial litigation in the country, it's essential to bear in mind that mere swiftness in case resolution does not equate to justice. Expedited disposal, without ensuring high-quality outcomes, fails to create the favourable impression among investors as envisioned by the legislators in the statement of purpose. In Chapter III, the author highlights the infrastructure concerns that have risen in the last eight years after the commencement of the CCA, 2015. Therefore, the author suggests that, in addition to expeditious resolution, there should be effective monitoring to ensure that the commercial courts are delivering top-notch justice to the litigants.

3. The CCA, 2015 entrusts the Chief Justice of the High Court with the responsibility of establishing the qualifications required for appointing judges in the commercial courts. It is anticipated that these qualifications would involve prior experience in handling commercial litigation, setting them apart from other judges within the same cadre. In Chapter II and Chapter III, while ascertaining the judicial caseload of these commercial courts, the findings on statistical data and the bare provisions of the CCA, 2015 show that no specific qualifications or experience in handling commercial disputes is a requirement to be appointed as a judge of these courts. To ensure clarity and consistency, the author proposes that the CCA, 2015 should specify certain statutory prerequisites for the direct recruitment of judges to these commercial courts. Additionally, the author suggests that the 2015 Act should mandate a specific judge-to-case ratio and compel state governments to allocate the necessary resources and infrastructure for these courts. Without these measures in place, merely relabelling existing civil courts as commercial courts would not fulfil the objective of expeditious case resolution.
4. The author suggests the implementation of e-governance in the administrative and filing procedures of commercial courts. The Indian government has previously outlined the E-Courts Project based on the National Policy and Action Plan for the Integration of Information and Communication Technology (ICT) in the Indian Judiciary since 2005, aimed at enhancing the technological capabilities of Indian courts. Given that a significant portion of commercial transactions occurs online, it would be appropriate to mandate e-filing for commercial disputes. The documents could be scanned, certified, and submitted electronically, with electronic service to the opposing party. This approach would not only reduce delays but also mitigate the risk of tampering with court records. Any need for verification with the original documents could be addressed during the trial, as outlined in Order XI of the CPC, 1908. Chapter IV of the thesis highlights how in countries such as the United Kingdom, Singapore, and China, commercial courts have embraced technology, allowing proceedings to occur entirely online. The findings state technologically enabled courts are faster in resolving disputes that are subject to a strict timeline. This approach offers convenience to partiesinvolved, who can participate from remote locations. The author suggests that India's commercial court system should adopt a similar technologically advanced model to align with these international standards.

5. The author suggests the inclusion of experts from diverse commercial domains as advisors in the adjudication process of commercial disputes. These experts would be available to assist commercial court judges when they encounter significant challenges in interpreting legal provisions. In Chapter IV, the author in his findings highlights the practice followed in France, where members of the business community have traditionally served as presiding judges in commercial courts due to their expertise in commercial matters. While India may not necessarily adopt the same approach entirely, it can certainly benefit from involving commercial experts in gaining a deeper understanding of the CCA, 2015, and thereby enhancing the effectiveness of these commercial courts.
6. Commercial courts have incorporated pre-institution mediation as part of the adjudication process, additionally, all arbitral awards are enforced by the commercial courts. It is evident that the CCA, 2015 has had an impact on the landscape of alternative dispute resolution (ADR) in the country. To enhance ADR practices, the government should take more deliberate steps to provide training in mediation and improve the conciliation skills of professional bodies offering mediation services. These mediation skills should be sufficiently effective to instil confidence in commercial litigants that engaging in pre-institution mediation is a valuable step in the dispute resolution process. The recent Supreme Court ruling has made pre-institution mediation mandatory for all parties approaching commercial courts. However, it's essential to recognize that mediation and other forms of ADR should be an integral part of the legal culture and not merely a means to quickly dismiss meritless and speculative claims. Chapter III of the thesis discusses the advantages of using mediation as a significant measure for settling commercial disputes. It's crucial, therefore, that the bodies providing mediation services are highly skilled to meet the needs of commercial litigants effectively. The findings emphasize the need for greater focus on the mediation framework, particularly in light of statistical data indicating that only a small percentage of commercial disputes undergo mediation before court proceedings commence, despite it being mandatory. Furthermore, of those mediations that do occur, only a fraction successfully and amicably resolve the disputes between the parties involved.
7. The Ministry of Law and Justice has recently released data on the resolution of commercial disputes in July 2023. According to this data, the number of disputes resolved in Delhi, Mumbai, Karnataka, and Kolkata are as follows: 2930, 111, 765, and 35, respectively. This information highlights two key points. First, there is a significant

disparity in the volume of commercial activities or transactions in these cities, leading to varying levels of disputes. Second, the successful implementation and effectiveness of the CCA, 2015 largely depend on the state governments, which are responsible for establishing and funding the necessary infrastructure and training for these courts. The pace of implementing the CCA, 2015 is suboptimal, and unless state governments collectively demonstrate sufficient interest and allocate funds to support the commercial courts, the intended objectives cannot be realized. In the past, our judiciaryhas faced challenges related to inadequate secretarial support and infrastructure in various fast track courts. Without addressing these issues, the experience with the CCA,2015 is unlikely to be any different. The author discusses the commercial court systems developed across different districts in USA, in Chapter IV. The findings elaborate on the type of support these courts have received from the respective state governments, with respect to funding, infrastructure and overall assistance in implementation and monitoring their progress. The author suggests therefore that similar collective efforts are essential and are a must have for the country's commercial courts to flourish as a forum.

8. The author proposes that commercial courts should incorporate technical members to support judicial members, mirroring the structure of institutions like the National Company Law Tribunal. The findings in Chapter IV show that this approach, which combines both technical and judicial expertise, has proven effective in various specialized courts such as the National Company Law Tribunal, Consumer Forums, and Rent Control Tribunals, as well as in international commercial courts in countries like the UK, France, and China, as discussed in Chapter IV. Furthermore, to ensure the efficient operation of these commercial courts, the use of technology must be mandatory to reduce procedural delays. Commercial courts, initially established to address commercial disputes, are inherently specialized forums. Technical members would facilitate the understanding of complex technical information during legalproceedings, ensuring access to accurate and reliable evidence for a fair verdict. In Chapter III, the author emphasizes the importance of robust infrastructure as a prerequisite for establishing these commercial courts. These technical members aid judges in expeditiously handling cases within stipulated timelines and provide expertise in resolving critical issues related to commercial disputes.

5.5. A Note for Future Research

Judiciary is an important and independent limb of our democracy, which when commented with distrust, threatens everyone. The common man has nowhere to go but knock at the doors of the court of law for justice. Historically, the commercial dispute resolution forums date back to pied piper courts which was organised by a borough on the occasion of a fair or market. For the ease of resolving business disputes in that era, these courts have applied *lex mercatoria* or the law of the merchant which eventually became part of the common law. But the author has emphasised in this study that this common law was deficient on one very vital aspect – speedy resolution of commercial causes. If courts could not produce certain and speedy decisions in commercial cases, speculators would mushroom and destroy commerce. A litigant would naturally prefer a rough and ready decision of an arbitrator as compared to a legalese of a court which has the probability of delivering a judgement long after the dispute has become stale. While the alternative dispute resolution has its advantages, it is not an ideal scenario for these forums to replace courts. Being a private mode of dispute resolution forum, it is not equally accessible to all members of the society. Therefore, it is essential that our courts are equipped enough to deliver fast justice, more so in case of commercial matters that require urgent speedy relief.

The author studied the Commercial Courts Act of 2015 and identified various loopholes that could affect the effectiveness of the commercial courts established under this legislation. The author also examined contradictory judgments from High Courts and the Supreme Court on these existing issues, which still lack a clear and certain resolution. Empirical evidence suggests that while progress has been made in establishing trustworthy commercial courts in the country, there is still much work to be done to compete with global counterparts.

It took 15 years of legislative deliberation to enact the Commercial Courts Act of 2015. However, simply changing the legal rules is not enough to transform institutional practices. Meaningful and sustainable legal system reform should not start and end with legislative changes. The legal system is intricate and dynamic, involving various key actors - lawyers, judges, and clients - who will respond differently to legislative modifications. Without a strategic model that anticipates stakeholder responses, the outcomes are unlikely to align with the legislator's goals.

Special courts and tribunals are not uncommon in our legal system. Over the past three decades, only one strategy seems to have significantly reduced delays - diverting disputes away from courts towards alternative dispute resolution mechanisms like mediation and arbitration. While large-scale studies on the effects of arbitration on reducing delays are scarce due to its ad hoc and non-institutional nature, research in the field of mediation suggests that it can increase the overall settlement rate at a lower cost and within shorter time frames than litigation. Hence, diversion strategies appear to be somewhat successful in reducing delays, but dispersion strategies like those adopted in the Act have had less success. This raises questions about whether a comprehensive reform of the legal system is needed if dispersion strategies are unsuccessful.

The Commercial Courts Act of 2015 was initially designed to address high-value commercial cases but gradually extended its scope to encompass almost all civil litigation. However, a successful legal reform strategy cannot rely too heavily on new legislative rules without a substantial investment in shaping the legal culture of judges, lawyers, and clients, as well as a corresponding overhaul of administrative systems for handling disputes. Achieving systemic change depends on consistent and clear communication, incentives for compliance and behaviour modification, and a fundamental transformation of the administrative functions of the court system. Successful legislative reform will hinge on these cultural and administrative shifts. Future law reformers should recognize the magnitude of effort required for sustainable and comprehensive change and the need to sequence administrative, cultural, and legislative reforms to bring about meaningful transformation.

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List of Publications

1. Resolution of Commercial Disputes in India: A Review of the Commercial Courts, 2015 - National Law School Business Law Review, Volume 8, Issue 1, Article No. 6 (2022)
2. Judicial approach of Constitutional Courts in India to commercial disputes - Company Law Journal in (2022) 3 Comp LJ 1

ANNEXURES

List of Publications

1. Resolution of Commercial Disputes in India: A Review of the Commercial Courts, 2015 - National Law School Business Law Review, Volume 8, Issue 1, Article No. 6 (2022)
2. Judicial approach of Constitutional Courts in India to commercial disputes - Company Law Journal in (2022) 3 Comp LJ 10

Questionnaire - To access the effectiveness of The Commercial Courts Act, 2015

The Commercial Courts Act, 2015 created commercial courts at every district of the country along with appeallate divisions at the High Court. These courts are meant to exclusively resolve business/commercial disputes. For the first time, these courts are created as part of our judicial system, aside from civil and criminal courts. The commercial disputes resolved by these courts are subjected to faster timelines and swifter processes under the Civil Procedure Code, 1908. Additionally, these courts mandated that all commercial disputes would initially be tried to be resolved amicably through mediation before litigation starts.

These new courts are meant to impact all stakeholders - lawyers, ordinary litigants/citizens, policy makers, etc.

The objective of this questionnaire/research is to access the effectiveness of these courts from the point of awareness, access, process and alternative dispute resolution.

It is to inform you that the responses collected will be kept anonymous/confidential and only used for the purposes of this research.

* Indicates required question

1. Name of the respondent

2. Location of the respondent *

Mark only one oval.

- ◯ Delhi
- ◯ Mumbai
- ◯ Kolkata
- ◯ Chennai
- ◯ Other: _____

3. Profession of the respondent *

Mark only one oval.

- ◯ Legal Professional
- ◯ Academician/Research Associate/Policy makers
- ◯ Ordinary litigant
- ◯ Other: _____

4. There is awareness amongst lawyers and other members of the legal fraternity regarding the Commercial Courts Act, 2015 and the creation of commercial courts at the district level across India as well as Commercial Divisions/Appellate Divisions at the High Court level. *

Mark only one oval.

- Agree
- Strongly agree
- Neutral
- Disagree
- Strongly disagree

5. The business community and other persons involved in the business world, i.e., the litigants are aware of the Commercial Courts Act, 2015 and the creation of commercial courts at the district level across India as well as Commercial Divisions/Appellate Divisions at the High Court level. *

Mark only one oval.

- Agree
- Strongly agree
- Neutral
- Disagree
- Strongly disagree

6. There is global awareness regarding the Commercial Courts Act, 2015 and the creation of commercial courts at the district level across India as well as Commercial Divisions/Appellate Divisions at the High Court level and the same is viewed as a reform ensuring ease of doing business in India. *

Mark only one oval.

- Agree
- Strongly agree
- Neutral
- Disagree
- Strongly disagree

7. Using pre-litigation mediation (where parties get a chance to amicably mediate the dispute before litigation starts) as required under the Commercial Courts Act, 2015 is well known to both litigants as well as litigators. *

Mark only one oval.

- Agree
- Strongly agree
- Neutral
- Disagree
- Strongly disagree

8. There is awareness amongst litigants that the Commercial Courts Act, 2015 is a speedy and fast track mechanism for commercial disputes in India. *

Mark only one oval.

- Agree
- Strongly agree
- Neutral
- Disagree
- Strongly disagree

9. Not just large corporations but even sole proprietorships, partnership firms and smaller business units are likely to approach commercial courts for dispute resolution. *

Mark only one oval.

- Agree
- Strongly agree
- Neutral
- Disagree
- Strongly disagree

10. The spread of commercial court locations in the country is sufficient for addressing commercial/business disputes in India. *

Mark only one oval.

- Agree
- Strongly agree
- Neutral
- Disagree
- Strongly disagree

11. Litigants have access to lawyers who are skilled to practice before commercial courts. *

Mark only one oval.

- Agree
- Strongly agree
- Neutral
- Disagree
- Strongly disagree

12. Litigation before Commercial courts is not expensive in terms of court fees and statutory expenses. *

Mark only one oval.

- Agree
- Strongly agree
- Neutral
- Disagree
- Strongly disagree

13. Access to commercial courts is not limited to wealthy plaintiffs only. *

Mark only one oval.

- Agree
- Strongly agree
- Neutral
- Disagree
- Strongly disagree

14. The Commercial Courts Act, 2015 brought significant amendments to the Civil Procedure Code, 1908, which highlighted the provisions that delay disposition of civil suits in general. Those provisions were carefully modified to faster resolve the commercial disputes. However, they remain unamended for other civil or commercial disputes of a lower value, thereby creating a clear demarcation between processes involving commercial and non-commercial suits. The former gets the advantage of a faster regulatory regime, while the latter does not. *

Mark only one oval.

- Agree
- Strongly agree
- Neutral
- Disagree
- Strongly disagree

15. The dispute resolution processes initiated by the Commercial Courts Act, 2015 will eventually help in streamlining other civil disputes, which are non-commercial in nature. *

Mark only one oval.

- Agree
- Strongly agree
- Neutral
- Disagree
- Strongly disagree

16. The judges in the Commercial Courts are well aware of not only laws but also commercial practice and business issues thus making the process of adjudication well considered. *

Mark only one oval.

- Agree
- Strongly agree
- Neutral
- Disagree
- Strongly disagree

17. The timelines maintained by The Commercial Courts Act, 2015 strike a fine balance between well considered adjudication and speedy disposal. *

Mark only one oval.

- Agree
- Strongly agree
- Neutral
- Disagree
- Strongly disagree

18. The Commercial Courts Act, 2015 have adopted pathbreaking case management process hitherto not used extensively in Indian courts and similar to arbitral institutions. *

Mark only one oval.

- Agree
- Strongly agree
- Neutral
- Disagree
- Strongly disagree

19. Pre-litigation mediation mandated under The Commercial Courts Act, 2015 for resolution of commercial disputes is viewed as an effective mode of dispute resolution and not just a compliance. *

Mark only one oval.

- Agree
- Strongly agree
- Neutral
- Disagree
- Strongly disagree

20. Pre-litigation mediation mandated under The Commercial Courts Act, 2015 for resolution of commercial disputes is effective in resolving disputes without acrimony or contentions. *

Mark only one oval.

- Agree
- Strongly agree
- Neutral
- Disagree
- Strongly disagree

21. Commercial courts are preferred by ordinary litigants over arbitration, when it comes to resolving commercial disputes. *

Mark only one oval.

- Agree
- Strongly agree
- Neutral
- Disagree
- Strongly disagree

22. Commercial Courts have the capacity to provide faster dispute resolution than arbitration. *

Mark only one oval.

- Agree
- Strongly agree
- Neutral
- Disagree
- Strongly disagree

23. Litigating before commercial courts in India is cheaper than arbitration *

Mark only one oval.

- Agree
- Strongly agree
- Neutral
- Disagree
- Strongly disagree

S.N.	Name of the respondent	Location of the respondent	Profession of the respondent	There is awareness amongst lawyers and other members of the legal	The business community and other persons involved in the	There is global awareness regarding the Commercial Courts	Using pre-litigation mediation (where parties get a chance to amicably	There is awareness amongst litigants that the Commercial Courts	Not just large corporations but even sole proprietors hire	The spread of commercial court locations in the country is sufficient	Litigants have access to lawyers who are skilled to practice	Litigation before Commercial courts is not expensive in terms of	Access to commercial courts is not limited to wealthy plaintiffs only	The Commercial Courts Act, 2015 brought significant amendment	The dispute resolution processes initiated by the Commercial	The judges in the Commercial Courts are well aware of not only	The timelines maintained by The Commercial Courts Act, 2015	The Commercial Courts Act, 2015 have adopted pathbreaking	Pre-litigation mediation mandated under The Commercial Courts	Pre-litigation mediation mandated under The Commercial Courts	Commercial courts are preferred by ordinary litigants over	Commercial Courts have the capacity to provide faster dispute	Litigating before commercial courts in India is cheaper than
1	Soma Sundarajan	Chennai	Academician/Research Associate	Strongly agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Disagree	Agree	Agree	Agree	Agree	Neutral	Neutral	Neutral
2	Garima tripathi	Delhi	Legal Professional	Neutral	Disagree	Disagree	Disagree	Agree	Agree	Disagree	Disagree	Neutral	Agree	Agree	Agree	Neutral	Agree	Disagree	Agree	Neutral	Disagree	Agree	Agree
3	Anand Das	Kolkata	Legal Professional	Strongly agree	Strongly agree	Neutral	Strongly agree	Disagree	Agree	Disagree	Disagree	Neutral	Strongly agree	Strongly agree	Strongly agree	Strongly disagree	Strongly agree	Strongly disagree	Neutral	Neutral	Disagree	Disagree	Agree
4	Niharika	Kolkata	Legal Professional	Agree	Disagree	Disagree	Disagree	Agree	Neutral	Strongly disagree	Strongly disagree	Strongly disagree	Disagree	Neutral	Neutral	Disagree	Neutral	Neutral	Agree	Agree	Neutral	Neutral	Agree
5	Ishita	Delhi	Legal Professional	Neutral	Neutral	Strongly agree	Neutral	Agree	Strongly agree	Agree	Agree	Strongly disagree	Neutral	Agree	Agree	Neutral	Agree	Agree	Agree	Agree	Neutral	Agree	Agree
6	Sayan Banerjee	Kolkata	Legal Professional	Agree	Neutral	Disagree	Strongly disagree	Disagree	Agree	Neutral	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Agree	Agree	Strongly disagree	Strongly disagree	Neutral	Agree	Agree
7	Yuvraj	Chennai	Legal Professional	Strongly agree	Agree	Disagree	Neutral	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Disagree	Agree	Agree	Disagree	Neutral	Neutral	Disagree	Disagree	Agree
8	Monika Singh	Mumbai	Legal Professional	Agree	Agree	Neutral	Agree	Agree	Agree	Neutral	Neutral	Neutral	Neutral	Agree	Agree	Neutral	Agree	Neutral	Agree	Agree	Disagree	Disagree	Disagree
9	Hitender Kapur	Delhi	Legal Professional	Disagree	Disagree	Disagree	Disagree	Strongly disagree	Disagree	Disagree	Strongly disagree	Disagree	Disagree	Neutral	Disagree	Disagree	Disagree	Neutral	Disagree	Disagree	Disagree	Disagree	Disagree
10	Dr. Cholaraja M.	Delhi	Academician/Research Associate	Strongly agree	Strongly agree	Strongly agree	Strongly agree	Agree	Strongly agree	Strongly disagree	Neutral	Strongly disagree	Neutral	Neutral	Neutral	Strongly agree	Agree	Neutral	Strongly agree	Neutral	Neutral	Neutral	Agree
11	Sonali	Chennai	Legal Professional	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Neutral	Agree	Neutral	Agree	Neutral	Neutral	Neutral	Agree	Agree	Disagree	Agree	Agree
12	Bodhisatta Biswas	Kolkata	Legal Professional	Disagree	Disagree	Neutral	Disagree	Disagree	Neutral	Agree	Strongly disagree	Disagree	Neutral	Strongly agree	Agree	Neutral	Neutral	Neutral	Disagree	Neutral	Disagree	Strongly disagree	Agree
13	Gaurav	Delhi	Academician/Research Associate	Agree	Agree	Agree	Neutral	Disagree	Neutral	Disagree	Strongly agree	Disagree	Disagree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree
14	Aastha Thakur	Delhi	Academician/Research Associate	Agree	Neutral	Neutral	Neutral	Disagree	Agree	Disagree	Disagree	Agree	Agree	Agree	Neutral	Agree	Neutral	Agree	Agree	Neutral	Agree	Neutral	Neutral
15	Deepak jain	Delhi	Legal Professional	Disagree	Agree	Neutral	Disagree	Disagree	Neutral	Agree	Agree	Agree	Neutral	Agree	Agree	Agree	Strongly agree	Agree	Neutral	Agree	Agree	Strongly agree	Strongly agree
16	Anchit Sripat	Delhi	Legal Professional	Disagree	Neutral	Neutral	Neutral	Disagree	Agree	Disagree	Agree	Neutral	Agree	Agree	Disagree	Neutral	Agree	Neutral	Agree	Disagree	Agree	Agree	Agree
17	VS	Delhi	Legal Professional	Agree	Agree	Agree	Agree	Neutral	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree
18	Bhavuk Narula	Delhi	Legal Professional	Strongly agree	Agree	Agree	Agree	Agree	Neutral	Disagree	Agree	Disagree	Neutral	Neutral	Agree	Neutral	Agree	Agree	Agree	Neutral	Disagree	Disagree	Agree
19	Bharat Agrawal	Delhi	Legal Professional	Agree	Disagree	Disagree	Agree	Agree	Disagree	Disagree	Strongly disagree	Neutral	Agree	Neutral	Agree	Neutral	Agree	Neutral	Agree	Agree	Agree	Strongly agree	Agree
20	SHIKHA MOHINI	Delhi	Legal Professional	Disagree	Disagree	Disagree	Disagree	Disagree	Neutral	Disagree	Disagree	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Neutral	Disagree	Neutral	Disagree	Neutral	Neutral
21	Shabana	Delhi	Academician/Research Associate	Neutral	Neutral	Neutral	Disagree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Neutral	Agree	Agree
22	Aakarshan Sinha	Delhi	Legal Professional	Disagree	Disagree	Neutral	Neutral	Agree	Neutral	Neutral	Neutral	Neutral	Neutral	Agree	Disagree	Agree	Agree	Agree	Strongly disagree	Agree	Agree	Neutral	Neutral
23	Sakshi singh	Delhi	Academician/Research Associate	Agree	Agree	Neutral	Agree	Agree	Disagree	Disagree	Disagree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree
24	Aditya Rathi	Delhi	Academician/Research Associate	Agree	Agree	Neutral	Agree	Agree	Agree	Agree	Agree	Neutral	Agree	Agree	Agree	Neutral	Agree	Agree	Agree	Agree	Agree	Disagree	Disagree
25	Adv Hemant Joshi	Mumbai	Legal Professional	Agree	Disagree	Agree	Disagree	Agree	Agree	Disagree	Disagree	Disagree	Disagree	Agree	Disagree	Neutral	Disagree	Disagree	Neutral	Neutral	Disagree	Disagree	Agree
26	Vishal Singhal	Delhi	Legal Professional	Agree	Neutral	Neutral	Neutral	Disagree	Strongly agree	Strongly agree	Strongly agree	Neutral	Agree	Agree	Agree	Neutral	Strongly agree	Strongly agree	Strongly agree	Neutral	Neutral	Strongly agree	Agree
27	Rohan Raj	Kolkata	Ordinary litigant	Agree	Agree	Neutral	Agree	Disagree	Agree	Agree	Agree	Neutral	Neutral	Neutral	Disagree	Neutral	Agree	Agree	Disagree	Neutral	Agree	Agree	Agree
28	Vikas Kirtani	Delhi	Ordinary litigant	Neutral	Neutral	Agree	Strongly agree	Agree	Strongly agree	Disagree	Disagree	Agree	Disagree	Agree	Strongly agree	Neutral	Agree	Agree	Strongly agree	Agree	Agree	Strongly agree	Strongly agree
29	Keshav Jatwani	Delhi	Legal Professional	Agree	Agree	Agree	Strongly agree	Agree	Agree	Strongly agree	Neutral	Strongly agree	Agree	Agree	Agree	Strongly agree	Neutral	Agree	Agree	Strongly agree	Agree	Neutral	Neutral
30	Pooja Tiwari	Delhi	Academician/Research Associate	Agree	Agree	Agree	Neutral	Disagree	Agree	Disagree	Agree	Neutral	Agree	Neutral	Agree	Agree	Neutral	Agree	Agree	Agree	Neutral	Agree	Agree
31	Raya	Delhi	Legal Professional	Agree	Neutral	Neutral	Neutral	Disagree	Agree	Neutral	Disagree	Neutral	Agree	Neutral	Agree	Neutral	Neutral	Agree	Strongly agree	Disagree	Disagree	Neutral	Agree
32	SAIMA	Delhi	Legal Professional	Agree	Agree	Neutral	Agree	Disagree	Agree	Disagree	Disagree	Agree	Agree	Agree	Agree	Neutral	Neutral	Disagree	Agree	Disagree	Agree	Agree	Agree
33	Vikrant	Delhi	Legal Professional	Disagree	Disagree	Disagree	Neutral	Agree	Disagree	Disagree	Strongly disagree	Disagree	Disagree	Agree	Agree	Strongly disagree	Strongly disagree	Agree	Disagree	Neutral	Agree	Strongly agree	Agree
34	Shubham Agarwal	Kolkata	Ordinary litigant	Strongly disagree	Disagree	Strongly disagree	Strongly disagree	Agree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Agree
35	Srishti	Mumbai	Ordinary litigant	Agree	Agree	Agree	Neutral	Agree	Neutral	Neutral	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Agree	Agree	Agree	Agree	Agree	Agree	Agree
36	Pratik Ahuja	Delhi	Legal Professional	Agree	Agree	Neutral	Neutral	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Agree	Agree

