



**EASE OF DOING BUSINESS – Creating and Enabling a Framework for Simulating Investments in Manufacturing – ENFORCEMENT OF CONTRACTS**

**Centre for Civil Society**

## ENFORCING CONTRACTS

The following are our comments on the 8 action points provided to the State Governments for enforcing contracts:

S.No	Recommendations for State	Status	Comments
1.	Provide standardized contract templates to reduce ambiguity	Not yet implemented	<ul style="list-style-type: none"> <li>• Excellent initiative;</li> <li>• Shall aid new and existing litigants.</li> </ul>
2.	Set up specialized courts or commercial divisions in existing courts to resolve commercial disputes	Implemented	<p>At present the Delhi High Court has only four commercial benches</p> <ul style="list-style-type: none"> <li>• Increase in the number of benches set up;</li> <li>• Alternatively – arbitration/conciliation/mediation – to be insisted upon (in cases holding an arbitration clause) to reduce the burden of the existing benches set up for commercial disputes</li> </ul>
3.	Implement case management systems in courts to reduce delays	Not yet implemented	<ul style="list-style-type: none"> <li>• Court to Set up advanced software and computer systems;</li> <li>• Monitor case statuses and reports periodically</li> </ul>
4.	Initiate process of e-filing of proceedings and e-services of court proceedings in district and High Courts	Implemented in stages	<ul style="list-style-type: none"> <li>• While e-filing has been introduced and brought into practice, the same has been done in stages- such as company matters, tax matters, original side - arbitration, fresh applications etc.</li> <li>• Once the same is done in totality – there would be scope for case management and accountability and statistics.</li> </ul>
5.	Appoint more judges	Not yet implemented	<ul style="list-style-type: none"> <li>• The state will have to create more positions in the lower judiciary as well as the higher judiciary;</li> </ul>

			<ul style="list-style-type: none"> <li>Judicial examinations to increase number of seats;</li> </ul>
6.	Limit number of adjournments for cases to avoid long delay in judgments	Not yet implemented	<p>While the suggestion is subject to misuse against bonafide litigants, the intent of the policy is to create accountability and create an effective mechanism for redressal. Accordingly:</p> <ul style="list-style-type: none"> <li>Use the assistance of the parties to the dispute to agree upon the number of adjournments to be granted (that can be sought) to each party in the matter;</li> <li>The above should be agreed upon at the time of fixing detailed time-tables for the matter;</li> <li>The Bar Council of India should include 50% non-lawyers to hear complaints against advocates on matters pertaining to questionable conduct/professional ethics.</li> </ul>
7.	Fix time limits for disposing of the commercial cases	Not yet implemented	<ul style="list-style-type: none"> <li>Form general time-frame/time-table guidelines depending on existing data;</li> <li>The bench should (soon after admitting the matter), make a detailed time-table – specific to the matter before it.</li> </ul> <p>Fix dates for all the stages of the suit, right from filing of the written statement till pronouncement of judgment and the Courts should strictly adhere to the said dates and the said time table as far as possible;</p> <ul style="list-style-type: none"> <li>If any delay is because of interlocutory applications, conduct of parties, the judge can provide sanctions for such</li> </ul>

			<p>behavior, including, dismissing the application, imposing costs, etc.;</p> <ul style="list-style-type: none"> <li>• May be opposed by the judiciary as an act of interference by the state;</li> <li>• Calls for accountability of the judges</li> </ul> <p><b><i>Comments: whilst the above, it is relevant to mention that a seven judge bench of the Supreme Court of India in Ramchandra Rao v. State of Karnataka, (2002) 4 SCC 578, had held that mandatory time limits could not be prescribed by the Court.</i></b></p>
8.	Mandate mediation/arbitration for commercial cases less than INR 10 Lakhs	Not yet implemented	<ul style="list-style-type: none"> <li>• <b>All commercial disputes</b> with an arbitration clause should be mandatorily sent to arbitration;</li> <li>• There should be no segregation of matters based on pecuniary jurisdiction;</li> <li>• All commercial disputes that do not contain an arbitration clause – should be sent for/encouraged to conciliation/mediation.</li> </ul>

#### **OTHER OBSERVATIONS/SUGGESTIONS:**

While we advance towards providing for “*doing ease of business*”, it is imperative that contracts of any nature – specially commercial contracts - as are enforceable in India, are duly adjudicated upon, and the parties to the contract have a definitive recourse to an “effective” redressal mechanism in terms of time and cost such that the sanctity of the legal contracts is maintained.

While the initiative to set up four benches to handle only commercial disputes is a welcomed one, the following are our observations and suggestions on the same:

1. **INSUFFICIENT BENCHES:** Four benches themselves may not be enough to reduce the burden of the courts;
2. **VOUME OF PENDING DISPUTES:** This is especially because there is no reliable statistic on the actual number of matters pending before the courts – this is to include matters in which notice has been issued, matters before the registrar courts, matters of final hearing and matters concluded and reserved for judgments amongst others;
3. **EXPANSION OF JUDICIARY:** Further, to meet the need of the pending and fresh matters both, it is felt that the courts will have to employ more judges and set up numerous more benches than there already are;
4. **COST TO STATE:** While the above is a task in itself – the COST to the state in relation to the new infrastructure, training, perks to judges and families – thereafter pensions – is exorbitant;
5. **ALTERNATE MECHANISMS FOR REDRESSAL:** Accordingly, it may be more prudent to move to alternative dispute resolution mechanisms – arbitration/conciliation/mediation, instead of litigation. This can prove to be:
  - Cost effective;
  - Time effective;
  - Involves accountability;
  - Gives control to the litigant to decide/choose their arbitrators, conciliators and mediators, so there is also a smaller chance for grievance or dissatisfaction;
  - Parties can devise their own procedures;
  - The burden on the appellate courts such as the Hon'ble Supreme Court of India is reduced such that other matters (pending or fresh) can be heard, disposed or decided upon;
  - Reduces the burden on the existing mechanism of the judiciary;
  - Reduces the cost of infrastructure, salaries, staff, pensions, perks etc., to the state;

An effective mechanism for providing arbitrators, conciliators or mediators can be easily provided for. The state can allow private parties (lawyers) to set up centres for such alternative redressal mechanisms. Alternatively, the state can also outsource third party assessment/certification for arbitration centres on basis of cost, quality and speedy disposal. The government can also prescribe Model/ standardized contract template, model arbitration proceedings and rules for the arbitrators as best practices, however, parties and arbitrators should be free to opt for what they like.