

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**

[ISSN 2581-5369]

Volume 4 | Issue 5

2021

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Role of Commercial Courts Act for Speedy Disposal of Commercial Disputes in India: A Critical Analysis

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ABSTRACT

Long ago, India was one of the most desired destinations for trade and commerce in the world. Qualities of Indian products were very high and these were exported all over the world. But, due to several reasons, we failed to retain that place and honor. Now, the time has come to do something concrete to get back our past glory and to place our country in the forefront of all nations of the Universe. During the past few years, Indian economy has become one of the fastest growing economies of the world and a preferred FDI destination. Rising incomes, savings, investment opportunities, increased domestic consumptions, availability of educated and cheap young human resources and existence of strong rule of law have increased our hope. Recent initiatives of the Government of India such as 'Make in India', 'Skill India', 'Digital India', and other initiatives for 'ease of doing business' have changed the face of Indian trade and commerce. Government of India has also taken various steps to bring reforms in legal framework. Because, law is the regulator of society. Rule of law is the very heart and soul of the democracy. If rule of law is destroyed, then exploitation, anarchy, nepotism, nihilism and cynicism will increase. It will prompt the people to take law in their own hand and which in turn will destroy trade and commerce environment. So, law plays an important role in the development of trade and commerce. Enactment of Commercial Courts Act, 2015 by the Government of India is one of the right steps in this direction. It was long overdue. This law will bring reforms in commercial dispute resolution procedures. It will help in increasing FDI as a part of ease of doing business initiatives in India.

Keywords: Commercial, Courts, Progressive, Trade & Commerce, Commercial Dispute.

I. INTRODUCTION

"It may be true that the law cannot make a man love me, but it can keep him from lynching me, and I think that's pretty important." Martin Luther King²

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² Inspirationstation.info. 2021. *Famous Law Quotes / Supreme Court Justice Quotes*. [online] Available at:

Once upon a time, India was one of the most developed countries in terms of trade and commerce. She was one of the most desired destinations for trade and commerce in the world. Qualities of Indian products were very high and these were exported all over the world. But, due to several reasons, we failed to retain that place and honor. Now, the time has come to do something concrete to get back our past glory and to place our country in the forefront of all nations of the Universe. During the past few years, Indian economy has become one of the fastest growing economies of the world and a preferred FDI destination. Rising incomes, savings, investment opportunities, increased domestic consumptions, availability of educated and cheap young human resources and existence of strong rule of law have increased our hope. Recent initiatives of the Government of India such as 'Make in India', 'Skill India', 'Digital India', '**Atmanirbhar Bharat Abhiyaan** or **Self-reliant India** campaign' and various other initiatives for 'ease of doing business' have changed the face of Indian trade and commerce. According to the latest World Bank annual ratings, in 2019, India has ranked 63 among 190 economies in the 'ease of doing business'. The rank of India improved to 63 in 2019 from 77 in 2018 and 142 in 2014³. A high ease of doing business ranking means the regulatory environment is more conducive to the starting and operation of a local firms. As a part of ease of doing business initiatives, various steps have already been taken by Government of India. Some of these are- introduction of e- biz portal, e- courts, e-procurement, GST, Digitization of Land Records and property registration, MCA-21 project in the incorporation process of the company, Pradhan Mantri Mudra Yojana, Power sector reforms, The Insolvency and Bankruptcy Code-2016, MCA-21 project for ensuring processes for greater transparency in the conduct of the corporate houses etc⁴. Government of India has also taken various steps to bring reforms in legal framework. Because, law is the regulator of society. Rule of law is the very heart and soul of the democracy. If rule of law is destroyed, then exploitation, anarchy, nepotism, nihilism and cynicism will increase. It will prompt the people to take law in their own hand and which in turn will destroy trade and commerce environment. So, law plays an important role in the development of trade and commerce. Enactment of Commercial Courts Act, 2015 by the Government of India is one of the right steps in this direction. It was long overdue. This law will bring reforms in commercial dispute resolution procedures. It will help in increasing FDI as a part of ease of doing business initiatives in progressive India.

<<http://www.inspirationstation.info/1-law-quotes/law-quotes.html>> [Accessed 23 October 2021].