37	Hamda alAkhtarul Arfeen	Chennai	Legal Professional	Neutral	Agree	Agree	Neutral	Agree	Strongly agree	Strongly agree	Disagree	Agree	Strongly agree	Strongly agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Strongly agree	Utral
38	Sujoy Sur	Delhi	Legal Professional	Agree	Neutral	Neutral	Disagree	Strongly disagree	Neutral	Disagree	Disagree	Neutral	Neutral	Disagree	Disagree	Agree	Neutral	Disagree	Strongly disagree	Disagree	Disagree	Disagree	Disagree
39	Aayushi Singh Tomar	Delhi	Academician/Research Associate	Strongly agree	Agree	Agree	Disagree	Disagree	Disagree	Disagree	Disagree	Neutral	Neutral	Disagree	Agree	Disagree	Agree	Agree	Strongly agree	Strongly agree	Neutral	Agree	Agree
40	Bini Thomas	Mumbai	Academician/Research Associate	Neutral	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Neutral	Disagree	Neutral	Neutral	Agree	Neutral	Neutral	Agree	Neutral	Agree	Neutral	Disagree	Agree
41	Bhagat Singh	Mumbai	Academician/Research Associate	Agree	Agree	Neutral	Agree	Agree	Agree	Disagree	Agree	Agree	Agree	Agree	Agree	Neutral	Neutral	Disagree	Disagree	Agree	Disagree	Disagree	Disagree
42	Poorvi	Delhi	Academician/Research Associate /Policy makers	Agree	Agree	Neutral	Agree	Agree	Disagree	Disagree	Neutral	Disagree	Agree	Agree	Agree	Agree	Agree	Disagree	Agree	Strongly agree	Agree	Disagree	Disagree
43		Delhi	Legal Professional	Neutral	Disagree	Strongly disagree	Disagree	Neutral	Neutral	Neutral	Agree	Neutral	Agree	Agree	Neutral	Neutral	Agree	Agree	Strongly agree	Disagree	Agree	Neutral	Neutral
44	Asha Verma	Delhi	Academician/Research Associate /Policy makers	Disagree	Disagree	Neutral	Strongly agree	Strongly disagree	Agree	Strongly disagree	Strongly disagree	Strongly agree	Strongly agree	Agree	Agree	Disagree	Agree	Disagree	Disagree	Disagree	Agree	Agree	Agree
45	Ishaan Jain	Delhi	Legal Professional	Neutral	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Strongly agree	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Utral
46	Kritika	Mumbai	Legal Professional	Neutral	Disagree	Disagree	Disagree	Agree	Strongly agree	Disagree	Disagree	Neutral	Agree	Agree	Strongly agree	Disagree	Agree	Agree	Agree	Agree	Agree	Agree	Agree
47	Apala Vatsa	Chennai	Academician/Research Associate /Policy makers	Neutral	Neutral	Agree	Agree	Neutral	Agree	Disagree	Disagree	Strongly disagree	Strongly disagree	Neutral	Strongly disagree	Disagree	Disagree	Disagree	Disagree	Disagree	Strongly disagree	Strongly agree	Strongly agree
48	Basudeb Biswas	Delhi	Legal Professional	Strongly agree	Disagree	Neutral	Disagree	Disagree	Disagree	Neutral	Strongly disagree	Disagree	Neutral	Agree	Neutral	Neutral	Disagree	Agree	Disagree	Disagree	Agree	Neutral	Agree
49	Akanksha Bhadouria	Delhi	Legal Professional	Agree	Strongly disagree	Disagree	Agree	Neutral	Strongly agree	Agree	Disagree	Disagree	Disagree	Agree	Agree	Disagree	Strongly disagree	Neutral	Strongly agree	Neutral	Agree	Neutral	Neutral
50	Nutan Keswani	Delhi	Legal Professional	Agree	Neutral	Neutral	Agree	Disagree	Agree	Neutral	Disagree	Disagree	Disagree	Neutral	Disagree	Neutral	Agree	Disagree	Disagree	Disagree	Strongly disagree	Disagree	Disagree
51	Ghanashyam Jayaswal	Mumbai	Ordinary litigant	Agree	Strongly agree	Agree	Agree	Disagree	Strongly agree	Agree	Neutral	Strongly agree	Agree	Strongly agree	Agree	Agree	Strongly agree	Neutral	Agree	Strongly agree	Agree	Agree	Agree
52	Chavi Sood Verma	Delhi	Legal Professional	Agree	Neutral	Agree	Neutral	Neutral	Strongly agree	Disagree	Agree	Strongly agree	Strongly agree	Agree	Strongly agree	Agree	Agree	Agree	Strongly agree	Strongly agree	Strongly agree	Strongly agree	Agree
53	Harshita Jain	Delhi	Academician/Research Associate /Policy makers	Agree	Agree	Disagree	Disagree	Disagree	Agree	Strongly disagree	Strongly disagree	Agree	Strongly disagree	Agree	Strongly agree	Disagree	Agree	Agree	Agree	Neutral	Disagree	Disagree	Agree
54	Lavish	Delhi	Legal Professional	Agree	Neutral	Disagree	Disagree	Neutral	Neutral	Disagree	Agree	Neutral	Disagree	Disagree	Agree	Neutral	Neutral	Agree	Agree	Neutral	Disagree	Disagree	Disagree
55	Deeksha Tewari	Delhi	Academician/Research Associate /Policy makers	Agree	Neutral	Agree	Agree	Agree	Agree	Disagree	Disagree	Strongly disagree	Strongly agree	Strongly agree	Strongly agree	Neutral	Strongly disagree	Strongly disagree	Agree	Disagree	Strongly disagree	Strongly disagree	Strongly disagree
56	Nitish Sharma	Delhi	Legal Professional	Disagree	Disagree	Neutral	Disagree	Agree	Agree	Disagree	Disagree	Strongly agree	Strongly agree	Agree	Agree	Agree	Neutral	Agree	Disagree	Disagree	Agree	Agree	Agree
57	Ambuj Dixit	Delhi	Legal Professional	Agree	Neutral	Neutral	Neutral	Disagree	Neutral	Disagree	Agree	Neutral	Neutral	Agree	Neutral	Disagree	Neutral	Neutral	Agree	Neutral	Agree	Neutral	Agree
58	Atyasha Jena	Chennai	Legal Professional	Neutral	Neutral	Neutral	Strongly agree	Neutral	Agree	Agree	Agree	Neutral	Agree	Neutral	Neutral	Neutral	Disagree	Agree	Neutral	Neutral	Neutral	Neutral	Neutral
59	Parichita Chowdhury	Delhi	Ordinary litigant	Neutral	Disagree	Disagree	Neutral	Neutral	Disagree	Disagree	Disagree	Strongly disagree	Disagree	Neutral	Neutral	Agree	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral
60	Antarup	Kolkata	Legal Professional	Agree	Disagree	Neutral	Agree	Agree	Neutral	Disagree	Neutral	Neutral	Neutral	Agree	Strongly disagree	Neutral	Agree	Neutral	Agree	Neutral	Neutral	Neutral	Neutral
61	Umang Thakar	Mumbai	Ordinary Litigant	Agree	Disagree	Disagree	Disagree	Disagree	Disagree	Disagree	Agree	Agree	Agree	Agree	Neutral	Neutral	Agree	Neutral	Strongly disagree	Agree	Strongly disagree	Strongly disagree	Strongly disagree
62	Atul Anand	Kolkata	Legal Professional	Neutral	Agree	Neutral	Disagree	Neutral	Disagree	Disagree	Agree	Disagree	Agree	Agree	Strongly agree	Agree	Agree	Agree	Agree	Strongly agree	Strongly agree	Strongly agree	Strongly agree
63	Ankita Mishra	Kolkata	Academician/Research Associate /Policy makers	Agree	Neutral	Neutral	Agree	Agree	Agree	Agree	Agree	Neutral	Neutral	Neutral	Agree	Agree	Agree	Neutral	Neutral	Neutral	Agree	Agree	Agree
64	Ankit Dutta	Chennai	Legal Professional	Disagree	Strongly disagree	Strongly disagree	Neutral	Neutral	Agree	Neutral	Disagree	Agree	Neutral	Agree	Disagree	Agree	Agree	Agree	Strongly agree	Strongly agree	Neutral	Neutral	Strongly agree
65	Surya Tej PNJ	Chennai	Legal Professional	Agree	Neutral	Disagree	Disagree	Neutral	Agree	Agree	Agree	Neutral	Agree	Agree	Neutral	Neutral	Agree	Agree	Agree	Agree	Agree	Agree	Disagree
66	Bhavya	Delhi	Academician/Research Associate	Agree	Disagree	Neutral	Disagree	Agree	Agree	Neutral	Agree	Agree	Agree	Agree	Agree	Disagree	Neutral	Neutral	Disagree	Neutral	Agree	Neutral	Disagree
67	Aman Singhania	Delhi	Ordinary litigant	Agree	Disagree	Disagree	Disagree	Agree	Disagree	Neutral	Neutral	Neutral	Neutral	Agree	Agree	Strongly disagree	Agree	Agree	Agree	Agree	Strongly agree	Disagree	Agree
68	Devanshu	Delhi	Ordinary litigant	Strongly agree	Agree	Neutral	Agree	Agree	Agree	Agree	Neutral	Agree	Agree	Disagree	Agree	Agree	Agree	Agree	Strongly agree	Agree	Agree	Neutral	Agree
69	Eklavya	Delhi	Ordinary litigant	Disagree	Disagree	Disagree	Disagree	Neutral	Strongly agree	Disagree	Disagree	Strongly disagree	Disagree	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Agree	Strongly disagree	Agree
70	Kamlesh	Kolkata	Legal Professional	Agree	Disagree	Disagree	Disagree	Disagree	Disagree	Strongly disagree	Strongly disagree	Disagree	Agree	Agree	Agree	Neutral	Disagree	Agree	Agree	Disagree	Strongly disagree	Neutral	Disagree

71	Tejas	Delhi	Academician/Research Associate	Disagree	Disagree	Neutral	Disagree	Strongly disagree	Agree	Disagree	Disagree	Strongly agree	Strongly agree	Agree	Agree	Agree	Neutral	Agree	Disagree	Disagree	Agree	Agree	Agree
72	Arya	Mumbai	Legal Professional	Agree	Strongly agree	Agree	Agree	Agree	Strongly agree	Agree	Neutral	Strongly agree	Agree	Strongly agree	Agree	Agree	Strongly agree	Neutral	Agree	Strongly agree	Agree	Agree	Agree
73	Amar Singhania	Delhi	Ordinary litigant	Agree	Neutral	Disagree	Disagree	Neutral	Neutral	Disagree	Agree	Neutral	Disagree	Disagree	Agree	Neutral	Neutral	Agree	Agree	Neutral	Disagree	Disagree	Disagree
74	Shital	Delhi	Ordinary litigant	Agree	Neutral	Neutral	Neutral	Neutral	Agree	Neutral	Disagree	Neutral	Agree	Neutral	Agree	Neutral	Neutral	Neutral	Neutral	Neutral	Disagree	Neutral	Neutral
75	Arnav	Mumbai	Legal Professional	Agree	Agree	Neutral	Agree	Agree	Agree	Disagree	Disagree	Agree	Agree	Agree	Agree	Neutral	Neutral	Disagree	Agree	Disagree	Agree	Agree	Agree
76	Priya	Mumbai	Legal Professional	Disagree	Disagree	Disagree	Neutral	Agree	Disagree	Disagree	Strongly disagree	Disagree	Disagree	Agree	Agree	Strongly disagree	Strongly disagree	Agree	Disagree	Neutral	Agree	Strongly agree	Agree
77	Charu	Mumbai	Legal Professional	Strongly disagree	Disagree	Strongly disagree	Strongly disagree	Neutral	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Agree
78	Chaiti Ghosh	Delhi	Academician/Research Associate	Agree	Agree	Agree	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Agree	Agree	Agree	Agree	Agree	Agree	Agree
79	Shivam	Delhi	Academician/Research Associate	Agree	Agree	Neutral	Neutral	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Agree	Agree
80		Delhi	Academician/Research Associate	Neutral	Agree	Agree	Neutral	Strongly disagree	Strongly agree	Strongly agree	Disagree	Agree	Strongly agree	Strongly agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Strongly agree	Strongly agree
81	Naman	Mumbai	Legal Professional	Agree	Neutral	Neutral	Disagree	Strongly disagree	Neutral	Disagree	Disagree	Neutral	Neutral	Disagree	Disagree	Agree	Neutral	Disagree	Strongly disagree	Disagree	Disagree	Disagree	Disagree
82	Preksha	Kolkata	Legal Professional	Strongly agree	Agree	Agree	Disagree	Neutral	Disagree	Disagree	Disagree	Neutral	Neutral	Disagree	Agree	Disagree	Agree	Agree	Strongly agree	Strongly agree	Neutral	Agree	Agree
83	Akansha Singh	Kolkata	Legal Professional	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral
84	Kamla	Kolkata	Legal Professional	Agree	Agree	Neutral	Agree	Agree	Agree	Disagree	Agree	Agree	Agree	Agree	Agree	Neutral	Neutral	Disagree	Disagree	Agree	Disagree	Disagree	Disagree
85		Delhi	Academician/Research Associate	Agree	Agree	Neutral	Agree	Agree	Disagree	Disagree	Neutral	Disagree	Agree	Agree	Agree	Agree	Agree	Disagree	Agree	Strongly agree	Agree	Disagree	Disagree
86	Maninder	Kolkata	Legal Professional	Neutral	Disagree	Strongly disagree	Disagree	Disagree	Neutral	Neutral	Agree	Neutral	Agree	Agree	Neutral	Neutral	Agree	Agree	Strongly agree	Disagree	Agree	Neutral	Neutral
87		Delhi	Academician/Research Associate	Agree	Agree	Agree	Neutral	Agree	Agree	Disagree	Neutral	Neutral	Disagree	Agree	Agree	Neutral	Disagree	Agree	Agree	Agree	Agree	Agree	Agree
88	Asthi	Kolkata	Legal Professional	Agree	Agree	Neutral	Neutral	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Agree	Agree
89	Dhruv	Mumbai	Legal Professional	Neutral	Agree	Agree	Neutral	Agree	Strongly agree	Strongly agree	Disagree	Agree	Strongly agree	Strongly agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Strongly agree	Strongly agree
90	Ishita	Delhi	Academician/Research Associate	Agree	Neutral	Neutral	Disagree	Neutral	Neutral	Disagree	Disagree	Neutral	Neutral	Disagree	Disagree	Agree	Neutral	Disagree	Strongly disagree	Disagree	Disagree	Disagree	Disagree
91	Shyamantaram	Mumbai	Legal Professional	Strongly agree	Agree	Agree	Disagree	Neutral	Disagree	Disagree	Disagree	Neutral	Neutral	Disagree	Agree	Disagree	Agree	Agree	Strongly agree	Strongly agree	Neutral	Agree	Agree
92	Naina	Kolkata	Academician/Research Associate	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral
93	Somil	Kolkata	Legal Professional	Agree	Agree	Neutral	Agree	Agree	Agree	Disagree	Agree	Agree	Agree	Agree	Agree	Neutral	Neutral	Disagree	Disagree	Agree	Disagree	Disagree	Disagree
94	Siddharth	Kolkata	Legal Professional	Agree	Agree	Neutral	Agree	Agree	Disagree	Disagree	Neutral	Disagree	Agree	Agree	Agree	Agree	Agree	Disagree	Agree	Strongly agree	Agree	Disagree	Disagree
95	Khushi	Kolkata	Legal Professional	Neutral	Disagree	Strongly disagree	Disagree	Disagree	Neutral	Neutral	Agree	Neutral	Agree	Agree	Neutral	Neutral	Agree	Agree	Strongly agree	Disagree	Agree	Neutral	Neutral
96	Nirvaan	Delhi	Academician/Research Associate	Disagree	Disagree	Neutral	Strongly agree	Neutral	Agree	Strongly disagree	Strongly disagree	Strongly agree	Strongly agree	Agree	Agree	Disagree	Agree	Disagree	Disagree	Disagree	Agree	Agree	Agree
97	Aryaman	Kolkata	Legal Professional	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Strongly agree	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Utral
98	Udiksha	Kolkata	Legal Professional	Neutral	Disagree	Disagree	Disagree	Agree	Strongly agree	Disagree	Disagree	Neutral	Agree	Agree	Strongly agree	Disagree	Agree	Agree	Agree	Agree	Agree	Agree	Agree
99	Disha	Kolkata	Legal Professional	Neutral	Neutral	Agree	Agree	Neutral	Agree	Disagree	Disagree	Strongly disagree	Strongly disagree	Neutral	Strongly disagree	Disagree	Disagree	Disagree	Disagree	Disagree	Strongly disagree	Strongly agree	Strongly agree
100	Madiha	Chennai	Legal Professional	Agree	Disagree	Neutral	Agree	Disagree	Neutral	Disagree	Neutral	Neutral	Neutral	Agree	Strongly disagree	Neutral	Agree	Neutral	Agree	Neutral	Neutral	Neutral	Neutral
101	Vivek	Chennai	Legal Professional	Agree	Disagree	Disagree	Disagree	Neutral	Disagree	Disagree	Agree	Agree	Agree	Agree	Neutral	Neutral	Agree	Neutral	Strongly disagree	Agree	Strongly disagree	Strongly disagree	Strongly disagree
102	Vijay	Kolkata	Legal Professional	Neutral	Agree	Neutral	Disagree	Disagree	Disagree	Disagree	Agree	Disagree	Agree	Agree	Strongly agree	Agree	Agree	Agree	Agree	Strongly agree	Strongly agree	Strongly agree	Strongly agree
103	Shaivi	Kolkata	Legal Professional	Agree	Neutral	Neutral	Agree	Disagree	Agree	Agree	Agree	Neutral	Neutral	Neutral	Agree	Agree	Agree	Neutral	Neutral	Neutral	Agree	Agree	Agree
104	Shabnam	Kolkata	Academician/Research Associate	Disagree	Strongly disagree	Strongly disagree	Neutral	Neutral	Agree	Neutral	Disagree	Agree	Neutral	Agree	Disagree	Agree	Agree	Agree	Strongly agree	Strongly agree	Neutral	Neutral	Neutral
105	Manisha	Mumbai	Legal Professional	Agree	Neutral	Disagree	Disagree	Neutral	Agree	Agree	Agree	Neutral	Agree	Agree	Neutral	Neutral	Agree	Agree	Agree	Agree	Agree	Agree	Agree
106	Sujata	Kolkata	Legal Professional	Agree	Disagree	Neutral	Disagree	Agree	Agree	Neutral	Agree	Agree	Agree	Agree	Agree	Disagree	Neutral	Neutral	Disagree	Neutral	Agree	Neutral	Neutral
107	Lata Dash	Kolkata	Legal Professional	Agree	Disagree	Disagree	Disagree	Agree	Disagree	Neutral	Neutral	Neutral	Neutral	Agree	Agree	Strongly disagree	Agree	Agree	Agree	Agree	Strongly agree	Disagree	Disagree

