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The Need for Classification of Litigants in Indian Commercial Courts

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The Indian judicial system has long struggled with delays in civil and commercial litigation, impacting economic growth and investor confidence. The Commercial Courts Act, 2015¹ (CCA), aimed to streamline dispute resolution through specialized courts, yet challenges persist. This paper examines key amendments to the Code of Civil Procedure introduced by the CCA, highlighting both their benefits and limitations. A major concern is the classification of litigants, as small merchants and corporate entities face vastly different legal realities. The paper proposes a bifurcation of commercial courts—one for merchants handling lower-value disputes and another for corporate entities with stricter procedural timelines. This distinction would balance efficiency with equitable access to justice. The study critiques the 2018 amendment's expansion of commercial court jurisdiction and argues for a more tailored approach that aligns with the practical needs of litigants while preserving judicial efficiency.

Keywords: *commercial courts, litigant classification, judicial efficiency, corporate litigation, merchant disputes.*

¹ The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act 2015

INTRODUCTION

The evolution of commercial courts in India reflects the country's efforts to streamline its judicial system and improve its business environment. This journey has been marked by gradual reforms and legislative changes aimed at addressing the specific needs of commercial disputes.

The concept of commercial courts was first envisaged in 2003 based on the 188th Law Commission report on a proposal for 'hi-tech fast track courts' to deal with commercial matters.² Based on this recommendation, in 2009, the government introduced the Commercial Division of High Courts Bill, which was passed by the Lok Sabha but faced opposition in the Rajya Sabha. After further revisions detailed in the 253rd Law Commission Report,³ the Commercial Courts Act was finally enacted in 2015.

The Commercial Courts Act, 2015 (CCA) marked a significant milestone, providing for the establishment of Commercial Courts at the district level and Commercial Divisions in High Courts. The Act introduced several innovative features, including strict timelines, case management hearings, and summary judgment provisions, aimed at faster dispute resolution.

In 2018, the Act was amended in an attempt to further streamline the procedure. The minimum value for commercial disputes was reduced from ₹1 crore to ₹3 lakh, expanding the scope of cases that could be heard by commercial courts.⁴ The amendment also introduced mandatory pre-institution mediation for commercial disputes.

The CCA has amended several sections, orders, and rules in the Code of Civil Procedure, 1908 (CPC).⁵ Here are the following changes that were made -

Section 26:⁶ A new proviso has been added regarding the requirement for an affidavit, stating that it must be in the form prescribed under Order VI, Rule 15A.

² Law Commission, *Proposals For Constitution of Hi-Tech Fast – Track Commercial Divisions in High Courts* (Law Com No 188, 2003)

³ Law Commission, *Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015* (Law Com No 253, 2015)

⁴ The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act 2018

⁵ Code of Civil Procedure 1908

⁶ Code of Civil Procedure 1908, s 26

Section 35:⁷ Substituted with provisions concerning costs, giving courts the discretion to determine costs in commercial disputes, including witness fees, legal fees, and other expenses.

Order V, Rule 1:⁸ Defendants are given a maximum of 120 days to file, after which the right to file is forfeited.

Order VI, Rule 3A:⁹ Introduces special forms of pleading in commercial disputes.

Order VI, Rule 15A:¹⁰ Verification of pleadings in commercial disputes must be done through an affidavit of truth.

Order VII, Rule 2A:¹¹ Where interest is claimed in a commercial dispute, specific details about the interest must be provided.

Order VIII, Rule 1:¹² The timeline for filing written statements is strictly limited to 120 days.

Order VIII, Rule 3A:¹³ The defendant must deny, admit, or state what allegations he requires proof for.

Order XI:¹⁴ Replaces previous provisions on disclosure, discovery, and inspection of documents, mandating full disclosure at the start of the suit.

Order XIII-A:¹⁵ Introduces a provision for summary judgments in commercial disputes without the need for oral evidence and makes changes to the following provisions –

Order V, Rule 1:¹⁶ Stricter timelines for service of summons and response from the defendant, aiding in expediting summary judgments.

Order VI, Rule 15A:¹⁷ Introduced verification of pleadings through affidavits to support summary judgments.