³ Justice, D., 2021. *Department of Justice, Ministry of Law and Justice, Government of India*. [online] Doj.gov.in. Available at: <<https://doj.gov.in/eodb/commcourts.html>> [Accessed 23 October 2021].

⁴ Mca.gov.in. 2021. *Ministry Of Corporate Affairs - Ease Of Doing Business*. [online] Available at: <<https://www.mca.gov.in/MinistryV2/easeofdoingbusiness.html>> [Accessed 23 October 2021].

However, it is in this socio-economic spectacle, the researcher has written this paper to evaluate the role and efficacy of the Commercial Courts Act, 2015. The author has discussed the background behind enactment of this law, importance of the law and the main provisions of the law. The author has also discussed the performance and efficacy of the law after 6 years of the enactment of the law. The Author has further discussed few problems in the implementation of the law and finally the Author has also given some suggestions to remove these problems.

II. OBJECTS AND BACKGROUNDS OF THE COMMERCIAL COURTS ACT, 2015-

After the opening up of the Indian economy for foreign companies and putting signature in the GAAT/WTO agreement in 1991, Government of India took various bold steps towards the development of trade and commerce in India. Various initiatives were taken to attract the foreign investors in India. The central government has also taken series of steps in this direction. As a result of that India has developed remarkably in trade and commerce front. Quantity of foreign investments have increased to a great extent than earlier. According to a recent report, India had attracted a total foreign direct investments (FDI) inflow of \$6.24 billion in April, 2021 up by 38 per cent year-on-year, according to data released by the Department for Promotion of Industry and Internal Trade (DPIIT). With the increase of trade and business, it is expected that business disputes will also grow in both domestic and international levels. Speedy resolution of the commercial disputes is sine qua non for the development of trade and commerce. Judicial dillydallies and law's delay may destroy the desired 'ease of doing business', 'Make in India', 'Skill India', 'Digital India', '**Atmanirbhar Bharat Abhiyaan** or **Self-reliant India** campaign' initiatives. Besides, the expansion of international trade in globalized economy has led to increase in commercial disputes. Due to increasingly internationalization of trade and commerce, specialized commercial courts have been instituted by many countries to decide complex commercial cases expeditiously⁵. It started with United Kingdom in 1895 as a part of Queens Bench Division of High Court; thereafter as many as seventeen countries, namely, France, Canada, Belgium, Germany, Australia, New Zealand, United States of America (22 States), Philippines, Pakistan, United Arab of Emirates, Poland, Russia, Romania, Ukraine, Ghana, Sri Lanka and Singapore have set up commercial courts as a part of their municipal court for speedy settlement of commercial disputes⁶. For, the Government of India, has enacted a new law the Commercial Courts Act in 2015 for speedy

⁵ SABHA, R., 2021. *Action taken by the Government on the Recommendations/Observations contained in the 176th Report on the Functioning of Delhi Police*. [online] Rajya Sabha Secretariat, New Delhi. Available at: <<http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Home%20Affairs/189.pdf>> [Accessed 23 October 2021].

⁶ Ibid

resolution of commercial disputes. However, the Preamble of the Act says that this is an Act to provide for the constitution of Commercial Courts, 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 thereto⁷. The Commercial Court, Commercial Division and Commercial Appellate Division of High Courts under the Act, provides for a separate commercial court at district and High Court level. One of the aims behind the enactment of this legislation is definitely early resolution of commercial disputes and to make an investment friendly environment in India. In the era of globalization, various Bi-lateral Investment Treaties are entered into by the Government. This Act will be very useful to get speedy remedy regarding any dispute relating to these treaties. In fact, this law is one of the progressive legislations in progressive India aiming at to attract FDI and to make investment friendly environment for domestic investors as well.