108	Sunanda	Mumbai	Legal Professional	Strongly agree	Agree	Neutral	Agree	Agree	Agree	Agree	Neutral	Agree	Agree	Disagree	Agree	Agree	Agree	Agree	Strongly agree	Agree	Agree	Neutral	Agree
109	Shashwat	Kolkata	Legal Professional	Disagree	Disagree	Disagree	Disagree	Neutral	Strongly agree	Disagree	Disagree	Strongly disagree	Disagree	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Agree	Strongly disagree	Strongly disagree
110	Aniruddha	Kolkata	Academician/Research Associate	Agree	Disagree	Disagree	Disagree	Disagree	Disagree	Strongly disagree	Strongly disagree	Disagree	Agree	Agree	Agree	Neutral	Disagree	Agree	Agree	Disagree	Strongly disagree	Neutral	Agree
111	Siddhant	Kolkata	Legal Professional	Disagree	Disagree	Neutral	Disagree	Strongly disagree	Agree	Disagree	Disagree	Strongly agree	Strongly agree	Agree	Agree	Agree	Neutral	Agree	Disagree	Disagree	Agree	Agree	Agree
112	Anwesha	Mumbai	Legal Professional	Agree	Strongly agree	Agree	Agree	Agree	Strongly agree	Agree	Neutral	Strongly agree	Agree	Strongly agree	Agree	Agree	Strongly agree	Neutral	Agree	Strongly agree	Agree	Agree	Agree
113	Debargha	Kolkata	Legal Professional	Agree	Disagree	Disagree	Disagree	Neutral	Disagree	Neutral	Neutral	Neutral	Neutral	Agree	Agree	Strongly disagree	Agree	Agree	Agree	Agree	Strongly agree	Disagree	Disagree
114	Devarshi	Kolkata	Academician/Research Associate	Strongly agree	Agree	Neutral	Agree	Neutral	Agree	Agree	Neutral	Agree	Agree	Disagree	Agree	Agree	Agree	Agree	Strongly agree	Agree	Agree	Neutral	Neutral
115	Kanan Kapoor	Chennai	Legal Professional	Disagree	Disagree	Disagree	Disagree	Agree	Strongly agree	Disagree	Disagree	Strongly disagree	Disagree	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Agree	Strongly disagree	Strongly disagree
116	Latika	Chennai	Legal Professional	Agree	Disagree	Disagree	Disagree	Agree	Disagree	Strongly disagree	Strongly disagree	Disagree	Agree	Agree	Agree	Neutral	Disagree	Agree	Agree	Disagree	Strongly disagree	Neutral	Agree
117	Hardik	Chennai	Legal Professional	Disagree	Disagree	Neutral	Disagree	Strongly disagree	Agree	Disagree	Disagree	Strongly agree	Strongly agree	Agree	Agree	Agree	Neutral	Agree	Disagree	Disagree	Agree	Agree	Agree
118	Harshith Iyer	Chennai	Legal Professional	Agree	Strongly agree	Agree	Agree	Agree	Strongly agree	Agree	Neutral	Strongly agree	Agree	Strongly agree	Agree	Agree	Strongly agree	Neutral	Agree	Strongly agree	Agree	Agree	Agree
119	Mousumi	Kolkata	Academician/Research Associate	Agree	Neutral	Disagree	Disagree	Neutral	Neutral	Disagree	Agree	Neutral	Disagree	Disagree	Agree	Neutral	Neutral	Agree	Agree	Neutral	Disagree	Disagree	Disagree
120	Amitava	Kolkata	Academician/Research Associate	Agree	Neutral	Neutral	Neutral	Neutral	Agree	Neutral	Disagree	Neutral	Agree	Neutral	Agree	Neutral	Neutral	Neutral	Neutral	Neutral	Disagree	Neutral	Neutral
121	Pulak	Kolkata	Academician/Research Associate	Agree	Agree	Neutral	Agree	Agree	Agree	Disagree	Disagree	Agree	Agree	Agree	Agree	Neutral	Neutral	Disagree	Agree	Disagree	Agree	Agree	Agree
122	Satvik Bhargava	Kolkata	Ordinary litigant	Disagree	Disagree	Disagree	Neutral	Agree	Disagree	Disagree	Strongly disagree	Disagree	Disagree	Agree	Agree	Strongly disagree	Strongly disagree	Agree	Disagree	Neutral	Agree	Strongly agree	Agree
123	Pranav Bhalla	Kolkata	Academician/Research Associate	Strongly disagree	Disagree	Strongly disagree	Strongly disagree	Neutral	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Agree
124	Bhavya Arora	Mumbai	Academician/Research Associate	Agree	Agree	Agree	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Agree	Agree	Agree	Agree	Agree	Agree	Agree
125	Mahira Bhalla	Kolkata	Academician/Research Associate	Agree	Agree	Neutral	Neutral	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Agree	Agree
126	Raunaq Dalal	Kolkata	Academician/Research Associate	Neutral	Agree	Agree	Neutral	Strongly disagree	Strongly agree	Strongly agree	Disagree	Agree	Strongly agree	Strongly agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Strongly agree	Strongly agree
127	Naina Gupta	Chennai	Academician/Research Associate	Agree	Neutral	Neutral	Disagree	Strongly disagree	Neutral	Disagree	Disagree	Neutral	Neutral	Disagree	Disagree	Agree	Neutral	Disagree	Strongly disagree	Disagree	Disagree	Disagree	Disagree
128	Sushant Yadav	Chennai	Academician/Research Associate	Strongly agree	Agree	Agree	Disagree	Neutral	Disagree	Disagree	Disagree	Neutral	Neutral	Disagree	Agree	Disagree	Agree	Agree	Strongly agree	Strongly agree	Neutral	Agree	Agree
129	Bhuvnesh Kumar	Chennai	Academician/Research Associate	Neutral	Neutral	Agree	Disagree	Neutral	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Disagree	Disagree	Disagree	Neutral	Neutral	Neutral	Neutral
130	Pragaas Kaur Chugh	Chennai	Academician/Research Associate	Agree	Agree	Neutral	Agree	Disagree	Agree	Disagree	Agree	Agree	Agree	Agree	Agree	Neutral	Neutral	Disagree	Disagree	Agree	Disagree	Disagree	Agree
131	Aryan Chaudhary	Chennai	Academician/Research Associate	Agree	Agree	Neutral	Agree	Agree	Disagree	Disagree	Neutral	Disagree	Agree	Agree	Agree	Agree	Agree	Disagree	Agree	Strongly agree	Agree	Disagree	Disagree
132	K. Raja Pandian	Mumbai	Academician/Research Associate	Neutral	Disagree	Strongly disagree	Disagree	Strongly agree	Neutral	Neutral	Agree	Neutral	Agree	Agree	Neutral	Neutral	Agree	Agree	Strongly agree	Disagree	Agree	Neutral	Utral
133	Nikita Vij	Chennai	Academician/Research Associate	Agree	Agree	Agree	Neutral	Agree	Neutral	Neutral	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Agree	Agree	Agree	Agree	Agree	Agree	Agree
134	Priyanka Malhotra	Chennai	Academician/Research Associate	Agree	Agree	Neutral	Neutral	Agree	Neutral	Neutral	Agree	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Agree	Agree
135	Vanshika Bharti	Chennai	Academician/Research Associate	Neutral	Agree	Agree	Neutral	Agree	Strongly agree	Strongly agree	Disagree	Agree	Strongly agree	Strongly agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Strongly agree	Strongly agree
136	Khushi Jain	Chennai	Academician/Research Associate	Agree	Neutral	Neutral	Disagree	Strongly disagree	Neutral	Disagree	Disagree	Neutral	Neutral	Disagree	Disagree	Agree	Neutral	Disagree	Strongly disagree	Disagree	Disagree	Disagree	Disagree
137	Raunaq	Chennai	Academician/Research Associate	Strongly agree	Agree	Agree	Disagree	Strongly agree	Disagree	Disagree	Disagree	Neutral	Neutral	Disagree	Agree	Disagree	Agree	Agree	Strongly agree	Strongly agree	Neutral	Agree	Agree
138	Siddhant Sharma	Chennai	Academician/Research Associate	Neutral	Agree	Neutral	Agree	Neutral	Disagree	Disagree	Neutral	Disagree	Agree	Agree	Agree	Agree	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Strongly agree
139	Harshaditya Goel	Chennai	Academician/Research Associate	Agree	Agree	Neutral	Agree	Disagree	Agree	Disagree	Agree	Agree	Agree	Agree	Agree	Neutral	Neutral	Disagree	Disagree	Agree	Disagree	Disagree	Disagree

140	Yuvraj Bindra	Chennai	Academician/Research Associate	Agree	Agree	Neutral	Agree	Agree	Disagree	Disagree	Neutral	Disagree	Agree	Agree	Agree	Agree	Agree	Disagree	Agree	Strongly agree	Agree	Disagree	Disagree
141	shaurya rajgarhia	Chennai	Academician/Research Associate	Neutral	Disagree	Strongly disagree	Disagree	Strongly agree	Neutral	Neutral	Agree	Neutral	Agree	Agree	Neutral	Neutral	Agree	Agree	Strongly agree	Disagree	Agree	Neutral	Neutral
142	Swatantra Deep Singh	Chennai	Academician/Research Associate	Disagree	Disagree	Neutral	Strongly agree	Disagree	Agree	Strongly disagree	Strongly disagree	Strongly agree	Strongly agree	Agree	Agree	Disagree	Agree	Disagree	Disagree	Disagree	Agree	Agree	Agree
143	Tamish Garg	Chennai	Academician/Research Associate	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Strongly agree	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Strongly agree
144	Khushi Singhal	Chennai	Academician/Research Associate	Neutral	Disagree	Disagree	Disagree	Agree	Strongly agree	Disagree	Disagree	Neutral	Agree	Agree	Strongly agree	Disagree	Agree	Agree	Agree	Agree	Agree	Agree	Agree
145	Sujal Grover	Mumbai	Academician/Research Associate	Neutral	Neutral	Agree	Agree	Disagree	Agree	Disagree	Disagree	Strongly disagree	Strongly disagree	Neutral	Strongly disagree	Disagree	Disagree	Disagree	Disagree	Disagree	Strongly disagree	Strongly agree	Strongly agree
146	Mehul Singhal	Chennai	Academician/Research Associate	Agree	Disagree	Neutral	Agree	Agree	Neutral	Disagree	Neutral	Neutral	Neutral	Agree	Strongly disagree	Neutral	Agree	Neutral	Agree	Neutral	Neutral	Neutral	Strongly agree
147	Sunny	Chennai	Legal Professional	Agree	Disagree	Disagree	Disagree	Strongly disagree	Disagree	Disagree	Agree	Agree	Agree	Agree	Neutral	Neutral	Agree	Neutral	Strongly disagree	Agree	Strongly disagree	Strongly disagree	Strongly disagree
148	Harman Singh Bhatia	Chennai	Legal Professional	Neutral	Agree	Neutral	Disagree	Agree	Disagree	Disagree	Agree	Disagree	Agree	Agree	Strongly agree	Agree	Agree	Agree	Agree	Strongly agree	Strongly agree	Strongly agree	Strongly agree
149	Purva Paliwal	Mumbai	Academician/Research Associate	Agree	Neutral	Neutral	Agree	Neutral	Agree	Agree	Agree	Neutral	Neutral	Neutral	Agree	Agree	Agree	Neutral	Neutral	Neutral	Agree	Agree	Agree
150	Armaan Deep Singh	Chennai	Legal Professional	Disagree	Strongly disagree	Strongly disagree	Neutral	Strongly agree	Agree	Neutral	Disagree	Agree	Neutral	Agree	Disagree	Agree	Agree	Agree	Strongly agree	Strongly agree	Neutral	Neutral	Agree
151	Aryan Goel	Chennai	Legal Professional	Agree	Neutral	Disagree	Disagree	Agree	Agree	Agree	Agree	Neutral	Agree	Agree	Neutral	Neutral	Agree	Agree	Agree	Agree	Agree	Agree	Strongly agree
152	Tisha Mittal	Mumbai	Academician/Research Associate	Agree	Disagree	Neutral	Disagree	Disagree	Agree	Neutral	Agree	Agree	Agree	Agree	Agree	Disagree	Neutral	Neutral	Disagree	Neutral	Agree	Neutral	Neutral
153	Soumi Das Gupta	Chennai	Legal Professional	Agree	Agree	Neutral	Agree	Agree	Agree	Disagree	Disagree	Agree	Agree	Agree	Agree	Neutral	Neutral	Disagree	Agree	Disagree	Agree	Agree	Agree
154	Arjun Singh Arora	Chennai	Legal Professional	Disagree	Disagree	Disagree	Neutral	Disagree	Disagree	Disagree	Strongly disagree	Disagree	Disagree	Agree	Agree	Strongly disagree	Strongly disagree	Agree	Disagree	Neutral	Agree	Strongly agree	Strongly agree
155	Ketan Kumar	Mumbai	Academician/Research Associate	Strongly disagree	Disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Agree
156	Shanaya Soni	Chennai	Ordinary Litigant	Agree	Agree	Agree	Neutral	Agree	Neutral	Neutral	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Agree	Agree	Agree	Agree	Agree	Agree	Agree
157	Ansh Khurrana	Chennai	Ordinary Litigant	Agree	Agree	Neutral	Neutral	Agree	Neutral	Neutral	Agree	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Agree	Strongly agree
158	Dakshyani vasudev	Mumbai	Ordinary Litigant	Neutral	Agree	Agree	Neutral	Agree	Strongly agree	Strongly agree	Disagree	Agree	Strongly agree	Strongly agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Strongly agree	Strongly agree
159	Rudransh Vikram Singh	Kolkata	Ordinary Litigant	Agree	Neutral	Neutral	Disagree	Strongly disagree	Neutral	Disagree	Disagree	Neutral	Neutral	Disagree	Disagree	Agree	Neutral	Disagree	Strongly disagree	Disagree	Disagree	Disagree	Agree
160	Nishi Kesharwani	Mumbai	Ordinary Litigant	Strongly agree	Agree	Agree	Disagree	Strongly agree	Disagree	Disagree	Disagree	Neutral	Neutral	Disagree	Agree	Disagree	Agree	Agree	Strongly agree	Strongly agree	Neutral	Agree	Agree
161	Tanuj Kashyap	Mumbai	Ordinary Litigant	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral
162	Vaibhav Dandona	Kolkata	Ordinary Litigant	Agree	Agree	Neutral	Agree	Disagree	Agree	Disagree	Agree	Agree	Agree	Agree	Agree	Neutral	Neutral	Disagree	Disagree	Agree	Disagree	Disagree	Disagree
163	Sahir Kaicker	Mumbai	Ordinary Litigant	Agree	Agree	Neutral	Agree	Agree	Disagree	Disagree	Neutral	Disagree	Agree	Agree	Agree	Agree	Agree	Disagree	Agree	Strongly agree	Agree	Disagree	Disagree
164	Mehul yadav	Mumbai	Ordinary Litigant	Neutral	Disagree	Strongly disagree	Disagree	Strongly agree	Neutral	Neutral	Agree	Neutral	Agree	Agree	Neutral	Neutral	Agree	Agree	Strongly agree	Disagree	Agree	Neutral	Neutral
165	Eva Pathak	Kolkata	Ordinary Litigant	Disagree	Disagree	Neutral	Strongly agree	Disagree	Agree	Strongly disagree	Strongly disagree	Strongly agree	Strongly agree	Agree	Agree	Disagree	Agree	Disagree	Disagree	Disagree	Agree	Agree	Agree
166	Khushi yadav	Mumbai	Ordinary Litigant	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Strongly agree	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Utral
167	Omanshi	Mumbai	Ordinary Litigant	Neutral	Disagree	Disagree	Disagree	Agree	Strongly agree	Disagree	Disagree	Neutral	Agree	Agree	Strongly agree	Disagree	Agree	Agree	Agree	Agree	Agree	Agree	Agree
168	Ashish Yadav	Kolkata	Ordinary Litigant	Neutral	Neutral	Agree	Agree	Disagree	Agree	Disagree	Disagree	Strongly disagree	Strongly disagree	Neutral	Strongly disagree	Disagree	Disagree	Disagree	Disagree	Disagree	Strongly disagree	Strongly agree	Strongly agree
169	Ansh Bhatia	Mumbai	Ordinary Litigant	Strongly agree	Disagree	Neutral	Disagree	Disagree	Disagree	Neutral	Strongly disagree	Disagree	Neutral	Agree	Neutral	Neutral	Disagree	Agree	Disagree	Disagree	Agree	Neutral	Agree
170	Hardik Bhatia	Mumbai	Legal Professional	Agree	Strongly disagree	Disagree	Agree	Strongly agree	Strongly agree	Agree	Disagree	Disagree	Disagree	Agree	Agree	Disagree	Strongly disagree	Neutral	Strongly agree	Neutral	Agree	Neutral	Neutral
171	Tanishq Kumar	Mumbai	Legal Professional	Agree	Neutral	Neutral	Agree	Disagree	Agree	Neutral	Disagree	Disagree	Disagree	Neutral	Disagree	Neutral	Agree	Disagree	Disagree	Disagree	Strongly disagree	Disagree	Disagree
172	Kunal Rampal	Mumbai	Legal Professional	Agree	Strongly agree	Agree	Agree	Agree	Strongly agree	Agree	Neutral	Strongly agree	Agree	Strongly agree	Agree	Agree	Strongly agree	Neutral	Agree	Strongly agree	Agree	Agree	Agree
173	Shikhar Shivam	Mumbai	Legal Professional	Agree	Neutral	Agree	Neutral	Strongly agree	Strongly agree	Disagree	Agree	Strongly agree	Strongly agree	Agree	Strongly agree	Agree	Agree	Agree	Strongly agree	Strongly agree	Strongly agree	Strongly agree	Strongly agree
174	Manas Verma	Mumbai	Legal Professional	Agree	Agree	Disagree	Disagree	Agree	Agree	Strongly disagree	Strongly disagree	Agree	Strongly disagree	Agree	Strongly agree	Disagree	Agree	Agree	Agree	Neutral	Disagree	Disagree	Strongly agree
175	Devanshi Gupta	Mumbai	Legal Professional	Agree	Neutral	Disagree	Disagree	Agree	Neutral	Disagree	Agree	Neutral	Disagree	Disagree	Agree	Neutral	Neutral	Agree	Agree	Neutral	Disagree	Disagree	Disagree
176	Janya Daluja	Mumbai	Legal Professional	Agree	Neutral	Agree	Agree	Agree	Agree	Disagree	Disagree	Strongly disagree	Strongly agree	Strongly agree	Strongly agree	Neutral	Strongly disagree	Strongly disagree	Agree	Disagree	Strongly disagree	Strongly disagree	Strongly disagree
177	Gaurav Chaudhary	Mumbai	Legal Professional	Disagree	Disagree	Neutral	Disagree	Disagree	Agree	Disagree	Disagree	Strongly agree	Strongly agree	Agree	Agree	Agree	Neutral	Agree	Disagree	Disagree	Agree	Agree	Agree
178	Yash Aggarwal	Mumbai	Legal Professional	Agree	Neutral	Neutral	Neutral	Neutral	Neutral	Disagree	Agree	Neutral	Neutral	Agree	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Agree	Neutral	Neutral
179	Yash Goel	Mumbai	Legal Professional	Neutral	Neutral	Neutral	Strongly agree	Neutral	Agree	Agree	Agree	Neutral	Agree	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral
180	Manan Aggarwal	Mumbai	Legal Professional	Neutral	Disagree	Disagree	Neutral	Neutral	Disagree	Disagree	Disagree	Strongly disagree	Disagree	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral

181	Arth Srivastava	Delhi	Ordinary Litigant	Agree	Disagree	Neutral	Agree	Agree	Neutral	Disagree	Neutral	Neutral	Neutral	Agree	Strongly disagree	Neutral	Agree	Neutral	Agree	Neutral	Neutral	Neutral	Neutral
182	Yuvraj Singh	Mumbai	Legal Professional	Agree	Disagree	Disagree	Disagree	Strongly disagree	Disagree	Disagree	Agree	Agree	Agree	Agree	Neutral	Neutral	Agree	Neutral	Strongly disagree	Agree	Strongly disagree	Strongly disagree	Strongly disagree
183	Siddhant Sharma	Delhi	Ordinary Litigant	Neutral	Agree	Neutral	Disagree	Agree	Disagree	Disagree	Agree	Disagree	Agree	Agree	Strongly agree	Agree	Agree	Agree	Agree	Strongly agree	Strongly agree	Strongly agree	Strongly agree
184	Harshaditya Goel	Mumbai	Legal Professional	Agree	Neutral	Neutral	Agree	Neutral	Agree	Agree	Agree	Neutral	Neutral	Neutral	Agree	Agree	Agree	Neutral	Neutral	Neutral	Agree	Agree	Agree
185	Yuvraj Bindra	Delhi	Ordinary Litigant	Disagree	Strongly disagree	Strongly disagree	Neutral	Strongly agree	Agree	Neutral	Disagree	Agree	Neutral	Agree	Disagree	Agree	Agree	Agree	Strongly agree	Strongly agree	Neutral	Neutral	Neutral
186	shaurya rajgarhia	Mumbai	Legal Professional	Agree	Neutral	Disagree	Disagree	Agree	Agree	Agree	Agree	Neutral	Agree	Agree	Neutral	Neutral	Agree	Agree	Agree	Agree	Agree	Agree	Agree
187	Swatantra Deep Singh	Mumbai	Legal Professional	Agree	Disagree	Neutral	Disagree	Disagree	Agree	Neutral	Agree	Agree	Agree	Agree	Agree	Disagree	Neutral	Neutral	Disagree	Neutral	Agree	Neutral	Agree
188	Tamish Garg	Delhi	Ordinary Litigant	Agree	Disagree	Disagree	Disagree	Agree	Disagree	Neutral	Neutral	Neutral	Neutral	Agree	Agree	Strongly disagree	Agree	Agree	Agree	Agree	Strongly agree	Disagree	Disagree
189	Khushi Singhal	Delhi	Ordinary Litigant	Strongly agree	Agree	Neutral	Agree	Strongly agree	Agree	Agree	Neutral	Agree	Agree	Disagree	Agree	Agree	Agree	Agree	Strongly agree	Agree	Agree	Neutral	Disagree
190	Sujal Grover	Mumbai	Legal Professional	Disagree	Disagree	Disagree	Disagree	Neutral	Strongly agree	Disagree	Disagree	Strongly disagree	Disagree	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral	Agree	Strongly disagree	Strongly disagree
191	Charan Kumar	Mumbai	Legal Professional	Agree	Disagree	Disagree	Disagree	Agree	Disagree	Strongly disagree	Strongly disagree	Disagree	Agree	Agree	Agree	Neutral	Disagree	Agree	Agree	Disagree	Strongly disagree	Neutral	Agree
192	Nishtha	Delhi	Ordinary Litigant	Disagree	Disagree	Neutral	Disagree	Disagree	Agree	Disagree	Disagree	Strongly agree	Strongly agree	Agree	Agree	Agree	Neutral	Agree	Disagree	Disagree	Agree	Agree	Agree
193	Rahul Jalal	Chennai	Ordinary Litigant	Agree	Strongly agree	Agree	Agree	Agree	Strongly agree	Agree	Neutral	Strongly agree	Agree	Strongly agree	Agree	Agree	Strongly agree	Neutral	Agree	Strongly agree	Agree	Agree	Agree
194	Chetan Gupta	Chennai	Ordinary Litigant	Agree	Neutral	Disagree	Disagree	Agree	Neutral	Disagree	Agree	Neutral	Disagree	Disagree	Agree	Neutral	Neutral	Agree	Agree	Neutral	Disagree	Disagree	Disagree
195		Chennai	Ordinary Litigant	Agree	Neutral	Neutral	Neutral	Neutral	Agree	Neutral	Disagree	Neutral	Agree	Neutral	Agree	Neutral	Neutral	Neutral	Neutral	Neutral	Disagree	Neutral	Disagree
196		Chennai	Ordinary Litigant	Agree	Agree	Neutral	Agree	Agree	Agree	Disagree	Disagree	Agree	Agree	Agree	Agree	Neutral	Neutral	Disagree	Agree	Disagree	Agree	Agree	Disagree
197	Sirat	Chennai	Ordinary Litigant	Disagree	Disagree	Disagree	Neutral	Disagree	Disagree	Disagree	Strongly disagree	Disagree	Disagree	Agree	Agree	Strongly disagree	Strongly disagree	Agree	Disagree	Neutral	Agree	Strongly agree	Neutral
198		Chennai	Ordinary Litigant	Strongly disagree	Disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Strongly disagree	Disagree
199	Hemanta Mukherjee	Kolkata	Ordinary Litigant	Agree	Agree	Agree	Neutral	Agree	Neutral	Neutral	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Agree	Agree	Agree	Agree	Agree	Agree	Disagree
200		Kolkata	Ordinary Litigant	Agree	Agree	Neutral	Neutral	Agree	Neutral	Neutral	Agree	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Neutral	Agree	Neutral	Neutral	Agree	Disagree

THE COMMERCIAL COURTS ACT, 2015

ARRANGEMENT OF SECTIONS

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SECTIONS

THE COMMERCIAL COURTS ACT, 2015

ACT NO. 4 OF 2016

[31*st December*, 2015.]

An Act to provide for the constitution of Commercial Courts, [1][Commercial Appellate Courts,] Commercial Division and Commercial Appellate Division in the High Courts for adjudicating commercial disputes of specified value and matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—[2][(*1*) This Act may be called the Commercial Courts Act, 2015.]

(*2*) It extends to the whole of India [3]***.

(*3*) It shall be deemed to have come into force on the 23rd day of October, 2015.

2. Definitions.—(*1*) In this Act, unless the context otherwise requires,—

[4][(*a*) "Commercial Appellate Courts" means the Commercial Appellate Courts designated under section 3A;]

[5][(*aa*)] "Commercial Appellate Division" means the Commercial Appellate Division in a High Court constituted under sub-section (*1*) of section 5;

(*b*) "Commercial Court" means the Commercial Court constituted under sub-section (*1*) of section 3;

(*c*) "commercial dispute" means a dispute arising out of—

(*i*) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;

(*ii*) export or import of merchandise or services;

(*iii*) issues relating to admiralty and maritime law;

(*iv*) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;

(*v*) carriage of goods;

(*vi*) construction and infrastructure contracts, including tenders;

(*vii*) agreements relating to immovable property used exclusively in trade or commerce;

(*viii*) franchising agreements;

(*ix*) distribution and licensing agreements;

(*x*) management and consultancy agreements;

(*xi*) joint venture agreements;

(*xii*) shareholders agreements;

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1. Ins. by Act 28 of 2018, s. 2 (w.e.f. 3-5-2018).
2. Subs. by s. 3, *ibid.*, for sub-section (*1*) (w.e.f. 3-5-2018).
3. The words "except the State of Jammu and Kashmir" omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10- 2019).
4. Ins. by Act 28 of 2018, s. 4 (w.e.f. 3-5-2018).
5. Clause (*a*) renumbered as clause (*aa*) by s. 4, *ibid*., (w.e.f. 3-5-2018).

(*xiii*) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;

(*xiv*) mercantile agency and mercantile usage;

(*xv*) partnership agreements;

(*xvi*) technology development agreements;

(*xvii*) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;

(*xviii*) agreements for sale of goods or provision of services;

(*xix*) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;

(*xx*) insurance and re-insurance;

(*xxi*) contracts of agency relating to any of the above; and

(*xxii*) such other commercial disputes as may be notified by the Central Government.

Explanation.—A commercial dispute shall not cease to be a commercial dispute merely because—

(*a*) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;

(*b*) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;

(*d*) "Commercial Division" means the Commercial Division in a High Court constituted under sub-section (*1*) of section 4;

(*e*) "District Judge" shall have the same meaning as assigned to it in clause (a) of article 236 of the Constitution of India;

(*f*) "document" means any matter expressed or described upon any substance by means of letters, figures or marks, or electronic means, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter;

(*g*) "notification" means a notification published in the Official Gazette and the expression "notify" with its cognate meanings and grammatical variations shall be construed accordingly;

(*h*) "Schedule" means the Schedule appended to the Act; and

(*i*) "Specified Value", in relation to a commercial dispute, shall mean the value of the subject-matter in respect of a suit as determined in accordance with section 12 [1][which shall not be less than three lakh rupees] or such higher value, as may be notified by the Central Government.

(*2*) The words and expressions used and not defined in this Act but defined in the Code of Civil Procedure, 1908 (5 of 1908) and the Indian Evidence Act, 1872 (1 of 1872), shall have the same meanings respectively assigned to them in that Code and the Act.

1. Subs. by Act 28 of 2018, s. 4, for " which shall not be less than one crore rupees" (w.e.f. 3-5-2018).

CHAPTER II

[1][COMMERCIAL COURTS, COMMERCIAL APPELLATE COURTS, COMMERCIAL DIVISIONS AND COMMERCIAL APPELLATE DIVISIONS].

3. Constitution of Commercial Courts.—(*1*) The State Government, may after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts at District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those Courts under this Act:

[2][Provided that with respect to the High Courts having ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, constitute Commercial Courts at the District Judge level:

Provided further that with respect to a territory over which the High Courts have ordinary original civil jurisdiction, the State Government may, by notification, specify such pecuniary value which shall not be less than three lakh rupees and not more than the pecuniary jurisdiction exercisable by the District Courts, as it may consider necessary.]

[3][(*1A*) Notwithstanding anything contained in this Act, the State Government may, after consultation with the concerned High Court, by notification, specify such pecuniary value which shall not be less than three lakh rupees or such higher value, for whole or part of the State, as it may consider necessary.]

(*2*) The State Government shall, after consultation with the concerned High Court specify, by notification, the local limits of the area to which the jurisdiction of a Commercial Court shall extend and may, from time to time, increase, reduce or alter such limits.

(*3*) The [4][State Government may], with the concurrence of the Chief Justice of the High Court appoint one or more persons having experience in dealing with commercial disputes to be the Judge or Judges, of a [5][Commercial Court either at the level of District Judge or a court below the level of a District Judge].

[6][**3A. Designation of Commercial Appellate Courts**.—Except the territories over which the High Courts have ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, designate such number of Commercial Appellate Courts at District Judge level, as it may deem necessary, for the purposes of exercising the jurisdiction and powers conferred on those Courts under this Act.]

4. Constitution of Commercial Division of High Court.—(*1*) In all High Courts, having [7][ordinary original civil jurisdiction], the Chief Justice of the High Court may, by order, constitute Commercial Division having one or more Benches consisting of a single Judge for the purpose of exercising the jurisdiction and powers conferred on it under this Act.

(*2*) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Division.

5. Constitution of Commercial Appellate Division.—(*1*) After issuing notification under sub-section (*1*) of section 3 or order under sub-section (*1*) of section 4, the Chief Justice of the concerned High Court shall, by order, constitute Commercial Appellate Division having one or more Division Benches for the purpose of exercising the jurisdiction and powers conferred on it by the Act.

(*2*) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Appellate Division.

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1. Subs. by Act 28 of 2018, s. 5, for "CONSTITUTION OF COMMERCIAL COURTS, COMMERCIAL DIVISIONS AND COMMERCIAL APPELLATE DIVISIONS" (w.e.f. 3-5-2018).
2. The proviso subs. by s. 6, *ibid.*, (w.e.f. 3-5-2018).
3. Ins. by s. 6, *ibid.*, (w.e.f. 3-5-2018).
4. Subs. by s. 6, *ibid.*, for "State Government shall" (w.e.f. 3-5-2018).
5. Subs. by s. 6, *ibid*., for "Commercial Court, from amongst the cadre of Higher Judicial Service in the State" (w.e.f. 3-5-2018).
6. Ins. by s. 7, *ibid.*, (w.e.f. 3-5-2018).
7. Subs. by s. 8, *ibid.*, for "ordinary civil jurisdiction" (w.e.f. 3-5-2018).

6. Jurisdiction of Commercial Court.—The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction.

Explanation.—For the purposes of this section, a commercial dispute shall be considered to arise out of the entire territory of the State over which a Commercial Court has been vested jurisdiction, if the suit or application relating to such commercial dispute has been instituted as per the provisions of sections 16 to 20 of the Code of Civil Procedure, 1908 (5 of 1908).

7. Jurisdiction of Commercial Divisions of High Courts.—All suits and applications relating to commercial disputes of a Specified Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court:

Provided that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a court not inferior to a District Court, and filed or pending on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court:

Provided further that all suits and applications transferred to the High Court by virtue of sub-section (*4*) of section 22 of the Designs Act, 2000 (16 of 2000) or section 104 of the Patents Act, 1970 (39 of 1970) shall be heard and disposed of by the Commercial Division of the High Court in all the areas over which the High Court exercises ordinary original civil jurisdiction.

8. Bar against revision application or petition against an interlocutory order.—Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of section 13, shall be raised only in an appeal against the decree of the Commercial Court.

9. [*Transfer of suit if counterclaim in a commercial dispute is of Specified Value***].—** *Omitted by The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act,* 2018 *(*28 *of* 2018*), s. 9* (*w.e.f.* 3-5-2018).

10. Jurisdiction in respect of arbitration matters.—Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and—

(*1*) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(*2*) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(*3*) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.

11. Bar of jurisdiction of Commercial Courts and Commercial Divisions.—Notwithstanding anything contained in this Act, a Commercial Court or a Commercial Division shall not entertain or decide any suit, application or proceedings relating to any commercial dispute in respect of which the jurisdiction of the civil court is either expressly or impliedly barred under any other law for the time being in force.

CHAPTER III

SPECIFIED VALUE

12. Determination of Specified Value.—(*1*) The Specified Value of the subject-matter of the commercial dispute in a suit, appeal or application shall be determined in the following manner:—

(*a*) where the relief sought in a suit or application is for recovery of money, the money sought to be recovered in the suit or application inclusive of interest, if any, computed up to the date of filing of the suit or application, as the case may be, shall be taken into account for determining such Specified Value;

(*b*) where the relief sought in a suit, appeal or application relates to movable property or to a right therein, the market value of the movable property as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining such Specified Value;

(*c*) where the relief sought in a suit, appeal or application relates to immovable property or to a right therein, the market value of the immovable property, as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining Specified Value; [1][and]

(*d*) where the relief sought in a suit, appeal or application relates to any other intangible right, the market value of the said rights as estimated by the plaintiff shall be taken into account for determining Specified Value; [2]***

[3]* * * * *

(*2*) The aggregate value of the claim and counterclaim, if any as set out in the statement of claim and the counterclaim, if any, in an arbitration of a commercial dispute shall be the basis for determining whether such arbitration is subject to the jurisdiction of a Commercial Division, Commercial Appellate Division or Commercial Court, as the case may be.

(*3*) No appeal or civil revision application under section 115 of the Code of Civil Procedure, 1908 (5 of 1908), as the case may be, shall lie from an order of a Commercial Division or Commercial Court finding that it has jurisdiction to hear a commercial dispute under this Act.

[4][CHAPTER IIIA

PRE-INSTITUTION MEDIATION AND SETTLEMENT

12A. Pre-Institution Mediation and Settlement—(*1*) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(*2*) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation.

(*3*) Notwithstanding anything contained in the Legal Services Authorities Act, 1987, the Authority authorised by the Central Government under sub-section (*2*) shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section (*1*):

Provided that the period of mediation may be extended for a further period of two months with the consent of the parties:

Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963 (36 of 1963).

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1. Ins. by Act 28 of 2018, s. 10 (w.e.f. 3-5-2018).
2. The word "and" omitted by s. 10, *ibid.*, (w.e.f. 3-5-2018).
3. Clause (*e*) omitted by s. 10, *ibid.*, (w.e.f. 3-5-2018).
4. Ins. by s. 11, *ibid.*, (w.e.f. 3-5-2018).

(*4*) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.

(*5*) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (*4*) of section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]

CHAPTER IV

APPEALS

13. Appeals from decrees of Commercial Courts and Commercial Divisions.—(*1*) [1][Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.

(*1A*) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]

(*2*) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.

14. Expeditious disposal of appeals.—The [2][Commercial Appellate Court and the Commercial Appellate Division] shall endeavour to dispose of appeals filed before it within a period of six months from the date of filing of such appeal.

CHAPTER V

TRANSFER OF PENDING SUITS

15. Transfer of pending cases.—(*1*) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in a High Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division.

(*2*) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in any civil court in any district or area in respect of which a Commercial Court has been constituted, shall be transferred to such Commercial Court:

Provided that no suit or application where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (*1*) or sub-section (*2*).

(*3*) Where any suit or application, including an application under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of Specified Value shall stand transferred to the Commercial Division or Commercial Court under sub-section (*1*) or sub-section (*2*), the provisions of this Act shall apply to those procedures that were not complete at the time of transfer.

(*4*) The Commercial Division or Commercial Court, as the case may be, may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines or issue such further directions as may be necessary for a speedy and efficacious disposal of such suit or application in accordance [3][with Order XV-A] of the Code of Civil Procedure, 1908 (5 of 1908):

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1. Subs. by Act 28 of 2018, s. 12, for sub-section (*1*) (w.e.f. 3-5-2018).
2. Subs. by s. 13, *ibid.*, for "Commercial Appellate Division" (w.e.f. 3-5-2018).
3. Subs. by s. 14, *ibid.*, for "with Order XIV-A" (w.e.f. 3-5-2018)

Provided that the proviso to sub-rule (*1*) of Rule 1 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to such transferred suit or application and the court may, in its discretion, prescribe a new time period within which the written statement shall be filed.

(*5*) In the event that such suit or application is not transferred in the manner specified in sub-section (*1*), sub-section (*2*) or sub-section (*3*), the Commercial Appellate Division of the High Court may, on the application of any of the parties to the suit, withdraw such suit or application from the court before which it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding.

CHAPTER VI

AMENDMENTS TO THE PROVISIONS OF THE CODE OF CIVIL PROCEDURE, 1908

16. Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes.—(*1*) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.

(*2*) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, in the trial of a suit in respect of a commercial dispute of a Specified Value.

(*3*) Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (5 of 1908), by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail.

CHAPTER VII

MISCELLANEOUS

17. Collection and disclosure of data by [1][Commercial Courts, Commercial Appellate Courts], Commercial Divisions and Commercial Appellate Divisions.—The statistical data regarding the number of suits, applications, appeals or writ petitions filed before the [1][Commercial Courts, Commercial Appellate Courts], Commercial Division, or Commercial Appellate Division, as the case may be, the pendency of such cases, the status of each case, and the number of cases disposed of, shall be maintained and updated every month by each [1][Commercial Courts, Commercial Appellate Courts], Commercial Division, Commercial Appellate Division and shall be published on the website of the relevant High Court.

18. Power of High Court to issue directions.—The High Court may, by notification, issue practice directions to supplement the provisions of Chapter II of this Act or the Code of Civil Procedure, 1908 (5 of 1908) insofar as such provisions apply to the hearing of commercial disputes of a Specified Value.

19. Infrastructure facilities.—The State Government shall provide necessary infrastructure to facilitate the working of a Commercial Court or a Commercial Division of a High Court.

20. Training and continuous education.—The State Government may, in consultation with the High Court, establish necessary facilities providing for training of Judges who may be appointed to the [2][Commercial Courts, Commercial Appellate Courts], Commercial Division or the Commercial Appellate Division in a High Court.

21. Act to have overriding effect.—Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law for the time being in force other than this Act.

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1. Subs. by Act 28 of 2018, s. 15, for "Commercial Court" and "Commercial Courts" (w.e.f. 3-5-2018).
2. Subs. by s. 16, *ibid.,* for "Commercial Court" (w.e.f. 3-5-2018).

[1][**21A. Power of Central Government to make rules.**—(*1*) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for or any of the following matters, namely:—

(*a*) the manner and procedure of pre-institution mediation under sub-section (*1*) of section 12A;

(*b*) any other matter which is required to be, or may be, prescribed or in respect of which provision is to be made by rules made by the Central Government.

(*3*) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

22. Power to remove difficulties.—(*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the date of commencement of this Act.

(*2*) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

23. Repeal and savings.—(*1*) The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015 (Ord. 8 of 2015) is hereby repealed.

(*2*) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

1. Ins. by Act 28 of 2018, s. 17 (w.e.f. 3-5-2018).

SCHEDULE

(*See* section 16)

1. Amendment of section 26.—In section 26 of the Code of Civil Procedure, 1908 (5 of 1908) (hereafter referred to as the Code), in sub-section (*2*), the following proviso shall be inserted, namely:—

"Provided that such an affidavit shall be in the form and manner as prescribed under Order VI of Rule 15A.".

2. Substitution of new section for section 35.—For section 35 of the Code, the following section shall be substituted, namely:—

'**35. Costs.**—(*1*) In relation to any commercial dispute, the Court, notwithstanding anything contained in any other law for the time being in force or Rule, has the discretion to determine:

(*a*) whether costs are payable by one party to another;

(*b*) the quantum of those costs; and

(*c*) when they are to be paid.

Explanation.—For the purpose of clause (*a*), the expression "costs" shall mean reasonable costs relating to—

(*i*) the fees and expenses of the witnesses incurred;

(*ii*) legal fees and expenses incurred;

(*iii*) any other expenses incurred in connection with the proceedings.

(*2*) If the Court decides to make an order for payment of costs, the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party:

Provided that the Court may make an order deviating from the general rule for reasons to be recorded in writing.

Illustration

The Plaintiff, in his suit, seeks a money decree for breach of contract, and damages. The Court holds that the Plaintiff is entitled to the money decree. However, it returns a finding that the claim for damages is frivolous and vexatious.

In such circumstances the Court may impose costs on the Plaintiff, despite the Plaintiff being the successful party, for having raised frivolous claims for damages.