⁷ Code of Civil Procedure 1908, s 35

⁸ Code of Civil Procedure 1908, Or V r 1

⁹ Code of Civil Procedure 1908, Or VI r 3A

¹⁰ Code of Civil Procedure 1908, Or VI r 15A

¹¹ Code of Civil Procedure 1908, Or VII r 2A

¹² Code of Civil Procedure 1908, Or VIII r 1

¹³ Code of Civil Procedure 1908, Or VIII r 3A

¹⁴ Code of Civil Procedure 1908, Or XI

¹⁵ Code of Civil Procedure 1908, Or XIII-A

¹⁶ Code of Civil Procedure 1908, Or V r 1

¹⁷ Code of Civil Procedure 1908, Or VI r 15A

Order VII, Rule 2A:¹⁸ Provides specific requirements for claims involving interest, ensuring clarity in pleadings.

Order VIII, Rule 1:¹⁹ Tightens the timeline for filing written statements (120 days), critical for the summary judgment process.

Order XVIII, Rule 2:²⁰ Introduces stricter guidelines on the submission of written arguments and limits oral arguments, essential for efficient summary judgments.

Order XIX, Rule 3:²¹ Governs the filing of affidavits in support of summary judgment applications, regulating the submission of evidence through affidavits.

Order XX:²² Allows judgments to be passed without full trials in cases deemed appropriate for summary judgments.

Order XV-A:²³ Introduces case management hearings to ensure efficient disposal of suits with amendments to the following provisions –

Order V, Rule 1:²⁴ Timeline for service of summons and submission of written statements is tightened.

Order XI: Strict timelines for disclosure and inspection of documents to ensure that the case proceeds without unnecessary delays.

Order XIV: The framing of issues is to be expedited during the first case management hearing.

Order XVIII, Rule 2: Case management hearings ensure the timely recording of evidence and oral arguments, with day-to-day examination of witnesses where possible.

Order XX: Timelines are set for delivering judgments following case management hearings to avoid delays.

¹⁸ Code of Civil Procedure 1908, Or VII r 2A

¹⁹ Code of Civil Procedure 1908, Or VIII r 1

²⁰ Code of Civil Procedure 1908, Or XVIII r 2

²¹ Code of Civil Procedure 1908, Or XIX r 3

²² Code of Civil Procedure 1908, Or VV

²³ Code of Civil Procedure 1908, Or XV-A

²⁴ Code of Civil Procedure 1908, Or V r 1

BENEFITS OF COMMERCIAL COURTS

These amendments of the CPC are added to enhance efficiency in the disposal of the cases in line with the judiciary's observations that all persons have a fundamental right to a speedy trial,²⁵ but a concern that arises must be balanced against the need for equality and due process. Courts achieve this by ensuring that expedited procedures do not compromise a party's ability to present their case fully. For example, while limiting adjournments, courts typically allow extensions when genuinely necessary, such as when a party needs more time to gather crucial evidence. This flexibility helps maintain equality by ensuring that parties with valid reasons are not unfairly disadvantaged by strict timelines.

Case management hearings held early in the litigation process, allow judges to work with parties to set a clear schedule for the case, identify key issues, and explore possibilities for settlement.²⁶ This approach promotes efficiency by focusing the litigation on essential matters and potentially avoiding unnecessary delays. At the same time, it ensures equality by allowing all parties to shape the course of the litigation and voice any concerns about the proposed schedule or process.

The use of technology in commercial courts also plays a significant role in balancing efficiency and equality. E-filing systems, digital case management tools, and virtual hearings can significantly speed up court processes and reduce costs.²⁷ This efficiency benefits all parties by making the judicial system more accessible and less time-consuming. However, courts must ensure that the use of technology does not create inequalities, particularly for parties with limited technological resources or expertise, and this must be addressed by providing support services or alternatives for parties who may struggle with digital systems.

The expertise of judges in commercial courts is another factor that contributes to both efficiency and equality.²⁸ Judges with specialized knowledge in business and commercial law can more

²⁵ *Ranjan Dwivedi v CBI* (2012) 8 SCC 495

²⁶ *Rameshwari Devi v Nirmala Devi* (2011) 8 SCC 249 [52]

²⁷ Nachiketa Mittal, 'Business Courts and Private Tribunals: Is India Ready for Global Commerce?' (2018) 60 JILI 1, 88-90

²⁸ Vijay Kumar Singh and Aratrika Deb, 'Resolution of Commercial Disputes in India: A Review of the Commercial Courts, 2015' (2022) 8 NLS Business Law Review 49, 79

<<https://repository.nls.ac.in/nlsblr/vol8/iss1/6/>> accessed 07 January 2025

quickly grasp complex issues, leading to faster and more accurate decisions. The Apex court has also endeavoured to ensure that not all high-value litigation is treated as commercial litigation²⁹ based on a thorough understanding of the commercial context, reducing the risk of misunderstandings that could unfairly advantage one party over another.