III. REPORT OF THE LAW COMMISSION OF INDIA AND THE COMMERCIAL COURT ACT 2015-

In the year 2003, the Law Commission of India Suo motu took up the issue of proposing the constitution of Commercial Division in High Courts due to vast changes in the economic policies of the country after 1991. The reason behind the proposal was to avoid inordinate delay in disposal of high value commercial disputes and to give assurance in the mind of domestic and foreign investors. In its 188th Report the Commission explained the need for such commercial courts in India. The title of the report was “Proposals for Constitution of Hi-tech Fast-Track Commercial Divisions in High Courts”. These Commercial Divisions would also be equipped with high-tech video conferencing facilities along the lines used in other advanced countries commercial courts as per the proposal⁸. On the basis of the recommendations of the Commission, the Lok Sabha introduced the Bill as “Bill No.139 of 2009” on 16th December 2009 and passed it on 18th December 2009. The Bill was passed in the Lok Sabha without being referred to Standing Committee. After its passage in the Lok Sabha, the Rajya Sabha took up the Bill for consideration on 22nd December 2009, pursuant to which the Bill was referred to the Select Committee on the Commercial Division of High Courts Bill, 2009⁹. The select Committee presented its Report on 29th July 2010 and suggested certain changes to the Bill. Based on the recommendations of the Select Committee, the Bill was redrafted incorporating all the recommendations of the Select Committee. It was placed before the Rajya Sabha for its

⁷ Preamble of the Commercial Courts Act, 2015.

⁸ Ibid

⁹ Ibid

consideration. During the course of the debate on 13th December 2011, few concerns were raised by the members of the Rajya Sabha about the redrafted Bill¹⁰. In view of the concerns raised by the Members of the Rajya Sabha, the Government withdrew the Bill. Subsequently, the Ministry of Law and Justice referred the Bill to the Law Commission in light of the various shortcomings observed in its provisions. The Law Commission submitted its final Report [Report No.-253] titled “Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015”¹¹. Finally, the Act was enacted in 2015 and it came into force on the 23rd day of October, 2015.

IV. SALIENT FEATURES OF THE ACT-

The Government of India has taken series of steps to make successful the ‘Make in India’ program and to boost ‘ease of doing business’ in India. The speedy and efficacious enforcement of contracts, recovery of monetary claims and award of just compensation for loss or damage were very essentials to attract the foreign investors. The Commercial Courts Act, 2015 will definitely act as a catalyst for achieving these objectives. However, some of the salient features of the Act are as below:

1. The State Government may, after consultation with the concerned High Court, constitute such number of Commercial Courts at District level as it may deem necessary¹².
2. A Commercial Division of a High Court will be constituted/set up constituting of a single judge¹³.
3. A Commercial Appellate Division in the High Court will be constituted/set up having one or more division benches¹⁴.
4. Jurisdiction: 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 jurisdiction¹⁵.
5. Commercial Disputes: It means every commercial transaction including ordinary transactions of merchants, bankers, financiers, traders, export & import, carriage of goods, joint venture agreements, shareholders agreements, partnership agreements, technology development agreements, contract of agency, and insurance & re-insurance etc.

¹⁰ Ibid 10

¹¹ Ibid 10

¹² Section 3 of the Commercial Courts Act, 2015.

¹³ Ibid, section 4.

¹⁴ Ibid, section 5.

¹⁵ The Commercial Courts Act, 2015, Section 6.

6. Specified Value: Specified value in relation to a commercial dispute means the value of the subject-matter in respect of a suit as specified in accordance with section 12. It shall not be less than 3 lakh or such higher value as may be notified by the Central Government.
7. Jurisdiction in respect of Arbitration Matter: Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and if such arbitration is an international commercial arbitration or other than international commercial arbitration, shall be heard and disposed of by the commercial division of the concerned court¹⁶.
8. Pre-Institution Mediation and settlement: A suit which does not require any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation as per the rules made by central government¹⁷. So, the mediation has been made compulsory for all the disputed parties and they should go in for mediation before bringing the case to the court. This is a quicker, cost-effective way of resolving disputes.
9. Appeals from decrees of Commercial Courts and Commercial Divisions: 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 60 days from the date of judgment or order. Again, any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or 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 order¹⁸.
10. Quick disposal of appeals: The Commercial Appellate Court and the Commercial Appellate Division shall endeavor to dispose of appeals filed before it within a period of 6 months from the date of filing of such appeal¹⁹.

¹⁶ .Section 10 of the Commercial Courts Act, 2015.

(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.

¹⁷ The Commercial Courts Act, 2015, Section 12A.

¹⁸ Ibid, Section 13.

¹⁹ Ibid, Section 14.