(*3*) In making an order for the payment of costs, the Court shall have regard to the following circumstances, including—

(*a*) the conduct of the parties;

(*b*) whether a party has succeeded on part of its case, even if that party has not been wholly successful;

(*c*) whether the party had made a frivolous counterclaim leading to delay in the disposal of the case;

(*d*) whether any reasonable offer to settle is made by a party and unreasonably refused by the other party; and

(*e*) whether the party had made a frivolous claim and instituted a vexatious proceeding wasting the time of the Court.

(*4*) The orders which the Court may make under this provision include an order that a party must pay—

(*a*) a proportion of another party's costs;

(*b*) a stated amount in respect of another party's costs;

(*c*) costs from or until a certain date;

(*d*) costs incurred before proceedings have begun;

(*e*) costs relating to particular steps taken in the proceedings;

(*f*) costs relating to a distinct part of the proceedings; and

(*g*) interest on costs from or until a certain date.'.

3. Amendment of section 35A.—In section 35A of the Code, sub-section (*2*) shall be omitted.

4. Amendment of First Schedule.—In the First Schedule to the Code,—

(*A*) in the Order V, in Rule 1, in sub-rule (*1*), for the second proviso, the following proviso shall be substituted, namely:—

"Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.";

(*B*) in Order VI,—

(*i*) after Rule 3, the following Rule shall be inserted, namely:—

"3A. Forms of pleading in Commercial Courts—In a commercial dispute, where forms of pleadings have been prescribed under the High Court Rules or Practice Directions made for the purposes of such commercial disputes, pleadings shall be in such forms.";

(*ii*) after Rule 15, the following Rule shall be inserted, namely:—

''15A. Verification of pleadings in a commercial dispute.—

(*1*) Notwithstanding anything contained in Rule 15, every pleading in a commercial dispute shall be verified by an affidavit in the manner and form prescribed in the Appendix to this Schedule.

(*2*) An affidavit under sub-rule (*1*) above shall be signed by the party or by one of the parties to the proceedings, or by any other person on behalf of such party or parties who is proved to the satisfaction of the Court to be acquainted with the facts of the case and who is duly authorised by such party or parties.

(*3*) Where a pleading is amended, the amendments must be verified in the form and manner referred to in sub-rule (*1*) unless the Court orders otherwise.

(*4*) Where a pleading is not verified in the manner provided under sub-rule (*1*), the party shall not be permitted to rely on such pleading as evidence or any of the matters set out therein.

(*5*) The Court may strike out a pleading which is not verified by a Statement of Truth, namely, the affidavit set out in the Appendix to this Schedule.";

(*C*) in Order VII, after Rule 2, the following Rule shall be inserted, namely:—

"2A. Where interest is sought in the suit,—

(*1*) Where the plaintiff seeks interest, the plaint shall contain a statement to that effect along with the details set out under sub-rules (*2*) and (*3*).

(*2*) Where the plaintiff seeks interest, the plaint shall state whether the plaintiff is seeking interest in relation to a commercial transaction within the meaning of section 34 of the Code of Civil Procedure, 1908 (5 of 1908) and, furthermore, if the plaintiff is doing so under the terms of a contract or under an Act, in which case the Act is to be specified in the plaint; or on some other basis and shall state the basis of that.

(*3*) Pleadings shall also state—

(*a*) the rate at which interest is claimed;

(*b*) the date from which it is claimed;

(*c*) the date to which it is calculated;

(*d*) the total amount of interest claimed to the date of calculation; and

(*e*) the daily rate at which interest accrues after that date.";

(*D*) in Order VIII,—

(*i*) in Rule 1, for the proviso, the following proviso shall be substituted, namely:—

"Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.";

(*ii*) after Rule 3, the following Rule shall be inserted, namely:—

"3A. Denial by the defendant in suits before the Commercial Division of the High Court or the Commercial Court—

(*1*) Denial shall be in the manner provided in sub-rules (2), (3), (4) and (5) of this Rule.

(*2*) The defendant in his written statement shall state which of the allegations in the particulars of plaint he denies, which allegations he is unable to admit or deny, but which he requires the plaintiff to prove, and which allegations he admits.

(*3*) Where the defendant denies an allegation of fact in a plaint, he must state his reasons for doing so and if he intends to put forward a different version of events from that given by the plaintiff, he must state his own version.

(*4*) If the defendant disputes the jurisdiction of the Court he must state the reasons for doing so, and if he is able, give his own statement as to which Court ought to have jurisdiction.

(*5*) If the defendant disputes the plaintiff's valuation of the suit, he must state his reasons for doing so, and if he is able, give his own statement of the value of the suit.";

(*iii*) in Rule 5, in sub-rule (*1*), after the first proviso, the following proviso shall be inserted, namely:—

''Provided further that every allegation of fact in the plaint, if not denied in the manner provided under Rule 3A of this Order, shall be taken to be admitted except as against a person under disability.";

(*iv*) in Rule 10, [1]***, the following proviso shall be inserted, namely:—

1. The words "after the first proviso" omitted by Act 28 of 2018, s. 18 (w.e.f. 3-5-2018).

"[1][Provided that] no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.";

(*E*) for Order XI of the Code, the following Order shall be substituted, namely:—

"ORDER XI

DISCLOSURE, DISCOVERY AND INSPECTION OF DOCUMENTS IN SUITS BEFORE THE COMMERCIAL DIVISION OF A HIGH COURT OR A COMMERCIAL COURT

1. Disclosure and discovery of documents.—(*1*) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint, including:—

(*a*) documents referred to and relied on by the plaintiff in the plaint;

(*b*) documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiff's case;

(*c*) nothing in this Rule shall apply to documents produced by plaintiffs and relevant only—

(*i*) for the cross-examination of the defendant's witnesses, or

(*ii*) in answer to any case set up by the defendant subsequent to the filing of the plaint, or

(*iii*) handed over to a witness merely to refresh his memory.

(*2*) The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document.

(*3*) The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.

Explanation.—A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix.

(*4*) In case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of such leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.

(*5*) The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non–disclosure along with the plaint.

(*6*) The plaint shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody of the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof by the said defendant.

(*7*) The defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the written statement or with its counterclaim if any, including—

(*a*) the documents referred to and relied on by the defendant in the written statement;

1. Subs. by Act 28 of 2018, s. 18, for "Provided further that" (w.e.f. 3-5-2018).

(*b*) the documents relating to any matter in question in the proceeding in the power, possession, control or custody of the defendant, irrespective of whether the same is in support of or adverse to the defendant's defence;

(*c*) nothing in this Rule shall apply to documents produced by the defendants and relevant only—

(*i*) for the cross-examination of the plaintiff's witnesses,

(*ii*) in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or

(*iii*) handed over to a witness merely to refresh his memory.

(*8*) The list of documents filed with the written statement or counterclaim shall specify whether the documents, in the power, possession, control or custody of the defendant, are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document being produced by the defendant, mode of execution, issuance or receipt and line of custody of each document.

(*9*) The written statement or counterclaim shall contain a declaration on oath made by the deponent that all documents in the power, possession, control or custody of the defendant, save and except for those set out in sub-rule (*7*) (*c*) (*iii*) pertaining to the facts and circumstances of the proceedings initiated by the plaintiff or in the counterclaim, have been disclosed and copies thereof annexed with the written statement or counterclaim and that the defendant does not have in its power, possession, control or custody, any other documents.

(*10*) Save and except for sub-rule (*7*) (*c*) (*iii*), defendant shall not be allowed to rely on documents, which were in the defendant's power, possession, control or custody and not disclosed along with the written statement or counterclaim, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counterclaim.

(*11*) The written statement or counterclaim shall set out details of documents in the power, possession, control or custody of the plaintiff, which the defendant wishes to rely upon and which have not been disclosed with the plaint, and call upon the plaintiff to produce the same.

(*12*) Duty to disclose documents, which have come to the notice of a party, shall continue till disposal of the suit.

2. Discovery by interrogatories.—(*1*) In any suit the plaintiff or defendant by leave of the court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:

Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose:

Provided further that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

(*2*) On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the court, and that court shall decide within seven days from the day of filing of the said application, in deciding upon such application, the court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the court shall consider necessary either for disposing fairly of the suit or for saving costs.

(*3*) In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

(*4*) Interrogatories shall be in the form provided in Form No. 2 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908), with such variations as circumstances may require.

(*5*) Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer of other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

(*6*) Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bona fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on the ground of privilege or any other ground may be taken in the affidavit in answer.

(*7*) Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous and any application for this purpose may be made within seven days after service of the interrogatories.

(*8*) Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the court may allow.

(*9*) An affidavit in answer to interrogatories shall be in the form provided in Form No. 3 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908), with such variations as circumstances may require.

(*10*) No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the court.

(*11*) Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the court for an order requiring him to answer, or to answer further, as the case may be, and an order may be made requiring him to answer, or to answer further, either affidavit or by *viva voce* examination, as the court may direct.

3. Inspection.—(*1*) All parties shall complete inspection of all documents disclosed within thirty days of the date of filing of the written statement or written statement to the counterclaim, whichever is later. The Court may extend this time limit upon application at its discretion, but not beyond thirty days in any event.

(*2*) Any party to the proceedings may seek directions from the Court, at any stage of the proceedings, for inspection or production of documents by the other party, of which inspection has been refused by such party or documents have not been produced despite issuance of a notice to produce.

(*3*) Order in such application shall be disposed of within thirty days of filing such application, including filing replies and rejoinders (if permitted by Court) and hearing.

(*4*) If the above application is allowed, inspection and copies thereof shall be furnished to the party seeking it, within five days of such order.

(*5*) No party shall be permitted to rely on a document, which it had failed to disclose or of which inspection has not been given, save and except with leave of Court.

(*6*) The Court may impose exemplary costs against a defaulting party, who wilfully or negligently failed to disclose all documents pertaining to a suit or essential for a decision therein and which are in their power, possession, control or custody or where a Court holds that inspection or copies of any documents had been wrongfully or unreasonably withheld or refused.

4. Admission and denial of documents.—(*1*) Each party shall submit a statement of admissions or denials of all documents disclosed and of which inspection has been completed, within fifteen days of the completion of inspection or any later date as fixed by the Court.

(*2*) The statement of admissions and denials shall set out explicitly, whether such party was admitting or denying:—

(*a*) correctness of contents of a document;

(*b*) existence of a document;

(*c*) execution of a document;

(*d*) issuance or receipt of a document;

(*e*) custody of a document.

Explanation.—A statement of admission or denial of the existence of a document made in accordance with sub-rule (*2*) (*b*) shall include the admission or denial of the contents of a document.

(*3*) Each party shall set out reasons for denying a document under any of the above grounds and bare and unsupported denials shall not be deemed to be denials of a document and proof of such documents may then be dispensed with at the discretion of the Court.

(*4*) Any party may however submit bare denials for third party documents of which the party denying does not have any personal knowledge of, and to which the party denying is not a party to in any manner whatsoever.

(*5*) An Affidavit in support of the statement of admissions and denials shall be filed confirming the correctness of the contents of the statement.

(*6*) In the event that the Court holds that any party has unduly refused to admit a document under any of the above criteria,–costs (including exemplary costs) for deciding on admissibility of a document may be imposed by the Court on such party.

(*7*) The Court may pass orders with respect to admitted documents including for waiver of further proof thereon or rejection of any documents.

5. Production of documents.—(*1*) Any party to a proceeding may seek or the Court may order, at any time during the pendency of any suit, production by any party or person, of such documents in the possession or power of such party or person, relating to any matter in question in such suit.

(*2*) Notice to produce such document shall be issued in the Form provided in Form No. 7 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908).

(*3*) Any party or person to whom such notice to produce is issued shall be given not less than seven days and not more than fifteen days to produce such document or to answer to their inability to produce such document.

(*4*) The Court may draw an adverse inference against a party refusing to produce such document after issuance of a notice to produce and where sufficient reasons for such non–production are not given and order costs.

6. Electronic records.—(*1*) In case of disclosures and inspection of Electronic Records (as defined in the Information Technology Act, 2000 (21 of 2000)), furnishing of printouts shall be sufficient compliance of the above provisions.

(*2*) At the discretion of the parties or where required (when parties wish to rely on audio or video content), copies of electronic records may be furnished in electronic form either in addition to or in lieu of printouts.

(*3*) Where Electronic Records form part of documents disclosed, the declaration on oath to be filed by a party shall specify—

(*a*) the parties to such Electronic Record;

(*b*) the manner in which such electronic record was produced and by whom;

(*c*) the dates and time of preparation or storage or issuance or receipt of each such electronic record;

(*d*) the source of such electronic record and date and time when the electronic record was printed;

(*e*) in case of email ids, details of ownership, custody and access to such email ids;

(*f*) in case of documents stored on a computer or computer resource (including on external servers or cloud), details of ownership, custody and access to such data on the computer or computer resource;

(*g*) deponent's knowledge of contents and correctness of contents;

(*h*) whether the computer or computer resource used for preparing or receiving or storing such document or data was functioning properly or in case of malfunction that such malfunction did not affect the contents of the document stored;

(*i*) that the printout or copy furnished was taken from the original computer or computer resource.

(*4*) The parties relying on printouts or copy in electronic form, of any electronic records, shall not be required to give inspection of electronic records, provided a declaration is made by such party that each such copy, which has been produced, has been made from the original electronic record.

(*5*) The Court may give directions for admissibility of Electronic Records at any stage of the proceedings.

(*6*) Any party may seek directions from the Court and the Court may of its motion issue directions for submission of further proof of any electronic record including metadata or logs before admission of such electronic record.

7. Certain provisions of the Code of Civil Procedure, 1908 not to apply.—For avoidance of doubt, it is hereby clarified that Order XIII Rule 1, Order VII Rule 14 and Order VIII Rule 1A of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to suits or applications before the Commercial Divisions of High Court or Commercial Courts.".

5. Insertion of new Order XIII-A.—After Order XIII of the Code, the following Order shall be inserted, namely:—

'ORDER XIII-A

SUMMARY JUDGMENT

1. Scope of and classes of suits to which this Order applies.—(*1*) This Order sets out the procedure by which Courts may decide a claim pertaining to any Commercial Dispute without recording oral evidence.

(*2*) For the purposes of this Order, the word "claim" shall include—

(*a*) part of a claim;

(*b*) any particular question on which the claim (whether in whole or in part) depends; or

(c) a counterclaim, as the case may be.

(*3*) Notwithstanding anything to the contrary, an application for summary judgment under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII.

2. Stage for application for summary judgment.—An applicant may apply for summary judgment at any time after summons has been served on the defendant:

Provided that, no application for summary judgment may be made by such applicant after the Court has framed the issues in respect of the suit.

3. Grounds for summary judgment.—The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that—

(*a*) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and

(*b*) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

4. Procedure.—(*1*) An application for summary judgment to a Court shall, in addition to any other matters the applicant may deem relevant, include the matters set forth in sub-clauses (*a*) to (*f*) mentioned hereunder:—

(*a*) the application must contain a statement that it is an application for summary judgment made under this Order;

(*b*) the application must precisely disclose all material facts and identify the point of law, if any;

(*c*) in the event the applicant seeks to rely upon any documentary evidence, the applicant must,—

(*i*) include such documentary evidence in its application, and

(*ii*) identify the relevant content of such documentary evidence on which the applicant relies;

(*d*) the application must state the reason why there are no real prospects of succeeding on the claim or defending the claim, as the case may be;

(*e*) the application must state what relief the applicant is seeking and briefly state the grounds for seeking such relief.

(*2*) Where a hearing for summary judgment is fixed, the respondent must be given at least thirty days' notice of:—

(*a*) the date fixed for the hearing; and

(*b*) the claim that is proposed to be decided by the Court at such hearing.

(*3*) The respondent may, within thirty days of the receipt of notice of application of summary judgment or notice of hearing (whichever is earlier), file a reply addressing the matters set forth in clauses (*a*) to (*f*) mentioned hereunder in addition to any other matters that the respondent may deem relevant:—

(*a*) the reply must precisely—

(*i*) disclose all material facts;

(*ii*) identify the point of law, if any; and

(*iii*) state the reasons why the relief sought by the applicant should not be granted;

(*b*) in the event the respondent seeks to rely upon any documentary evidence in its reply, the respondent must—

(*i*) include such documentary evidence in its reply; and

(*ii*) identify the relevant content of such documentary evidence on which the respondent relies;

(*c*) the reply must state the reason why there are real prospects of succeeding on the claim or defending the claim, as the case may be;

(*d*) the reply must concisely state the issues that should be framed for trial;

(*e*) the reply must identify what further evidence shall be brought on record at trial that could not be brought on record at the stage of summary judgment; and

(*f*) the reply must state why, in light of the evidence or material on record if any, the Court should not proceed to summary judgment.

5. Evidence for hearing of summary judgment.—(*1*) Notwithstanding anything in this Order, if the respondent in an application for summary judgment wishes to rely on additional documentary evidence during the hearing, the respondent must:—

(*a*) file such documentary evidence; and

(*b*) serve copies of such documentary evidence on every other party to the application at least fifteen days prior to the date of the hearing.

(*2*) Notwithstanding anything in this Order, if the applicant for summary judgment wishes to rely on documentary evidence in reply to the defendant's documentary evidence, the applicant must:—

(*a*) file such documentary evidence in reply; and

(*b*) serve a copy of such documentary evidence on the respondent at least five days prior to the date of the hearing.

(*3*) Notwithstanding anything to the contrary, sub-rules (*1*) and (*2*) shall not require documentary evidence to be:—

(*a*) filed if such documentary evidence has already been filed; or

(*b*) served on a party on whom it has already been served.

6. Orders that may be made by Court.—(*1*) On an application made under this Order, the Court may make such orders that it may deem fit in its discretion including the following:—

(*a*) judgment on the claim;

(*b*) conditional order in accordance with Rule 7 mentioned hereunder;

(*c*) dismissing the application;

(*d*) dismissing part of the claim and a judgment on part of the claim that is not dismissed;

(*e*) striking out the pleadings (whether in whole or in part); or

(*f*) further directions to proceed for case management under Order XV-A.

(*2*) Where the Court makes any of the orders as set forth in sub-rule (*1*) (*a*) to (*f*), the Court shall record its reasons for making such order.

7. Conditional order.—(*1*) Where it appears to the Court that it is possible that a claim or defence may succeed but it is improbable that it shall do so, the Court may make a conditional order as set forth in Rule 6 (*1*) (*b*).

(*2*) Where the Court makes a conditional order, it may:—

(*a*) make it subject to all or any of the following conditions:—

(*i*) require a party to deposit a sum of money in the Court;

(*ii*) require a party to take a specified step in relation to the claim or defence, as the case may be;

(*iii*) require a party, as the case may be, to give such security or provide such surety for restitution of costs as the Court deems fit and proper;

(*iv*) impose such other conditions, including providing security for restitution of losses that any party is likely to suffer during the pendency of the suit, as the Court may deem fit in its discretion; and

(*b*) specify the consequences of the failure to comply with the conditional order, including passing a judgment against the party that have not complied with the conditional order.

8. Power to impose costs.—The Court may make an order for payment of costs in an application for summary judgment in accordance with the provisions of sections 35 and 35A of the Code.'.

6. Omission of Order XV.—Order XV of the Code shall be omitted.

7. Insertion of Order XV-A.—7. After Order XV of the Code, the following Order shall be inserted, namely:—

"ORDER XV A

CASE MANAGEMENT HEARING

1. First Case Management Hearing.—The Court shall hold the first Case Management Hearing, not later than four weeks from the date of filing of affidavit of admission or denial of documents by all parties to the suit.

2. Orders to be passed in a Case Management Hearing.—In a Case Management Hearing, after hearing the parties, and once it finds that there are issues of fact and law which require to be tried, the Court may pass an order—

(*a*) framing the issues between the parties in accordance with Order XIV of the Code of Civil Procedure, 1908 (5 of 1908) after examining pleadings, documents and documents produced before it, and on examination conducted by the Court under Rule 2 of Order X, if required;

(*b*) listing witnesses to be examined by the parties;

(*c*) fixing the date by which affidavit of evidence to be filed by parties;

(*d*) fixing the date on which evidence of the witnesses of the parties to be recorded;

(*e*) fixing the date by which written arguments are to be filed before the Court by the parties;

(*f*) fixing the date on which oral arguments are to be heard by the Court; and

(*g*) setting time limits for parties and their advocates to address oral arguments.

3. Time limit for the completion of a trial.—In fixing dates or setting time limits for the purposes of Rule 2 of this Order, the Court shall ensure that the arguments are closed not later than six months from the date of the first Case Management Hearing.

4. Recording of oral evidence on a day-today basis.—The Court shall, as far as possible, ensure that the recording of evidence shall be carried on, on a day-to-day basis until the cross-examination of all the witnesses is complete.

5. Case Management Hearings during a trial.—The Court may, if necessary, also hold Case Management Hearings anytime during the trial to issue appropriate orders so as to ensure adherence by the parties to the dates fixed under Rule 2 and facilitate speedy disposal of the suit.

6. Powers of the Court in a Case Management Hearing.—(*1*) In any Case Management Hearing held under this Order, the Court shall have the power to—

(*a*) prior to the framing of issues, hear and decide any pending application filed by the parties under Order XIII-A;

(*b*) direct parties to file compilations of documents or pleadings relevant and necessary for framing issues;

(*c*) extend or shorten the time for compliance with any practice, direction or Court order if it finds sufficient reason to do so;

(*d*) adjourn or bring forward a hearing if it finds sufficient reason to do so;

(*e*) direct a party to attend the Court for the purposes of examination under Rule 2 of Order X;

(*f*) consolidate proceedings;

(*g*) strike off the name of any witness or evidence that it deems irrelevant to the issues framed;

(*h*) direct a separate trial of any issue;

(*i*) decide the order in which issues are to be tried;

(*j*) exclude an issue from consideration;

(*k*) dismiss or give judgment on a claim after a decision on a preliminary issue;

(*l*) direct that evidence be recorded by a Commission where necessary in accordance with Order XXVI;

(*m*) reject any affidavit of evidence filed by the parties for containing irrelevant, inadmissible or argumentative material;

(*n*) strike off any parts of the affidavit of evidence filed by the parties containing irrelevant, inadmissible or argumentative material;

(*o*) delegate the recording of evidence to such authority appointed by the Court for this purpose;

(*p*) pass any order relating to the monitoring of recording the evidence by a commission or any other authority;

(*q*) order any party to file and exchange a costs budget;

(*r*) issue directions or pass any order for the purpose of managing the case and furthering the overriding objective of ensuring the efficient disposal of the suit.