Alternative Dispute Resolution (ADR) mechanisms integrated into commercial court processes also help balance efficiency and equality. Many commercial courts encourage and even mandate attempts at mediation (via PIMs) or other forms of ADR before or during litigation.³⁰ This can lead to faster resolutions, reducing court backlogs and costs for parties. From an equality perspective, ADR can level the playing field by providing a less formal setting where parties can communicate directly and find mutually beneficial solutions, rather than being bound by strict legal outcomes.³¹

The approach to costs and fees in commercial litigation is another area where courts must balance competing interests. To promote efficiency and deter frivolous litigation, many commercial courts employ 'loser pays' cost rules or allow for cost shifting based on parties' conduct during litigation. While this can incentivize efficient behaviour and settlement, it may also create access to justice issues for parties with fewer financial resources. Courts address this by exercising discretion in cost awards, considering factors such as the parties' financial positions and the reasonability of their actions throughout the whole process of litigation.

There are also stricter standards for granting appeals in commercial cases, limiting grounds for appeal or requiring leave to appeal.³² This promotes finality and efficiency by reducing protracted legal battles. However, to maintain equality and fairness, courts typically preserve the right to appeal on fundamental issues of law or in cases of clear error, ensuring that parties have recourse if there are serious flaws in the initial judgment.

²⁹ *Ambalal Sarabhai Enterprises v K.S. Infraspace LLP* 2019 SCC OnLine SC 1311

³⁰ Justice V. Ramasubramanian, 'Commercial Litigation or Litigation Commercial: Specialised Commercial Courts in India' (2015) 2015 NLS Business Law Review 79, 81-84

³¹ *Yashpal Jain v Sushila Devi* 2023 SCC OnLine SC 137

³² *Aditya Khaitan v IL and FS Financial* 2023 SCC OnLine SC 1241

DRAWBACKS OF THE CURRENT MODEL

One of the most significant impediments to the efficient operation of any kind of court in India is the acute shortage of judges. Unfortunately, the commercial courts are not immune to this problem.³³ The volume of cases entering the system far exceeds the capacity of the available judicial officers. In many commercial courts, the existing judges are overburdened with an unmanageable caseload, leading to prolonged delays in adjudicating disputes.³⁴ This situation is further exacerbated by the complexity of commercial cases, which often require specialized knowledge in areas like corporate law, intellectual property rights, and cross-border transactions. The lack of dedicated commercial court judges not only delays case disposal but also affects the quality of judgments. Often, non-specialist judges are assigned commercial cases, leading to inconsistent rulings that can undermine confidence in the judicial system.

The Indian judiciary has long grappled with an overall shortage of judges, which extends to the commercial courts as well. The sanctioned strength of judges in most high courts, where commercial disputes are often heard, is well below the actual requirement. This shortage is compounded by delays in appointing new judges, a slow recruitment process, and lengthy procedures for filling vacancies. The result is a significant backlog of cases that accumulate over time, clogging up the system and undermining the purpose for which commercial courts were established.

In terms of technology, although some courts have taken steps to digitize records and allow for the electronic filing of cases,³⁵ the infrastructure remains inadequate. Most courts are still heavily reliant on physical paperwork, which is cumbersome and prone to loss or damage. This reliance on outdated methods slows down the process of case management, from filing to judgment.