11. Transfer of Pending Cases: All suits and applications, including applications under the Arbitration and Conciliation Act, 1996, relating to commercial disputes of a specified value pending in a High Court or in any Civil Court of a District shall be transferred to the Commercial Division of the High court or Commercial Court of the district²⁰.
12. Infrastructure Facilities: The State Government shall provide necessary infrastructure to facilitate the workings of a Commercial Court or Commercial Division of a High Court²¹.
13. Training and Continuous Education: The State Government may, in consultation with High Court, establish necessary facilities providing for training of judges who may be appointed to the Commercial Court or commercial appellate court or Commercial Division or the commercial appellate Division in a High Court²².
14. Power of Central Government to Make Rule: The Central Government may, by notification, make rules for carrying out the provisions of this Act²³.

V. CRITICAL ANALYSIS-

When the Indian Judicial system was infected with dillydallies, the litigants were frustrated about the laws delay and foreign investors were hesitant to invest in India because of the infrastructural inadequacies, enactment of the Commercial Courts Act, 2015 was the need of the hour. It was very essential to keep pace with the continuous reforms in Indian economy and trade & commerce. It was very timely to reinvigorate the 'Make in India' and 'ease of doing business' initiatives of government of India. There are many provisions of the Act which are incorporated to speed up the adjudication process. Some of these are:

1. In case of urgent filings, the plaintiff may seek leave of the court to rely on additional documents and the plaintiff shall file such additional documents in court within 30 days of filing the suit²⁴.
2. Written statement must be filed **within 120 days** by the defendants from the date of service of the summons and after the expiry of the 120 days the defendant shall forfeit the right to file the written statement²⁵.
3. The Commercial Appellate court and the Commercial Appellate Division shall endeavour to dispose of appeals filed before it **within a period of 6 months** from the date of filing of such appeal²⁶.

²⁰ Ibid, Section 15.

²¹ Ibid, Section 19.

²² Ibid, Section 20.

²³ Ibid, Section 21A.

²⁴ Rule 1, Order 11 of C.P.C.

²⁵ First Schedule, Order V, Rule 1, C.P.C.

²⁶ Section 14, The Commercial Courts Act, 2015.

4. 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. Order in such application shall be disposed of **within thirty days** of filing such application. If the above application is allowed by the court, inspection and copies thereof shall be furnished to the party seeking it, **within five days of such order**²⁷.
5. All parties must complete inspection of documents **within 30 days of the filing of the written statement**²⁸.
6. Inspection of documents must be completed **within 5 days of the passing of an order** allowing inspection.
7. 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. Notice to produce such document shall be issued in Form no.-7. Any party or person to whom such notice is issued, shall be given **not less than 7 days and not more than 15 days to produce** such document or to answer the inability to produce such document²⁹.
8. 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 Court³⁰.
9. The Court shall hold the first Case Management Hearing, **within four weeks from the date of filing of affidavit of admission or denial of documents** by all parties to the suit³¹.
10. The 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.

However, though the above points are few examples of positive sides of the Act, but there are some weaknesses of the Law as well. Implementation of the Act throughout the country is really a difficult task. After 6 years of enactment of the law, only four states have made the dedicated Commercial Courts functional in India. In Delhi, there are 22 Dedicated Commercial

²⁷ Order XI, Rule 3, C.P.C.

²⁸ Ibid.

²⁹ Order XI, Rule 5, C.P.C.

³⁰ Order XI, Rule 4, C.P.C.

³¹ Order XVA, Rule-1, C.P.C.

Courts spread across 11 districts and 6 court complexes. 42 additional Dedicated Commercial courts have also been notified on 13-04-2021 in New Delhi along with 42 judicial officers and support staffs³². In Mumbai, Government of Maharashtra in consultation with High Court of Bombay had established 16 Dedicated Commercial Courts spread across 11 Commercial Courts located in Mumbai city civil and sessions court, Mumbai and 5 commercial courts located in city civil and sessions courts³³. In Bangaluru, there are overall 9 Dedicated Commercial Courts which are operational in Karnataka, There are 8 Dedicated Commercial Courts in Bangaluru city and 1 Dedicated Commercial Court in Bangaluru rural area. In Kolkata, there are 2 Dedicated Commercial Courts which are functional at Alipur and Rajarhat. Calcutta High Court on 20/03/2020 has notified establishment of 2 more Dedicated Commercial Courts³⁴. No states in India have come forward to set up Commercial Courts besides these four States till now. But if the Commercial Courts are not established in other States, then the purpose of the Act would be defeated. However, the Commercial Courts should be established in those areas where there are huge Commercial Disputes. If the Commercial Courts are set up in the areas where there are no Commercial Disputes, then it will serve no purpose. So, the Courts should be set up as soon as possible where it is very necessary.