(*2*) When the Court passes an order in exercise of its powers under this Order, it may—

(*a*) make it subject to conditions, including a condition to pay a sum of money into Court; and

(*b*) specify the consequence of failure to comply with the order or a condition.

(*3*) While fixing the date for a Case Management Hearing, the Court may direct that the parties also be present for such Case Management Hearing, if it is of the view that there is a possibility of settlement between the parties.

7. Adjournment of Case Management Hearing.—(*1*) The Court shall not adjourn the Case Management Hearing for the sole reason that the advocate appearing on behalf of a party is not present:

Provided that an adjournment of the hearing is sought in advance by moving an application, the Court may adjourn the hearing to another date upon the payment of such costs as the Court deems fit, by the party moving such application.

(*2*) Notwithstanding anything contained in this Rule, if the Court is satisfied that there is a justified reason for the absence of the advocate, it may adjourn the hearing to another date upon such terms and conditions it deems fit.

8. Consequences of non-compliance with orders.—Where any party fails to comply with the order of the Court passed in a Case Management Hearing, the Court shall have the power to—

(*a*) condone such non-compliance by payment of costs to the Court;

(*b*) foreclose the non-compliant party's right to file affidavits, conduct cross-examination of witnesses, file written submissions, address oral arguments or make further arguments in the trial, as the case may be, or

(*c*) dismiss the plaint or allow the suit where such non-compliance is wilful, repeated and the imposition of costs is not adequate to ensure compliance.".

8. Amendment of Order XVIII.—In Order XVIII of the Code, in Rule 2, for sub-rules (*3A*), (*3B*), (*3C*), (*3D*), (*3E*) and (*3F*), the following shall be substituted, namely:—

"(*3A*) A party shall, within four weeks prior to commencing the oral arguments, submit concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(*3B*) The written arguments shall clearly indicate the provisions of the laws being cited in support of the arguments and the citations of judgments being relied upon by the party and include copies of such judgments being relied upon by the party.

(*3C*) A copy of such written arguments shall be furnished simultaneously to the opposite party.

(*3D*) The Court may, if it deems fit, after the conclusion of arguments, permit the parties to file revised written arguments within a period of not more than one week after the date of conclusion of arguments.

(*3E*) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(*3F*) It shall be open for the Court to limit the time for oral submissions having regard to the nature and complexity of the matter.".

9. Amendment of Order XVIII.—In Order XVIII of the Code, in Rule 4, after sub-rule (*1*), the following sub-rules shall be inserted, namely:—

‘‘(*1A*) The affidavits of evidence of all witnesses whose evidence is proposed to be led by a party shall be filed simultaneously by that party at the time directed in the first Case Management Hearing.

(*1B*) A party shall not lead additional evidence by the affidavit of any witness (including of a witness who has already filed an affidavit) unless sufficient cause is made out in an application for that purpose and an order, giving reasons, permitting such additional affidavit is passed by the Court.

(*1C*) A party shall however have the right to withdraw any of the affidavits so filed at any time prior to commencement of cross-examination of that witness, without any adverse inference being drawn based on such withdrawal:

Provided that any other party shall be entitled to tender as evidence and rely upon any admission made in such withdrawn affidavit.”.

10. Amendment to Order XIX.—In Order XIX of the Code, after Rule 3, the following Rules shall be inserted, namely:—

“**4. Court may control evidence.—**(*1*) The Court may, by directions, regulate the evidence as to issues on which it requires evidence and the manner in which such evidence may be placed before the Court.

(*2*) The Court may, in its discretion and for reasons to be recorded in writing, exclude evidence that would otherwise be produced by the parties.”.

5. Redacting or rejecting evidence.—A Court may, in its discretion, for reasons to be recorded in writing—

(*i*) redact or order the redaction of such portions of the affidavit of examination-in-chief as do not, in its view, constitute evidence; or

(*ii*) return or reject an affidavit of examination-in-chief as not constituting admissible evidence.

6. Format and guidelines of affidavit of evidence.—An affidavit must comply with the form and requirements set forth below:—

(*a*) such affidavit should be confined to, and should follow the chronological sequence of, the dates and events that are relevant for proving any fact or any other matter dealt with;

(*b*) where the Court is of the view that an affidavit is a mere reproduction of the pleadings, or contains the legal grounds of any party’s case, the Court may, by order, strike out the affidavit or such parts of the affidavit, as it deems fit and proper;

(*c*) each paragraph of an affidavit should, as far as possible, be confined to a distinct portion of the subject;

(*d*) an affidavit shall state—

(*i*) which of the statements in it are made from the deponent’s own knowledge and which are matters of information or belief; and

(*ii*) the source for any matters of information or belief;

(*e*) an affidavit should—

(*i*) have the pages numbered consecutively as a separate document (or as one of several documents contained in a file);

(*ii*) be divided into numbered paragraphs;

(*iii*) have all numbers, including dates, expressed in figures; and

(*iv*) if any of the documents referred to in the body of the affidavit are annexed to the affidavit or any other pleadings, give the annexures and page numbers of such documents that are relied upon.".

11. Amendment of Order XX.—In Order XX of the Code, for Rule 1, the following Rule shall be substituted, namely:—

"(*1*) The [1][Commercial Court, Commercial Appellate Court], Commercial Division, or Commercial Appellate Division, as the case may be, shall, within ninety days of the conclusion of arguments, pronounce judgment and copies thereof shall be issued to all the parties to the dispute through electronic mail or otherwise.".

[2]**[12**. After Appendix H, the following Appendix shall be inserted, namely:—

''APPENDIX-I

STATEMENT OF TRUTH

(Under First Schedule, Order VI- Rule 15A and Order XI- Rule 3)

I ----- the deponent do hereby solemnly affirm and declare as under:

1. I am the party in the above suit and competent to swear this affidavit.

2. I am sufficiently conversant with the facts of the case and have also examined all relevant documents and records in relation thereto.

3. I say that the statements made in -----paragraphs are true to my knowledge and statements made in -----paragraphs are based on information received which I believe to be correct and statements made in ---paragraphs are based on legal advice.

4. I say that there is no false statement or concealment of any material fact, document or record and I have included information that is according to me, relevant for the present suit.

5. I say that all documents in my power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by me have been disclosed and copies thereof annexed with the plaint, and that I do not have any other documents in my power, possession, control or custody.

6. I say that the above-mentioned pleading comprises of a total of ---- pages, each of which has been duly signed by me.

7. I state that the Annexures hereto are true copies of the documents referred to and relied upon by me.

8. I say that I am aware that for any false statement or concealment, I shall be liable for action taken against me under the law for the time being in force.

Place:

Date:

DEPONENT

VERIFICATION

I, ……. do hereby declare that the statements made above are true to my knowledge.

Verified at [place] on this [date]

DEPONENT.".]

1. Subs. by Act 28 of 2018, s. 18, for "Commercial Court" (w.e.f. 3-5-2018).
2. Ins. by s. 18, *ibid.*, (w.e.f. 23-10-2015).

रजिस्ट्री सं० डी० एल०-33004/99 REGD. NO. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 2481] नई दिल्ली, मंगलवार, जुलाई 3, 2018/आषाढ़ 12, 1940
No. 2481] NEW DELHI, TUESDAY, JULY 3, 2018/ASHADHA 12, 1940

विधि और न्याय मंत्रालय
(विधि कार्य विभाग)
अधिसूचना

नई दिल्ली, 3 जुलाई, 2018

का.आ.3232(अ).—केंद्रीय सरकार, वाणिज्यिक न्यायालय अधिनियम, 2015 की धारा 12क की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, वाणिज्यिक न्यायालय अधिनियम, 2015 के अध्याय 3क के अधीन, संस्थित करने से पहले मध्यस्थता और समझौता के प्रयोजनों हेतु, विधिक सेवा प्राधिकरण अधिनियम, 1987 (1987 का 39) के अधीन गठित राज्य प्राधिकारी और जिला प्राधिकारी को प्राधिकृत करती है।

[सं. ए-60011(06)/20/2016-प्रशा.-III (वि.का.)]

डॉ. राजीव मणि, संयुक्त सचिव और विधि सलाहकार

MINISTRY OF LAW AND JUSTICE
(Department of Legal Affairs)
NOTIFICATION

New Delhi, the 3rd July, 2018

S.O. 3232(E).—In exercise of the powers conferred by sub-section (2) of section 12A of the Commercial Courts Act, 2015, the Central Government hereby authorises the State Authority and District Authority constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation and settlement under Chapter IIIA of the Commercial Courts Act, 2015.

[No.A-60011(06)/20/2016-Admn.-III(LA)]

Dr. RAJIV MANI , Jt. Secy. and Legal Adviser

3759 GI/2018

Uploaded by Dte. of Printing at Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.

रजिस्ट्री सं० डी० एल०-33004/99 REGD. NO. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

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PART II—Section 3—Sub-section (i)
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 446] नई दिल्ली, मंगलवार, जुलाई 3, 2018/आषाढ़ 12, 1940
No. 446] NEW DELHI, TUESDAY, JULY 3, 2018/ASHADHA 12, 1940

विधि और न्याय मंत्रालय

(विधि कार्य विभाग)

अधिसूचना

नई दिल्ली, 3 जुलाई, 2018

सा.का.नि. 606(अ).—केंद्रीय सरकार, वाणिज्यिक न्यायालय अधिनियम, 2015 (2016 का 4) की धारा 12क की उपधारा (1) के साथ पठित धारा 21क की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित नियम बनाती है, अर्थात्:-

1. **संक्षिप्त नाम और प्रारंभ**- (1) इन नियमों का संक्षिप्त नाम वाणिज्यिक न्यायालय (पूर्व सांस्थानिक मध्यकता और समझौता) नियम, 2018 है ।

(2) ये राजपत्र में उनके प्रकाशन की तारीख से प्रवृत्त होंगे ।

2. **परिभाषाएं**- (1) इन नियमों में जब तक कि संदर्भ से अन्यथा अपेक्षित न हो,-

(क) "अधिनियम" से वाणिज्यिक न्यायालय अधिनियम, 2015 (2016 का 4) अभिप्रेत है;

(ख) "आवेदक" से वह व्यक्ति अभिप्रेत है जो नियम 3 के अधीन मध्यकता प्रक्रिया आरंभ करने के लिए प्राधिकारी के पास पहुंचता है ;

(ग) "प्राधिकारी" से अधिनियम की धारा 12क की उपधारा (2) के अधीन केन्द्रीय सरकार द्वारा अधिसूचित प्राधिकारी अभिप्रेत है;

(घ) "वाणिज्यिक विवाद" से अधिनियम की धारा 2 की उपधारा (1) के खंड (ग) के अधीन यथा परिभाषित वाणिज्यिक विवाद अभिप्रेत है;

(ङ) "प्ररूप" से इन नियमों की अनुसूची में विनिर्दिष्ट प्ररूप अभिप्रेत है;

(च) "मध्यकता" से दो पक्षकारों के मध्य वाणिज्यिक विवाद समाधान, सामंजस्य और निपटारे के लिए मध्यक द्वारा अपनाई गई प्रक्रिया अभिप्रेत है ;

(छ) "मध्यक" से मध्यकता के संचालन के लिए प्राधिकारी द्वारा पैनलित व्यक्ति अभिप्रेत है;

(ज) "विरोधी पक्षकार" से वह पक्षकार अभिप्रेत है जिसके विरुद्ध किसी वाणिज्यिक विवाद में अनुतोष चाहा गया है ;

(झ) "अनुसूची" से इन नियमों से उपाबद्ध अनुसूची अभिप्रेत है ;और

(ञ) "समझौता" से मध्यकता के पक्षकारों द्वारा वाणिज्यिक विवाद का समझौता अभिप्रेत है ;

(2) इन नियमों में प्रयुक्त और परिभाषित नहीं किए गए शब्दों और पदों के वही अर्थ होंगे जो उन्हें अधिनियम या विधिक सेवा प्राधिकरण अधिनियम, 1987 (1987 का 39) या तत्समय प्रवृत्त किसी अन्य विधि में दिए गए हैं ।

3. मध्यकता प्रक्रिया का आरंभ- (1) वाणिज्यिक विवाद का पक्षकार प्राधिकारी को या तो आनलाइन या डाक द्वारा या सीधे ही अनुसूची (1) में विनिर्दिष्ट प्ररूप -1 के अनुसार अधिनियम के अधीन मध्यकता प्रक्रिया के आरंभ के लिए डिमांड ड्राफ्ट या आनलाइन प्राधिकारी को संदेय एक हजार रुपए की फीस के साथ आवेदन कर सकेगा;

(2) प्राधिकारी क्षेत्रीय और धनीय अधिकारिता तथा वाणिज्यिक विवाद की प्रकृति को ध्यान में रखते हुए अनुसूची 1 में विनिर्दिष्ट प्ररूप -2 के अनुसार रजिस्ट्रीकृत या स्पीड पोस्ट और इलैक्ट्रानिक माध्यम से, जिसके अंतर्गत ई-मेल भी है, नोटिस जारी करेगा और ऐसी तारीख को जो उक्त नोटिस के जारी करने की तारीख से दस दिन की अवधि से आगे की न हो विरोधी पक्षकार को प्रकट होने तथा मध्यकता प्रक्रिया में सम्मिलित होने की सहमति देने की वांछा करेगा ;

(3) जहां विरोधी पक्षकार से डाक या ई-मेल द्वारा कोई उत्तर प्राप्त नहीं होता, वहां प्राधिकारी उप नियम (2) में यथा विनिर्दिष्ट रीति में उसे एक अंतिम नोटिस जारी करेगा ;

(4) जहां उप नियम (3) के अधीन जारी किया गया नोटिस अभिस्वीकृत नहीं किया जाता है या जहां विरोधी पक्षकार भागीदारी प्रक्रिया में हिस्सा लेने से इनकार कर देता है, वहां प्राधिकारी मध्यकता प्रक्रिया को अप्रारंभ के रूप में मानेगा और अनुसूची 1 में विनिर्दिष्ट प्ररूप -3 के अनुसार एक रिपोर्ट तैयार करेगा तथा उसे आवेदक और विरोधी पक्षकार को पृष्ठांकित करेगा ;

(5) जहां विरोधी पक्षकार, उप नियम (2) या उप नियम (3) के अधीन नोटिस प्राप्त करने के पश्चात् प्रकट होने के लिए और समय चाहता है, वहां प्राधिकारी यदि वह उचित समझे तो विरोधी पक्षकार से ऐसे आवेदन की प्राप्ति की तारीख से दस दिन से अनधिक की एक वैकल्पिक तारीख नियत कर सकेगा ;

(6) जहां विरोधी पक्षकार उप नियम (5) के अधीन नियत तारीख को प्रकट होने में असफल हो जाता है, वहां प्राधिकारी मध्यकता प्रक्रिया को अप्रारंभ के रूप में मानेगा और अनुसूची 1 में विनिर्दिष्ट प्ररूप -3 के अनुसार एक रिपोर्ट तैयार करेगा तथा उसे आवेदक और विरोधी पक्षकार को पृष्ठांकित करेगा ;

(7) जहां वाणिज्यिक विवाद के दोनों पक्षकार प्राधिकारी के समक्ष उपस्थित होते हैं और मध्यकता प्रक्रिया में हिस्सा लेने की सहमति देते हैं, वहां प्राधिकारी वाणिज्यिक विवाद को मध्यक को समनुदेशित करेगा और उक्त मध्यक के समक्ष उनकी उपस्थिति के लिए एक तारीख नियत करेगा ;

(8) प्राधिकारी यह सुनिश्चित करेगा कि मध्यकता प्रक्रिया पूर्व सांस्थानिक मध्यकता के लिए आवेदन की प्राप्ति की तारीख से तीन मास की अवधि के भीतर पूर्ण हो जाए, यदि यह अवधि आवेदक और विरोधी पक्षकार की सहमति से और दो महिने के लिए विस्तारित नहीं की जाती है ।

4. मध्यकता करने के लिए स्थान- मध्यकता करने के लिए स्थान प्राधिकारी का परिसर होगा ।

5. मध्यक की भूमिका- मध्यक नियम 3 के उप नियम (7) के अधीन समनुदेशन की प्राप्ति पर, पक्षकारों के मध्य वाणिज्यिक विवाद के स्वैच्छिक समाधान को सुकर बनाएगा और समझौते तक पहुंचने में उनकी सहायता करेगा ।

6. पक्षकारों का प्रतिनिधित्व- वाणिज्यिक विवाद का कोई पक्षकार या तो व्यक्तिगत रूप से या उसके सम्यक् रूप से प्राधिकृत प्रतिनिधि या परामर्शी के माध्यम से, यथास्थिति प्राधिकारी या मध्यक के समक्ष उपस्थित होगा ।

7. मध्यकता की प्रक्रिया- (1) मध्यकता का संचालन निम्नलिखित प्रक्रिया के अनुसार किया जाएगा:-

(i) मध्यकता के प्रारंभ पर, मध्यक पक्षकारों को मध्यकता प्रक्रिया के बारे में समझाएगा;

(ii) प्रत्येक मध्यकता बैठक की तारीख और समय वाणिज्यिक विवाद के पक्षकारों के साथ परामर्श से मध्यक द्वारा नियत किया जाएगा ;

(iii) मध्यक, मध्यकता की प्रक्रिया के दौरान पक्षकारों के साथ संयुक्त या पृथक् रूप से बैठकें कर सकेगा, जैसा वह उचित समझे ;

(iv) आवेदक या विरोधी पक्षकार इस विशेष निर्देश के साथ कि उसका कौन सा भाग अन्य पक्षकार के साथ साक्षा किया जा सकता है, अपने समझौता प्रस्तावों को मध्यक् के साथ पृथक् बैठकों में साक्षा कर सकेंगे ;

(v) मध्यकता के पक्षकार मध्यकता बैठकों के दौरान या तो मौखिक रूप से या लिखित में एक-दूसरे के साथ समझौता प्रस्तावों का आदान-प्रदान कर सकेंगे ;

(vi) मध्यकता की प्रक्रिया के दौरान, मध्यक प्रत्येक पक्षकार के साथ पृथक् बैठकों में किए गए विचार-विमर्श की गोपनीयता को बनाए रखेगा और केवल वही तथ्य जो कोई पक्षकार साक्षा करना अनुज्ञात करे, अन्य पक्षकार के साथ साक्षा किए जा सकते हैं;

(vii) एक बार दोनों पक्षकारों के पारस्परिक रूप से सहमत समझौते पर पहुंचने पर, उसे मध्यक द्वारा लेखबद्ध किया जाएगा और उस पर वाणिज्यिक विवाद के पक्षकारों द्वारा अनुसूची 1 में विनिर्दिष्ट प्ररूप-4 के अनुसार हस्ताक्षर किए जाएंगे ;

(viii) मध्यक मूल समझौता करार को वाणिज्यिक विवाद के सभी पक्ष्ंकारों को प्रदान करेगा और उसकी एक हस्ताक्षरित प्रति प्राधिकारी को भी अग्रेषित करेगा ; और

(ix) जहां अधिनियम की धारा 12क की उप धारा (3) में विनिर्दिष्ट समय के भीतर पक्षकारों के मध्य कोई समझौता नहीं होता या जहां मध्यक की यह राय है कि समझौता संभव नहीं है, वहां मध्यक अनुसूची 1 में विनिर्दिष्ट प्ररूप-5 के अनुसार लिखित में कारणों सहित एक रिपोर्ट प्राधिकारी को प्रस्तुत करेगा ।

(2) यथास्थिति, प्राधिकारी या मध्यक पक्षकारों के मध्य आदान प्रदान किए गए या मध्यक को प्रस्तुत किए गए दस्तावेजों या मध्यक द्वारा तैयार किए गए टिप्पणों की हार्ड या साफ्ट प्रतियों को, नियम 3 के उप नियम (1) के अधीन मध्यकता के लिए आवेदन, नियम 3 के उप नियम (2) या उप नियम (3) के अधीन जारी नोटिस, नियम 7 के उप नियम (1) के खंड (vii) के अधीन समझौता करार और नियम 7 के उप नियम (1) के खंड (ix) के अधीन असफलता रिपोर्ट से भिन्न दस्तावेजों को छह मास की अवधि से अधिक नहीं रखेगा ।

8. पक्षकारों का सद्भावपूर्वक कार्य करना- वाणिज्यिक विवाद के सभी पक्षकार विवाद को निपटाने के आशय के साथ सद्भावपूर्वक मध्यकता प्रक्रिया में भागीदारी करेंगे ।

9. मध्यकता की गोपनीयता- मध्यक, पक्षकार या उनके प्राधिकृत प्रतिनिधि या परामर्शी मध्यकता के बारे में गोपनीयता रखेंगे और मध्यक मध्यकता बैठकों की आशुलीपिकीय या श्रव्य या दृश्य रिकोर्डिंग अनुज्ञात नहीं करेगा ।

10. मध्यकता डाटा का अनुरक्षण और प्रकाशन- (1) जिला विधिक सेवा प्राधिकरण उसके द्वारा अधिनियम के अधीन किए गए मध्यकता संबंधी विस्तृत डाटा को राज्य विधिक सेवा प्राधिकरण को अग्रेषित करेगा ।

(2) राज्य विधिक सेवा प्राधिकरण उसके द्वारा या उसकी अधिकारिता के अधीन की गई सभी मध्यकताओं के डाटा को अनुरक्षित करेगा और त्रैमासिक आधार पर अनुसूची (1) में विनिर्दिष्ट प्ररूप-6 के अनुसार अपनी वेबसाइट पर उसका प्रकाशन करेगा ।