³³ Prof. (Dr.) Sudhir Krishnaswamy and Varsha Mahadeva Aithala, 'Commercial Courts in India: Three Puzzles for Legal System Reform' (2020) 11(1) Journal of Indian Law and Society 20, 40-41 <<https://clpr.org.in/wp-content/uploads/2020/09/Commercial-Courts-in-India-Three-Puzzles-for-Legal-System-Reform.pdf>> accessed 07 January 2025

³⁴ Arifa Zahra, 'Delay of Corporate Justice: Need of an Hour to Review Indian Judicial System' (2022) 2(1) Indian Journal of Integrated Research 1, 4 <<https://ijirl.com/wp-content/uploads/2022/01/DELAY-OF-CORPORATE-JUSTICE-NEED-OF-AN-HOUR-TO-REVIEW-INDIAN-JUDICIAL-SYSTEM.pdf>> accessed 07 January 2025

³⁵ Siddharth Aiyar, 'Rebooting Justice: Technology As A Catalyst For Change In The Legal System' (*Live Law*, 31 August 2024) <<https://www.livelaw.in/lawschool/articles/indian-legal-system-challenges-and-technological-solutions-268173>> accessed 07 January 2025

Moreover, manual handling of documents often leads to procedural errors, further delaying the resolution of disputes.

In a globalized business environment, commercial disputes often involve complex legal and factual issues that require quick and efficient access to large volumes of data. Advanced technological tools, such as e-courts, case management systems, and digital evidence platforms, are essential for handling such disputes. However, many of the district and sub-district Indian commercial courts lack these facilities, which makes it difficult for judges to manage the growing number of cases efficiently. Even in courts where some level of digitization has been achieved, the systems are often outdated and not integrated with other courts or tribunals, creating bottlenecks in the flow of information.

NEED FOR DEMARCATION OF CORPORATE AND MERCHANT COURTS

The main bone of contention among legal scholars is that despite these changes being attractive in theory, have failed to address the issue of cases piling up and clogging the system owed to sub-par disposal numbers, as case disposal metrics have gone down in 2015 from 88.30% to 44.56 % in 2017, with a brief improvement in 2018 with 64.10% in the Delhi High Court and are bound to go even lower after the 2018 amendment.

Additionally, in the Bombay High Court, 33 of the 45 disposed cases were completed in under 1 year. However, the bulk of the cases under review (i.e. 99 of the total 144 cases), approximately sixty-eight percent (68%), have significantly breached the two-year time frame, with a large number of these cases pending for almost 1000 days or more. This context diminishes the significance of the 33 cases disposed of under a year and depicts an overall failure of the Act to expedite the disposal of a majority of commercial cases in the Bombay High Court.³⁶

While the abysmal case-to-judge ratio and lack of adequate infrastructural facilities are attributed as the culprits, there is another underlying issue that was brought to the fore by the 2018 amendment i.e., ordinary lawsuits being filed as commercial lawsuits. This calls for a prompt change in the commercial systems before things take a turn from bad, to worse, to downright unmanageable.

³⁶ Vidhi Centre for Legal Policy, *Commercial Courts Act, 2015: An Empirical Impact Evaluation* (White Paper, 05 July 2019) ch 4

It is clear that there is a divide between the classes of litigants these courts were intended for i.e. companies engaged in high-value business transactions, versus the bulk of litigants being directed to these courts now, consisting of your run-of-the-mill shops and small establishments. Therefore, the following changes are proposed to the commercial courts to mitigate the impact of the caseload they're burdened with today.

Commercial Courts for Merchants: These courts can function per usual commercial courts and try cases with a value ranging from three lakhs to one crore. The case will be filed at a commercial court below a district level with an appeal lying to the appellate division at the district level. This will ensure that grounded merchants and traders not conducting their business at a large scale can have their disputes swiftly resolved with a sense of familiarity within their local limits.

More often than not, the ordinary grocery store owner whose inventory can range from anywhere between fifty thousand to five lakh rupees is not equipped to simultaneously handle their business with an ongoing legal battle owed to a sense of alienation from the commercial justice system with all its added constraints of time limits and apparent finality of interlocutory orders. They are also reluctant to shell out a considerable portion of their revenue to fund a good lawyer to win their case. With the increase of a growing service sector in India and MSMEs emerging in every corner of the nation, the commercial courts need to respond to the demands of an evolving class of litigants, not the other way around.

A way around this is the encouragement of opting for PIM as the Legal Services Authority personnel opt for a more inquisitorial approach to attempt to resolve the matter prima facie on its merits and emerging facts to not disadvantage either party. If the matter goes to court, the litigants should be given the choice as to whether their suit ought to be tried as then the judge is allowed to exercise their discretion in deviating from a timeline in the interest of fairness and equity of litigants unaccustomed to the proceedings of commercial courts.