VI. CONCLUSION AND SUGGESTIONS-

Generally, a country with good infrastructural facilities e.g., highways, ports, bridges, communication facilities and sound legal system is the most desired destination for foreign investors. There is a keen competition in the world amongst nation states to attract foreign investors. Government of India has also taken various steps to make our country an investment friendly destination. As a part of this initiative, India has enacted the Commercial Court Act, 2015. One of the main objects of the Act is to give speedy remedy to the investors and entrepreneurs in case of any commercial disputes. Commercial Disputes of high value particularly have an impact on financial investments in the country. That's why the Commercial Court Act was enacted, in alia, for quick disposal of Commercial Disputes. The Act was enacted to fast track the disposal of Commercial Disputes generally and Commercial Disputes of high value specifically. Another objective of the Act was to bolster India's ranking in the Ease of Doing Business Index, published by the World Bank. But there are some drawbacks of the Act and following suggestions can be made to remove these drawbacks:

³² Justice, D., 2021. *Department of Justice, Ministry of Law and Justice, Government of India*. [online] Doj.gov.in. Available at: <<https://doj.gov.in/eodb/commcourts.html>> [Accessed 23 October 2021].

³³ Ibid.

³⁴ Ibid.

1. The onus to establish Commercial Courts lies in the hand of State Governments. In most of cases, these courts are set up in the same building with that of the District Courts and High Courts. But there is need to have a separate building for these Dedicated Commercial Courts/Divisions with adequate infrastructure and hi-tech facilities like e-filing, video conferencing of witnesses, electronic data entry etc at per with global standards.
2. Existing judges are allotted as the judge of Dedicated Commercial Courts and Commercial Divisions. Number of existing judges were already less and their allocation to these courts have made the situation more serious. Besides, the judges of these courts must have proper training and qualifications in Economics, Accountancy, Management and Business Laws. But in most of the cases existing judges are assigned the responsibility of these Commercial Courts. So, proper training should be given to the existing judges and new judges should be recruited having specialized knowledge of Commercial Courts.
3. In order to give a time-bound remedy and for quick disposal of cases, maximum time limit has been prescribed in many cases, e.g. the court must pronounce the decision within the time period of 90 days of the conclusion of arguments etc. These time lines will be meaningless if sufficient number of judges are not available to deal with the Commercial Courts. So, if number of judges are not increased then the purpose of the Act will be deviated.
4. Where a person is not satisfied with the decision of the Commercial Court/ Commercial Divisions can move an application to the Appellate Division of the High Court only. The Act has failed to provide a statutory right to move an application to the Supreme Court of India if the person is not satisfied by the decision of the Commercial Appellate Division of the High Court.
5. Section 15 of the Act allows transfer of all the commercial pending cases to District Commercial Court and the Commercial Division of the High Court. But it is apprehended that as a result of transferring of all the pending Commercial disputes to such Commercial Courts/Divisions would defeat the very object of the Act. Because, this will overburden the Commercial Courts in District level and Commercial Divisions of the High Court. Hence, the object speedy trial of the Act may be marred as a result of this.
6. There is a time limitation for the disposal of the appeals under the Act. But the Act does not contain any provision prescribing a period of time for the original please which have been filed. No maximum period is mentioned in the Act to resolve the original disputes. Had the Act contained the provision in this regard, then it would have been more effective.

7. To improve the 'ease of doing business' ranking and to increase the reputation of the country in international level are no doubt important aspects, but the law should not only be enacted to fulfil these objectives only. So, proper attention should be paid in speedy implementation of the law throughout the country. Unless Commercial Courts are set up in all the districts by all states within a short span of time and sufficient number of trained judges are appointed to deal with the Commercial Disputes, the objects of the Act may not be achieved.