11. मध्यकता फीस-मध्यकता के प्रारंभ से पूर्व, वाणिज्यिक विवाद के पक्षकार अनुसूची 2 में यथा विनिर्दिष्ट दावा की मात्रा के अनुसार बराबर साझा की जाने वाली एक बार मध्यकता फीस प्राधिकारी को संदाय करेंगे ।

12. मध्यक द्वारा पालन किए जाने वाले आचार- मध्यक-

(i) मध्यकता प्रक्रिया की निष्ठा और ऋजुता बनाए रखेगा ;

(ii) यह सुनिश्चित करेगा कि मध्यकता में अंतवर्लित पक्षकारों को उचित रूप से सूचित किया जाए और मध्यकता प्रक्रिया के प्रक्रियागत पहलुओं की उन्हें पर्याप्त समझ हो '

(iii) वाणिज्यिक विवाद की विषय वस्तु में किसी वित्तीय हित या अन्य हित का प्रकटन नहीं करेगा ;

(iv) वाणिज्यिक विवाद के पक्षकारों के साथ संवाद करते समय किसी अनुपयुक्तता से बचेगा ;

(v) उसमें निहित विश्वास और गोपनीयता के संबंध के प्रति निष्ठावान रहेगा ;

(vi) वाणिज्यिक विवाद के समाधान से संबंधित मध्यकता का संचालन तत्समय प्रवृत्त लागू विधि के अनुसार करेगा ;

(vii) यह मानेगा कि मध्यकता पक्षकारों द्वारा आत्म निर्धारण के सिद्धांतों पर आधारित है और मध्यकता की प्रक्रिया पक्षकारों के स्वैच्छिक करार पर पहुंचने की योग्यता पर निर्भर है ;

(viii) वायदों या परिणामों की गारंटी से बचेगा ;

(ix) प्राधिकारी के परिसर में मध्यकता बैठकों के दौरान के सिवाय, पक्षकारों, उनके प्रतिनिधियों या उनके परामर्शियों से नहीं मिलेगा या उनके साथ संवाद नहीं करेगा ;

(x) उसके द्वारा मध्यकता किए गए वाणिज्यिक विवाद मामले या मध्यक के रूप में उसके द्वारा किए गए किसी अन्य सहबद्ध क्रियाकलाप के ब्यौरे मीडिया के साथ या जन साधारण के साथ साझा नहीं करेगा जो वाणिज्यिक विवाद के पक्षकारों के हितों के प्रतिकूल हों।

अनुसूची-1

<u>प्ररूप-1: मध्यकता आवेदन प्ररूप</u>

[नियम 3 (1) देखें]

प्राधिकारी का नाम और पता

पक्षकारों के ब्यौरे:

1. आवेदक का नाम:
2. आवेदक का पता और संपर्क ब्यौरे:
   पता:-
   दूरभाष सं.---------मोबाइल--------ई-मेल आईडी----------
3. विरोधी पक्षकार का नाम:
4. विरोधी पक्षकार का पता और संपर्क ब्यौरे:
   पता:-
   दूरभाष सं.---------मोबाइल--------ई-मेल आईडी----------

विवाद के ब्यौरे:

1. वाणिज्यिक न्यायालय अधिनियम, 2015 (2016 का 4) की धारा 2(1)(ग) के अनुसार विवाद की प्रकृति
2. दावे की मात्रा :
3. सक्षम न्यायालय की क्षेत्रीय अधिकारिता:
4. वाणिज्यिक विवाद का संक्षिप्त सारांश (5000 शब्दों से अधिक नहीं) :
5. सुसंगता के अतिरिक्त बिंदु :

संदत्त फीस के ब्यौरे :

डी डी सं..... तारीख .....बैंक और शाखा का नाम ..... द्वारा संदत्त फीस ऑनलाइन संव्यवहार सं.....तारीख.....

तारीख : **आवेदक का नाम और हस्ताक्षर**

टिप्पण : प्ररुप, एक हजार रुपये फीस के साथ प्राधिकारी को प्रस्तुत किया जाएगा ।

कार्यालय प्रयोग के लिए : प्ररुप प्राप्ति की तारीख : आबंटित फाइल सं. : विरोधी पक्षकार को नोटिस भेजने की रीति : विरोधी पक्षकार को भेजी गई नोटिस की तारीख : क्या विरोधी पक्षकार द्वारा नोटिस की अभिस्वीकृति दी गई या नहीं : अनारंभित रिपोर्ट की तारीख/मध्यस्थ को वाणिज्यिक विवाद की सुपुर्दगी :

प्ररूप 2 : पूर्व-संस्थित मध्यकता के लिए विरोधी पक्षकार को नोटिस/अंतिम नोटिस

[नियम 3(2) और नियम 3(3) देखें]

प्राधिकारी का नाम और पता

1. एक वाणिज्य विवाद (**प्राधिकारी का नाम**) को (**आवेदक का नाम**) द्वारा (**विरोधी पक्षकार का नाम**) के विरूद्ध वाणिज्यिक न्यायालय अधिनियम, 2015 के अध्याय 3क की धारा 12क के निबंधनों में पूर्व-संस्थित मध्यकता का अनुरोध करने के लिए प्रस्तुत किया गया है । मध्यकता आवेदन प्रारूप की एक प्रति इसके साथ उपाबद्ध है ।

2. विरोधी पक्षकार को ..... (तारीख) ..... समय पर ..... (प्राधिकारी का पता) पर वैयक्तिक रूप से उपस्थित होंगे या उसके सम्यकता प्राधिकृत प्रतिनिधि या काउंसेल के माध्यम से उपस्थित होने का और मध्यकता प्रक्रिया में भाग लेने के लिए अपनी सहमति संसूचित करने का निदेश दिया जाता है ।

3. विरोधी पक्षकार द्वारा उपस्थित होने में असफलता को आवेदक द्वारा संस्थापित मध्यकता प्रक्रिया में भाग लेने से इंकार समझा जाएगा ।

4. यदि पैरा 2 में वर्णित तारीख और समय में परिवर्तन करने की ईप्सा की जाती है तो ऐसा विरोधी पक्षकार द्वारा स्वयं या उनके प्राधिकृत प्रतिनिधि या काउंसेल द्वारा उपस्थिति की अनुसूचित तारीख से कम से कम दो दिन पूर्व लिखित अनुरोध द्वारा किया जा सकता है ।

प्राधिकारी के हस्ताक्षर

तारीख :

प्ररुप 3 : अनारंभित रिपोर्ट

[नियम 3(4) और नियम (6) देखें]

प्राधिकारी का नाम और पता

1. आवेदक का नाम :
2. पूर्व संस्थित मध्यकता के लिए आवेदक की तारीख:
3. विरोधी पक्षकार का नाम :
4. विरोधी पक्षकार की हाजिरी के लिए नियत तारीख :
5. नियम 3 (4) और 3(6) के अधीन बनाई गई रिपोर्ट :
6. अनारंभिक रिपोर्ट का कारण .....

....

....

प्राधिकारी के हस्ताक्षर

तारीख :

प्रति :

आवेदक ।

विरोधी पक्षकार ।

प्ररुप 4 : समझौता

[नियम 7(1) (vii) देखें]

प्राधिकारी का नाम और पता

1. मध्यस्थ का नाम :
2. आवेदक का नाम
3. विरोधी पक्षकार का नाम :
4. पूर्व संस्थित मध्यकता के लिए आवेदन की तारीख :
5. मध्यकता का स्थान :
6. मध्यकता की तारीख (तारीखें):
7. बैठकों की संख्या और बैठकों की अवधि :
8. समझौते का निबंधन :

तारीख :

आवेदक का हस्ताक्षर **विरोधी पक्षकार का हस्ताक्षर**

मध्यस्थ का हस्ताक्षर

प्ररुप 5 : निष्फल रिपोर्ट
[नियम 7(1) (ix) देखें]
प्राधिकारी का नाम और पता

1. मध्यस्थ का नाम :
2. आवेदक का नाम
3. विरोधी पक्षकार का नाम :
4. पूर्व संस्थित मध्यकता के लिए आवेदन की तारीख :
5. मध्यकता का स्थान :
6. मध्यकता की तारीख (तारीखें):
7. बैठकों की संख्या और बैठकों की अवधि :
8. निष्फलता के कारण :

तारीख :

आवेदक के हस्ताक्षर **विरोधी पक्षकार का हस्ताक्षर**

मध्यस्थ का हस्ताक्षर

प्ररुप 6 मध्यकता डाटा
[नियम 10 (2) देखें]

क्रम सं.	प्राधिकारी का नाम	प्राधिकारी द्वारा प्राप्त आवेदन की संख्या	आवेदक पक्षकार की प्रकृति		विरोधी पक्षकार की प्रकृति		अनुसूची ।। के अनुसार स्तरवार आवेदनों की संख्या					नियम 3(4) और नियम 3(6) के अनुसार निपटाये गए आवेदन की सं.	मध्यकता के लिए निर्दिष्ट आवेदन की सं.	नियम 7(1) (ix) के अनुसार, जहां कोई समझौता नहीं हुआ, आवेदन की सं.	नियम 7(1) (vii) के अनुसार, जहां पक्षकार समझौते पर पहुंचे, आवेदन की सं.
			व्यक्तिगत	कारपोरेट	व्यक्तिगत	कारपोरेट	I	II	III	IV	V				

अनुसूची - ।।
मध्यकता फीस
(नियम ।। देखें)

क्रम सं.	दावा की मात्रा	प्राधिकारी को संदेय मध्यकता फीस (भारतीय रुपये में)
1.	3,00,000 रुपये से 10,00,000 रुपये तक	15,000/- रुपये
2.	10,00,000 रुपये से 50,00,000 रुपये तक	30,000/- रुपये
3.	50,00,000 रुपये से 1,00,00,000 रुपये तक	40,000/- रुपये

4.	100,00,000 रुपये से 3,00,00,000 रुपये तक	50,000/- रुपये
5.	3,00,00,000 रुपये से अधिक	75,000/- रुपये

[सं. ए-60011(06)/20/2016-एडमिन-।।।(एलए)]

डा. राजीव मणि, संयुक्त सचिव और विधायी सलाहकार

MINISTRY OF LAW AND JUSTICE

(Department of Legal Affairs)

NOTIFICATION

New Delhi, the 3rd July, 2018

G.S.R. 606(E).—In exercise of the powers conferred by sub-section (2) of section 21A read with sub-section (1) of section 12A of the Commercial Courts Act, 2015 (4 of 2016), the Central Government hereby makes the following rules, namely:-

1. **Short title and commencement. –** (1) These rules may be called the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018.

   (2) They shall come into force on the date of their publication in the Official Gazette.

2. **Definitions.**- (1) In these rules unless the context otherwise requires,-

   (a) "Act" means the Commercial Courts Act, 2015 (4 of 2016);

   (b) "applicant" means a person who approaches the Authority under rule 3 for the initiation of mediation process;

   (c) "Authority" means the Authority notified by the Central Government under sub-section (2) of section 12A of the Act;

   (d) "commercial dispute" means the commercial dispute as defined in clause (c) of sub-section (1) of section 2 of the Act;

   (d) "Form" means the Form specified in the Schedule to these rules;

   (e) "mediation" means a process undertaken by a Mediator to resolve, reconcile and settle a commercial dispute between the parties thereto**.**

   (f) "Mediator" means a person empanelled by the Authority for conducting the mediation;

   (g) "opposite party" means a party against whom relief is sought in a commercial dispute;

   (h) "Schedule" means the Schedule appended to these rules; and

   (i) "settlement" means the settlement of commercial dispute arrived at by the parties to the mediation;

   (2) The words and expressions used and not defined in these rules, shall have the same meanings respectively as assigned to them in the Act or the Legal Services Authorities Act, 1987 (39 of 1987) or in any other law for the time being in force.

3. Initiation of mediation process.- (1) A party to a commercial dispute may make an application to the Authority as per Form-1 specified in Schedule-I, either online or by post or by hand, for initiation of mediation process under the Act along with a fee of one thousand rupees payable to the Authority either by way of demand draft or through online;

(2) The Authority shall, having regard to the territorial and pecuniary jurisdiction and the nature of commercial dispute, issue a notice, as per Form-2 specified in Schedule-I through a registered or speed post and electronic means including e-mail and the like to the opposite party to appear and give consent to participate in the mediation process on such date not beyond a period of ten days from the date of issue of the said notice.

(3) Where no response is received from the opposite party either by post or by e-mail, the Authority shall issue a final notice to it in the manner as specified in sub-rule (2).

(4) Where the notice issued under sub-rule (3) remains unacknowledged or where the opposite party refuses to participate in the mediation process, the Authority shall treat the mediation process to be a non-starter and make a report as per Form 3 specified in the Schedule-I and endorse the same to the applicant and the opposite party.

(5) Where the opposite party, after receiving the notice under sub-rule (2) or (3) seeks further time for his appearance, the Authority may, if it thinks fit, fix an alternate date not later than ten days from the date of receipt of such request from the opposite party.

(6) Where the opposite party fails to appear on the date fixed under sub-rule (5), the Authority shall treat the mediation process to be a non-starter and make a report in this behalf as per Form 3 specified in Schedule-I and endorse the same to the applicant and the opposite party.

(7) Where both the parties to the commercial dispute appear before the Authority and give consent to participate in the mediation process, the Authority shall assign the commercial dispute to a Mediator and fix a date for their appearance before the said Mediator.

(8) The Authority shall ensure that the mediation process is completed within a period of three months from the date of receipt of application for pre-institution mediation unless the period is extended for further two months with the consent of the applicant and the opposite party.

4. Venue for conducting mediation.— The venue for conducting of the mediation shall be the premises of the Authority.

5. Role of Mediator.— The Mediator shall, on receipt of the assignment under sub-rule (7) of rule 3, facilitate the voluntary resolution of the commercial dispute between the parties and assist them in reaching a settlement.

6. Representation of parties.— A party to a commercial dispute shall appear before the Authority or Mediator, as the case may be, either personally or through his duly authorised representative or Counsel.

7. Procedure of mediation.— (1) The mediation shall be conducted as per the following procedure-

(i) At the commencement of mediation, the Mediator shall explain to the parties the mediation process;

(ii) The date and time of each mediation sitting shall be fixed by the Mediator in consultation with the parties to the commercial dispute.

(iii) The Mediator may, during the course of mediation, hold meetings with the parties jointly or separately, as he thinks fit;

(iv) The applicant or opposite party may share their settlement proposals with the Mediator in separate sittings with specific instruction as to what part thereof can be shared with the other party;

(v) The parties to the mediation can exchange settlement proposals with each other during mediation sitting either orally or in writing;

(vi) During the process of mediation, the Mediator shall maintain confidentiality of discussions made in the separate sittings with each party and only those facts which a party permits can be shared with the other party;

(vii) Once both the parties reach to a mutually agreed settlement, the same shall be reduced in writing by the Mediator and shall be signed by the parties to the commercial dispute and the Mediator as per Form-4 specified in the Schedule-I;

(viii) The Mediator shall provide the settlement agreement, in original, to all the parties to a commercial dispute and shall also forward a signed copy of the same to the Authority; and

(ix) Where no settlement is arrived at between the parties within the time specified in the sub-section (3) of section 12A of the Act or where the Mediator is of the opinion that the settlement is not possible, the Mediator shall submit a report to the Authority, with reasons in writing, as per Form-5 specified in Schedule-I.

(2) The Authority or the Mediator, as the case may be, shall not retain the hard or soft copies of the documents exchanged between the parties or submitted to the Mediator or notes prepared by the Mediator beyond a period of six months other than the application for mediation under sub-rule (1) of rule 3, notice issued under sub-rule (2) or (3) of rule 3, settlement agreement under clause (vii) of sub-rule (1) of rule 7 and the Failure report under clause (ix) of sub-rule (1) of rule 7.

8. Parties to act in good faith.— All the parties to a commercial dispute shall participate in the mediation process in good faith with an intention to settle the dispute.

9. Confidentiality of mediation.— The Mediator, parties or their authorized representatives or Counsel shall maintain confidentiality about the mediation and the Mediator shall not allow stenographic or audio or video recording of the mediation sittings.

10. Maintenance and publication of mediation data.— (1) The District Legal Services Authority shall forward the detailed data of the mediation dealt by it under the Act to the State Legal Services Authority.

(2) The State Legal Services Authority shall, maintain the data of all mediations carried out by it or under its jurisdiction and publish the same, on quarterly basis, on its website as per Form-6 specified in the Schedule-I.

11. Mediation Fee .— Before the commencement of the mediation, the parties to the commercial dispute shall pay to the Authority a one-time mediation fee, to be shared equally, as per the quantum of claim as specified in Schedule-II.

12. Ethics to be followed by Mediator.—The Mediator shall-

(i) uphold the integrity and fairness of the mediation process;

(ii) ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the mediation process;

(iii) disclose any financial interest or other interest in the subject-matter of the commercial dispute;

(iv) avoid any impropriety, while communicating with the parties to the commercial dispute;

(v) be faithful to the relationship of trust and confidentiality reposed in him;

(vi) conduct mediation related to the resolution of a commercial dispute, in accordance with the applicable laws for the time being in force;

(vii) recognise that the mediation is based on the principles of self-determination by the parties and that mediation process relies upon the ability of parties to reach a voluntary agreement;

(viii) refrain from promises or guarantees of results;

(ix) not meet the parties, their representatives, or their counsels or communicate with them, privately except during the mediation sittings in the premises of the Authority;

(x) not interact with the media or make public the details of commercial dispute case, being mediated by him or any other allied activity carried out by him as a Mediator, which may prejudice the interests of the parties to the commercial dispute.

SCHEDULE –I

FORM-1: MEDIATION APPLICATION FORM

[See Rule 3(1)]

Name of the Authority and address

DETAILS OF PARTIES:

1. Name of applicant :
2. Address and contact details of applicant:

   Address:-

   Telephone. No._____ Mobile._____E-mail ID:_____
3. Name of opposite party:
4. Address and contact details of opposite party:

   Address:-

   Telephone. No._____ Mobile._____E-mail ID:_____

DETAILS OF DISPUTE:

1. Nature of dispute as per section 2 (1)(c) of the Commercial Courts Act 2015 (4 of 2016):
2. Quantum of claim:
3. Territorial jurisdiction of the competent court:
4. Brief synopsis of commercial dispute (not to exceed 5000 words):
5. Additional points of relevance:

DETAILS OF FEE PAID:

Fee paid by DD No._____dated_____Name of Bank and branch_____.

Online transaction No. _____dated_____.

Date: **Name and Signature of Applicant**

Note: Form shall be submitted to the Authority with a fee of one thousand rupees.

For Office Use:
Form received on :
File No. allotted:
Mode of sending notice to the opposite party:
Notice to opposite party sent on:
Whether Notice acknowledged by opposite party or not:
Date of Non-starter report/ Assignment of commercial dispute to Mediator:

FORM-2: Notice/Final Notice to the Opposite party for Pre-Institution Mediation

[See Rule 3(2) and Rule 3(3)]

Name of the Authority and address

1. *Whereas a commercial dispute has been submitted to* ***(name of Authority)*** *by* ***(name of applicant)*** *against* ***(name of opposite party)*** *requesting for pre-institution mediation in terms of section 12A of Chapter IIIA of Commercial Courts Act, 2015. A copy of the mediation application Form is attached herewith.*

2. *The opposite party is hereby directed to appear in person or through his duly authorised representative or Counsel on ……..(Date) ……..(Time) at the (Authority address) and convey his consent to participate in mediation process.*

3. *Failure to appear before the Authority by opposite party would be deemed as his refusal to participate in mediation process initiated by the applicant.*

4. In case, the date and time mentioned in para 2 is sought to be rescheduled the same can be done by the opposite party either on its own or through its authorised representative or counsel by making a request in writing at-least two days prior to the scheduled date of appearance.

Signature of the Authority

Date:

Form 3:Non-Starter Report

[See Rule 3 (4) and (6)]

Name of the Authority and address

1. ***Name of the applicant:***
2. ***Date of application for Pre-Institution mediation:***
3. ***Name of the opposite party:***
4. ***Date scheduled for appearance of opposite party:***
5. ***Report made under rule 3(4) or 3(6):***
6. ***Non Starter Report reason:_____***

_____

_____

Date: ***Signature of the Authority***

Copy to:

Applicant.

Opposite Party.