Commercial Courts for Corporate Entities: These courts should undertake cases with a suit value of more than one crore and must be dealt with at the district level with an appeal lying before the High Court. These courts must be equipped with high-tech infrastructure as

suggested by the 188th Law Commission report so that corporate entities based in India or overseas alike have a better time resolving their disputes or fighting it out in a legal battle.

Corporate entities are established contributors to the economy that can afford adequate legal representation both quality and quantity-wise. They should be encouraged to resolve their differences in the PIM, but if they fail to do it, the case must proceed in a severely strict and time-bound manner as one expects these entities to adhere to set standards of professionalism and punctuality owed to their reputation as big players in the market. The outcome of the case management hearing should be treated as final and there must be very little scope for deviation from the timeline. These cases need to be mandatorily directed to the commercial courts. The 'Code of Compulsory Costs' ought to be strictly enforced here too.³⁷

The key changes made by the 2018 amendment were the introduction of pre-institution mediation mechanisms and reducing the minimum pecuniary value of a commercial suit from one crore to three lakhs to bump India's rank on the Doing Business Index. Such a proposition was not discussed anywhere in either the 188th or the 253rd Law Commission Reports. Rather, the 2018 amendment to the CCA axed the original jurisdiction of the High Court's Commercial Division to only hear second appeals as per Section 100 of the CPC from the commercial divisions at a district level.³⁸ This dilutes the aims and objectives of introducing commercial courts in the first place, leaving the legislators vulnerable to criticisms of adopting a tokenistic approach to boost the nation's ranking on international indices by a few points while leaving complicated issues that plague the system, unresolved.

The crux of this proposition is that to achieve true equality in commercial courts, there needs to be delineation into separate classes of litigants. An all-inclusive rule of treating all cases arising out of values over 3 lakhs as similar commercial suits is detrimental to the justice system as it stands today because there are varied interests at play between an ordinary merchant and a corporate entity. Both prioritize recovery of their losses and damages in a swift manner, but merchants would not have as great an access to legal resources as corporates would, and

³⁷ *Subrata Roy v Union of India* (2014) 8 SCC 470

³⁸ The Commercial Courts, Commercial Division and Commercial Appellate Division Of High Courts (Amendment) Act 2018

corporates favour resolving the case as swiftly as possible while merchants might see it as rushing the delivery of justice.

Their interests are the same yet their realization follows different paths, and that is something that ought to be respected by the Indian justice system owing to its frequent logistical shortcomings such as not having enough judges on the roster or not having state-of-the-art facilities. Were the situation to improve and the system equipped enough to be accessible to everyone, perhaps this proposition can be revisited for the current model to be enforced properly again, but for now, the courts should make do with what they have.

CONCLUSION

Commercial courts in India were brought in to tackle one of the most daunting challenges prevalent within the Indian legal system, which is the lack of expediency. Their original framework in 2015 was a bold and necessary step taken in the right direction to enable swift disposal of cases and release of capital to aggrieved parties at the earliest moment possible. The scope of these courts being limited to high-value commercial transactions was beneficial insomuch as it helped these courts achieve their desired objective and fulfil their intended purpose.

However, the 2018 act brought everything back to square one as it broadened the pecuniary jurisdiction of these courts to include cases that cannot exactly be classified as those of high value, but were commercial. Seeing that disputes arising out of ordinary and day-to-day commercial activities were now also covered within the ambit of these courts, led to the floodgates of litigation bursting open. This has led to courts that were established for an expeditious handling of cases, being relegated to the status of ordinary civil courts.

The courts ought to take great care in not unduly prejudicing either litigant, but the current system has propped up an undesirable scenario where the same rules and procedures are being applied to two different classes of litigants in these courts, to their detriment. Seeing that classification within the commercial court system is not a new concept, it is argued that classifying these courts to entertain different matters would best serve the purpose this system originally sought to achieve.

The commercial courts in India are a wonderful initiative undertaken by the legislature to ensure that litigation arising out of commercial disputes is resolved in a speedy and efficient manner, and the legal framework has indeed helped India's reputation by bumping it a few ranks on various economic and business indices, their application on the ground leaves much to be desired. Commercial disputes are themselves a classification of civil litigation, and creating a sub-classification of two kinds of commercial disputes will not only aid in the improvement of the efficiency of the courts but also speak to separate interests of different classes of litigants approaching the forum.