Form 4: Settlement

[See Rule 7 (1) (vii)]

Name of the Authority and address

1. Name of the Mediator:
2. Name of the applicant:
3. Name of the opposite party:
4. Date of application for Pre-Institution mediation:
5. Venue of mediation:
6. Date(s) of mediation:

7. No. of sittings and duration of sittings:
8. Terms of settlement:

Date:

Signature of Applicant **Signature of Opposite Party**

Signature of Mediator

Form 5: Failure Report

[See Rule 7 (1) (ix)]

Name of the Authority and address

1. Name of the Mediator:
2. Name of the applicant:
3. Name of the opposite party:
4. Date of application for Pre-Institution mediation:
5. Venue of mediation:
6. Date(s) of mediation:
7. No. of sittings and duration of sittings:
8. Reasons for failure:

Date:

Signature of Applicant **Signature of Opposite Party**

Signature of Mediator

Form 6: Mediation Data

[See Rule 10 (2)]

S. No	Name of the Authority	No. of application received by Authority	Nature of Applicant Party		Nature of Opposite Party		No. of applications slab-wise as per Schedule-II					No. of application disposed off as per Rule 3(4) and 3(6)	No. of application referred for mediation	No. of application where no settlement arrived at as per Rule 7(1)(ix)	No. of application where parties reached a settlement as per Rule 7(1)(vii)
			Individual	Corporate	Individual	Corporate	I	II	III	IV	V				

SCHEDULE-II

Mediation Fee

[See Rule 11]

S.NO	QUANTUM OF CLAIM	MEDIATION FEE PAYABLE TO AUTHORITY (in Indian rupees).
1.	From Rs. 3,00,000 to Rs.10,00,000.	Rs. 15,000/-
2.	From Rs. 10,00,000. to Rs. 50,00,000.	Rs. 30,000/-
3.	From Rs. 50,00,000. to Rs. 1,00,00,000.	Rs. 40,000/-
4.	From Rs.1,00,00,000. to Rs.3,00,00,000.	Rs. 50,000/-
5.	Above Rs. 3,00,00,000.	Rs. 75000/-

[No.A-60011(06)/20/2016-Admin-III(LA)]
Dr. RAJIV MANI, Jt. Secy. and Legal Adviser

अधिसूचना

नई दिल्ली, 3 जुलाई, 2018

सा.का.नि. 607(अ).— केंद्रीय सरकार, वाणिज्यिक न्यायालय अधिनियम, 2015 की धारा 21क की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और उक्त अधिनियम की धारा 17 के अनुसरण में निम्नलिखित नियम बनाती है, अर्थात् :-

1. संक्षिप्त नाम और प्रारंभ- (1) इन नियमों का संक्षिप्त नाम वाणिज्यिक न्यायालय (सांख्यिकी आंकड़ा) नियम, 2018 है ।

(2) ये राजपत्र में प्रकाशन की तारीख को प्रवृत्त होंगे ।

2. परिभाषाएं.- (1) इन नियमों में जब तक कि संदर्भ से अन्यथा अपेक्षित न हो, --

(क) "अधिनियम" से वाणिज्यिक न्यायालय अधिनियम, 2015 (2016 का 4) अभिप्रेत है;

(ख) " अनुसूची" से इन नियमों से संलग्न अनुसूची अभिप्रेत है ।

(2) उन शब्दों और पदों के, जो इसमें प्रयुक्त हैं और परिभाषित नहीं हैं किंतु अधिनियम में परिभाषित हैं वहीं अर्थ होंगे जो उनके उस अधिनियम में हैं ।

3. वाणिज्यिक न्यायालय, वाणिज्यिक अपील न्यायालय, उच्च न्यायालय वाणिज्यिक प्रभाग और वाणिज्यिक अपील प्रभाग द्वारा आंकड़ों का एकत्रण और प्रकटन.-

वाणिज्यिक न्यायालय, वाणिज्यिक अपील न्यायालय, वाणिज्यिक प्रभाग और वाणिज्यिक अपील प्रभाग, यथास्थिति, के समक्ष दाखिल वादों, आवेदनों, अपीलों और रिट याचिकाओं, लंबित मामलों, मामलों की प्रास्थिति और निपटाए गए मामलों की

संख्या के संबंध में, अधिनियम की धारा 17 द्वारा यथापेक्षित सांख्यिकी आंकड़ों का, संबद्ध उच्च न्यायालयों द्वारा उनकी वैब साइट पर इन नियमों से संलग्न अनुसूची में विनिर्दिष्ट रुप में रखरखाव किया जाएगा, अद्यतन किया जाएगा और प्रत्येक माह के दसवें दिन प्रकाशन किया जाएगा ।

अनुसूची
सांख्यिकी आंकड़े के लिए रूप विधान
(नियम 3 देखें)

क्रम सं.	न्यायालय का नाम	लंबित मामलों की संख्या (____महीने के प्रथम दिन)	नए संस्थित मामलों की संख्या (स्तंभ 3 के अनुसार महीने के दौरान)	न्यायालय में लंबित कुल मामलों की संख्या (स्तंभ 3 के अनुसार महीने के आखिरी दिन)	निपटाए गए मामलों की संख्या(स्तंभ 3 के अनुसार महीने के दौरान)	मामले का विनिश्चय करने के लिए लगे दिनों की औसत संख्या
(1)	(2)	(3)	(4)	(5)	(6)	(7)

[सं. ए-60011(06)/20/2016-प्रशा.-III (एल ए)]
डा. राजीव मणि, संयुक्त सचिव और विधायी सलाहकार

NOTIFICATION

New Delhi, the 3 rd July, 2018

G.S.R. 607(E).—In exercise of the powers conferred by sub-section (1) of section 21A of the Commercial Courts Act, 2015 and in pursuance of section 17 of the said Act, the Central Government hereby makes the following rules, namely:-

1. **Short title and commencement.—** (1) These rules may be called the Commercial Courts (Statistical Data) Rules, 2018.

   (2) They shall come into force on the date of their publication in the Official Gazette.

2. **Definitions.—** (1) In these rules unless the context otherwise requires,-

   (a) "Act" means the Commercial Courts Act, 2015 (4 of 2016);

   (b) "Schedule" means the Schedule appended to these rules.

   (2) The words and expressions used and not defined in these rules but defined in the Act— shall have the same meanings as respectively assigned to them in that Act.

3. **Collection and disclosure of data by Commercial Courts, Commercial Appellate Courts, Commercial Divisions and Commercial Appellate Divisions of High Courts.—** The statistical data, as required by section 17 of the Act, regarding the number of suits, applications, appeals or writ petitions filed before the Commercial Courts, Commercial Appellate Courts, Commercial Division or Commercial Appellate Division, as the case may be, the pendency of such cases, the status of each case, and the number of cases disposed off, shall be maintained, updated and published by the tenth day of every month in the form specified in Schedule appended to these rules, by the concerned High Courts on their website.

SCHEDULE
Format for Statistical data
(See Rule 3)

S.No (1)	Name of the Court (2)	No. of cases pending (on the 1st day of month of ___) (3)	No. of new cases instituted (during the month as per column 3) (4)	Total cases pending in the court (on the last day of the month as per column 3) (5)	No. of cases disposed (during the month as per column 3) (6)	Average no. of days taken to decide the case (7)

[No.A-60011(06)/20/2016-Admin-III(LA)]
Dr. Rajiv Mani, Jt. Secy. and Legal Adviser

Uploaded by Dte. of Printing at Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.

रजिस्ट्री सं. डी.एल.- 33004/99 REGD. NO. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

सी.जी.-डी.एल.-अ.-29042020-219233
CG-DL-E-29042020-219233

असाधारण
EXTRAORDINARY
भाग II—खण्ड 3—उप-खण्ड (i)
PART II—Section 3—Sub-section (i)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 211] नई दिल्ली, बुधवार, अप्रैल 29, 2020/वैशाख 9, 1942
No. 211] NEW DELHI, WEDNESDAY, APRIL 29, 2020/VAISAKHA 9, 1942

विधि और न्याय मंत्रालय

(विधि कार्य विभाग)

अधिसूचना

नई दिल्ली, 29 अप्रैल, 2020

सा.का.नि. 270(अ).—केन्द्रीय सरकार, वाणिज्यिक न्यायालय अधिनियम, 2015 (2016 का 4) की धारा 17 के साथ पठित उक्त अधिनियम की धारा 21क की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, वाणिज्यिक न्यायालय (सांख्यिकी आंकड़ा) नियम, 2018 का संशोधन करने के लिए निम्नलिखित नियम बनाती है, अर्थात् :-

1. (1) इन नियमों का संक्षिप्त नाम वाणिज्यिक न्यायालय (सांख्यिकी आंकड़ा) संशोधन नियम, 2020 है।

(2) ये उनके राजपत्र में प्रकाशन की तारीख को प्रवृत्त होंगे।

2. वाणिज्यिक न्यायालय (सांख्यिकी आंकड़ा) नियम, 2018 में-

(क) नियम 3 को उसके उपनियम (1) के रूप में पुनःसंख्यांकित किया जाएगा, और-

(i) इस प्रकार पुनः संख्यांकित उपनियम (1) में से "इन नियमों के साथ संलग्न अनुसूची" शब्दों के स्थान पर "अनुसूची-1" शब्द और अंक रखे जाएंगे;

(ii) इस प्रकार पुनः संख्यांकित उपनियम (1) के पश्चात् निम्नलिखित नियम अतःस्थापित किया जाएगा, अर्थात् :-

"(2) उपनियम (1) में अतर्विष्ट उपबंधों पर प्रतिकूल प्रभाव डाले बिना, संबंधित उच्च न्यायालय, अनुसूची 2 में यथाविनिर्दिष्ट प्ररूप में निम्नलिखित आंकड़े अनुरक्षित करेगी, अर्थात्:-

(i) मास के दौरान ई-फाइल किए गए मामलों की सूची ;

(ii) ऐसे मामलों की सूची जिनमें मास के दौरान न्यायालय फीस का ई-संदाय किया गया था ;

(iii) ऐसे मामलों की सूची जिनमें मास के दौरान इलैक्ट्रानिक तामील की प्रक्रिया की गई है ;

(iv) मास के दौरान अनियमित रूप से आबंटित कुल मामलों की सूची ;

(v) ऐसे मामलों की सूची जिनमें मास के दौरान मामला प्रबंध सुनवाई की गई थी ;

(vi) मास के दौरान निपटाए गए सविरोध वाणिज्यिक मामलें ; और

(vii) मास के दौरान वाणिज्यिक मामलों का संक्षिप्त विवरण" ;

(ख) निम्नलिखित शब्दों कोष्ठकों और अंक के स्थान पर

"अनुसूची

सांख्यिकी आकड़े के लिए रूप विधान

(नियम 3 देखें)",

निम्नलिखित शब्द कोष्ठक और अंक रखे जाएंगे, अर्थात् :-

"अनुसूची-I

[नियम 3 (1) देखें]",

(ग) इस प्रकार संशोधित अनुसूची-I और उससे संबंधित प्रविष्टियों के पश्चात् निम्नलिखित अंतःस्थापित किया जाएगा, अर्थात् :-

"अनुसूची-II

[नियम 3 (2) देखें]

प्ररूप 1
मास के दौरान ई-फाइल किए गए मामलों की सूची

क्र.सं.	न्यायालय	जिला	मामला सं.	याची का नाम बनाम प्रत्यर्थी का नाम	अधिवक्ता	अधिवक्ता का मोबाईल सं.	अधिवक्ता का ई-मेल आई डी	रजिस्ट्रीकरण की तारीख	ई-फाइल करने की तारीख
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1									
2									

प्ररूप 2
ऐसे मामलों की सूची जिनमें मास के दौरान न्यायालय फीस का ई-संदाय किया गया था

क्र.सं.	न्यायालय	जिला	मामला सं.	याची का नाम बनाम प्रत्यर्थी का नाम	अधिवक्ता	रजिस्ट्रीकरण की तारीख	न्यायालय फीस के ई-भुगतान की तारीख
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1							
2							

प्ररूप 3
ऐसे मामलों की सूची जिनमें मास के दौरान ईलैक्ट्रानिक तामील की प्रक्रिया की गई है

क्र.सं.	न्यायालय	जिला	मामला सं.	याची का नाम बनाम प्रत्यर्थी का नाम	अधिवक्ता	रजिस्ट्रीकरण की तारीख	इलेक्ट्रानिक सेवा की प्रक्रिया की तारीख
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1							
2							

प्ररूप 4
मास के दौरान अनियमित रूप से आबंटित कुल मामलों की सूची

क्र.सं.	न्यायालय	जिला	न्यायालय का नाम	न्यायालय की संख्या	मामला का प्रकार	मामला गणनांक (आकस्मिक आंबटित मामलों की संख्या)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1						
2						

प्ररूप 5
ऐसे मामलों की सूची जिनमें मास के दौरान मामला प्रबंध सुनवाई की गई थी

क्र.सं.	न्यायालय	जिला	मामला सं.	याची का नाम बनाम प्रत्यर्थी का नाम	अधिवक्ता	रजिस्ट्रीकरण की तारीख	मामला प्रबंध सुनवाई की तारीख
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1							
2							

प्ररूप 6
मास के दौरान निपटाए गए सविरोध वाणिज्यिक मामले

क्र.सं.	न्यायालय	जिला	मामला सं.	याची का नाम बनाम प्रत्यर्थी का नाम	अधिवक्ता	रजिस्ट्रीकरण की तारीख	क्या तत्काल अनुलोप की ईप्सा की गई थी और पूर्व सांस्थानिक मध्यकता नहीं हुई थी (हां/नहीं)	विनिश्चय की तारीख	निपटान के दिन	निपटान की प्रकृति (सविरोध/ तय किया हुआ).	डिक्री के निष्पादन की तारीख	विनिश्चय की तारीख से डिक्री के निष्पादन के लिए दिनों की संख्या	अधिनियम अनुभाग
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
1													
2													

प्ररूप 7
मास के दौरान वाणिज्यिक मामलों का संक्षिप्त विवरण

क्र.सं.	न्यायालय	जिला	मास के पहले दिन लंबित मामलों की कुल संख्या	मास के दौरान संस्थानिक मामलों की कुल संख्या	मास के दौरान निपटान मामलों की कुल संख्या	मास के अंत में लंबित मामलों की कुल संख्या
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1						
2						

."

[फा.सं. ए-6011(06)20/2016-प्रशा.- III (एल ए)]

डॉ. राजीव मणि, संयुक्त सचिव एवं विधि सलाहकार

MINISTRY OF LAW AND JUSTICE

(Department of Legal Affairs)

NOTIFICATION

New Delhi, the 29th April, 2020

G.S.R. 270(E).—In exercise of the powers conferred by sub-section (1) of section 21A of the Commercial Courts Act, 2015 (4 of 2016) read with section 17 of the said Act, the Central Government hereby makes the following rules to amend the Commercial Courts (Statistical Data) Rules, 2018, namely:-

1. (1) These rules may be called the Commercial Courts (Statistical Data) Amendment Rules, 2020.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Commercial Courts (Statistical Data) Rules, 2018, -

(a) rule 3 shall be renumbered as sub-rule (1) thereof, and, -

(i) in sub-rule (1) as so renumbered, for the words "Schedule appended to these rules", the words and figures "the Schedule-I" shall be substituted;

(ii) after sub-rule (1) as so renumbered, the following rule shall be inserted, namely:-

"(2) Without prejudice to the provisions contained in sub-rule (1), the concerned High Courts shall maintain the following data in the form as specified in Schedule – II, namely: -

(i) list of cases e-filed during the month;

(ii) list of cases in which e-Payment of Court fees was made during the month;

(iii) list of cases in which Electronic Service of Process has taken place during the month;

(iv) list of total number of cases randomly allocated during the month;

(v) list of cases in which case management hearing was held during the month;

(vi) contested commercial cases disposed during the month; and

(vii) summary of commercial cases during the month";

(b) for the words, bracket and figure

"SCHEDULE

Format for Statistical data

(See Rule 3)",

the following words, bracket and figure shall be substituted, namely:-

"SCHEDULE-I

[See Rule 3(1)]",

(c) after Schedule-I as so amended and entries relating there to, the following shall be inserted, namely:-

"SCHEDULE-II

[See Rule 3(2)]

Form 1 List of cases e-filed during the month									
Sr. No.	Court	District	Case No.	Petitioner Name Vs. Respondent Name	Advocate	Advocate Mobile Number	Advocate E-mail Id	Date of Registration	Date of e-filing
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1									
2									

Form 2
List of cases in which e-Payment of Court fees was made during the month

Sr. No.	Court	District	Case No.	Petitioner Name Vs Respondent Name	Advocate	Date of Registration	Date of e-payment of Court Fees
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1							
2							

Form 3
List of cases in which Electronic Service of Process has taken place during the month

Sr. No.	Court	District	Case No.	Petitioner Name Vs. Respondent Name	Advocate	Date of Registration	Date of Electronic Service of Process
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1							
2							

Form 4
List of total no. of cases randomly allocated during the month

Sr. No.	Court	District	Court Name	Court No.	Case Type	Case Count (No. of cases randomly allocated)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1						
2						

Form 5
List of cases in which Case Management Hearing was held during the month

Sr. No.	Court	District	Case No.	Petitioner Name Vs. Respondent Name	Advocate	Date of Registration	Date of case Management Hearing
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1							
2							

Form 6
Contested commercial cases disposed during the month

Sr. No.	Court	District	Case No.	Petitioner Name Vs Respondent Name	Advocate	Date of Registration	Whether Urgent Relief was sought and Pre-Institution Mediation did not take place (Yes/No)	Date of Decision	Days for disposal	Nature of Disposal (Contested /Settled)	Date of execution of decree	Number of days for execution of decree from date of decision	Act Section
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
1													
2													

Form 7 Summary of Commercial Cases during the month						
Sr. No.	Court	District	Total number of cases pending on the 1st day of the month	Total number of cases instituted during the month	Total number of cases disposed during the month	Total number of cases pending at the end of the month
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1						
2						

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[F. No. A-60011(06)/20/2016-Admn.-III(LA)]

Dr. RAJIV MANI, Jt. Secy. and Legal Adviser

अधिसूचना

नई दिल्ली, 29 अप्रैल, 2020

सा.का.नि. 271(अ).— केन्द्रीय सरकार, वाणिज्यिक न्यायालय अधिनियम, 2015 (2016 का 4) की धारा 12क की उपधारा (1) के साथ पठित धारा 21 क की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, वाणिज्यिक न्यायालय (पूर्व सांस्थानिक मध्यकता और समझौता) नियम, 2018 का संशोधन करने के लिए निम्नलिखित नियम बनाती है, अर्थात् :-

1. (1) इन नियमों का संक्षिप्त नाम वाणिज्यिक न्यायालय (पूर्व सास्थानिक मध्यकता और समझौता) संशोधन नियम, 2020 है।

(2) राजपत्र में उनके प्रकाशन की तारीख को प्रवृत्त होंगे।

वाणिज्यिक न्यायालय (पूर्व सांस्थानिक मध्यकता और समझौता) नियम, 2018 में

(क) नियम 10 के उपनियम (2) में "त्रैमासिक आधार पर अनुसूची (1) में विनिर्दिष्ट प्ररूप-6 के अनुसार" शब्दों और अंकों के स्थान पर "अनुसूची 1 में विनिर्दिष्ट, प्ररूप 6(i) के अनुसार मासिक आधार पर और प्ररूप 6 (ii) के अनुसार त्रैमासिक आधार पर" शब्द, कोष्ठक और अंक रखे जाएंगे,

(ख) अनुसूची-I में प्ररूप 6 के स्थान पर निम्नलिखित प्ररूप रखे जांएगे, अर्थात् :-

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" प्ररूप 6 (i) मासिक आधार पर मध्यकता डाटा

[नियम 10 (2) देखें]

मास के दौरान संस्थित करने पूर्व मध्यकता और परिनिर्धारण के लिए प्राप्त मामलों की संख्या						
क्र.सं.	मध्यकता केन्द्र का नाम [उदाहरण के लिए, डी एल एस ए या मुक्त मध्यकता केन्द्र मुम्बई]	महीने 1तारीख को लंबित आवेदनों की कुल संख्या	मास के दौरान प्राप्त आवेदनों की कुल संख्या	मास के दौरान परिनिर्धारित मामलों की कुल संख्या	मास के दौरान गैर प्रारम्भक मामलों की कुल संख्या	मास के अंत मे लंबित आवेदनों की कुल संख्या
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1						
2						

" प्ररूप 6 (ii) तिमाही आधार पर मध्यकता डाटा

[नियम 10 (2) देखें]

क्र.सं.	प्राधिकरण का नाम	प्राधिकरण द्वारा प्राप्त आवेदन की संख्या	आवेदक पक्षकार की प्रकृति		विपक्षी पक्षकार की प्रकृति		अनुसूची -2 के अनुसार स्तरवार आवेदनो की संख्या					नियम 3 (4) और 3 (6) के अनुसार निपटाए गए आवेदन की संख्या	मध्यकता के लिए निर्दिष्ट आवेदन की संख्या	आवेदन की संख्या जहां परिनिर्धारित नियम 7(1) (ix) के अनुसार किया गया है	आवेदन की संख्या जहां पक्षकार नियम 7(1) (vii) के अनुसार समझौते पर पहुंचे
			वैयक्तिक	कारपोरेट	वैयक्तिक	कारपोरेट	I	II	III	IV	v				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)					(9)	(10)	(11)	(12)
1															
2															

."

[फा. सं. ए- 60011(06)/20/2016 – प्रशा.-III (एल ए)]

डा. राजीव मणि, संयुक्त सचिव एंव विधि सलाहकार

NOTIFICATION

New Delhi, the 29th April, 2020

G.S.R. 271(E).—In exercise of the powers conferred by sub-section (2) of section 21A read with sub-section (1) of section 12A of the Commercial Courts Act, 2015 (4 of 2016), the Central Government hereby makes the following rules to amend the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018, namely:-

1. (1) These rules may be called the Commercial Courts (Pre-Institution Mediation and Settlement) Amendment Rules, 2020.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018, -

(a) In rule 10, in sub-rule (2), - for the words and figures "on quarterly basis, on its website as per Form-6 specified in the Schedule-I", the words, brackets and figures "on its website on monthly basis as per Form 6 (i) and on quarterly basis as in Form 6 (ii), specified in Schedule-I" shall be substituted,

(b) In Schedule-I, for Form 6, the following forms shall be substituted, namely:-

"Form 6 (i): Mediation Data on Monthly Basis

[See rule 10 (2)]

List of cases received for Pre-Institution Mediation and Settlement during the month						
Sr. No.	Name of Mediation Centre [For example, DLSA or Main Mediation Centre Mumbai]	Total number of applications pending on the 1st day of the month	Total number of applications received during the month	Total number of cases settled during the month	Total number of non-starter cases during the month	Total number of applications pending at the end of the month
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1						
2						

Form 6 (ii): Mediation Data on Quarterly Basis
[See rule 10 (2)]

S. No	Name of the Authority	No. of application received by Authority	Nature of Applicant Party		Nature of Opposite Party		No. of applications slab-wise as per Schedule-II					No. of application disposed off as per Rule 3(4) and 3(6)	No. of application referred for mediation	No. of application where no settlement arrived at as per Rule 7(1)(ix)	No. of application where parties reached a settlement as per Rule 7(1)(vii)
			Individual	Corporate	Individual	Corporate	I	II	III	IV	V				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)					(9)	(10)	(11)	(12)

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[F. No.A-60011(06)/20/2016-Admin.-III(LA)]

Dr. RAJIV MANI, Jt. Secy. and Legal Adviser

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