

To

THE DEPARTMENT OF LEGAL AFFAIRS,
MINISTRY OF LAW AND JUSTICE

COMMENTS AND SUGGESTIONS ON

**THE DRAFT COMMERCIAL COURTS
(AMENDMENT) BILL, 2024**

NOVEMBER 2024



CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION
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To,
The Department of Legal Affairs
Ministry of Law and Justice
4th Floor, A-Wing, Shastri Bhawan
New Delhi - 110001

22nd November 2024

Subject: SUBMISSION OF COMMENTS AND SUGGESTIONS ON THE DRAFT COMMERCIAL COURTS (AMENDMENT) BILL, 2024

Respected Authorities,

In furtherance of the notification dated 8th November 2024 issued by the Ministry of Law and Justice inviting comments/suggestions on the Draft Commercial Courts (Amendment) Bill, 2024, we, the members of the Centre for Alternative Dispute Resolution (“CADR-RGNUL”) and Kautilya Society, RGNUL hereby submit our comments and suggestions on the Draft Bill. The **Centre for Alternative Dispute Resolution**, under the aegis of the **Rajiv Gandhi National University of Law, Punjab** (“RGNUL”), was established in the year 2018 to promote research in dispute resolution and develop ADR mechanisms as effective tools for socio-economic and political justice. **The Kautilya Society, RGNUL** was established in 2024 as a branch of the Kautilya Society initiative by the **Vidhi Centre for Legal Policy** to promote student-led policy research.

As part of our objectives of being a research-driven Centres, and as law students who understand the importance of policy making, we have conducted in-depth research into the existing framework of the commercial courts in India and the existing disputes resolution ecosystem, and have prepared the following document with our recommendations for the Bill.

We thank the Department of Legal Affairs, Ministry of Law and Justice for placing the Draft Commercial Courts (Amendment) Bill, 2024 in the public domain and granting all stakeholders and the general public the opportunity to provide their suggestions and comments.

Regards,

CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION, RGNUL
KAUTILYA SOCIETY, RGNUL

TABULAR STATEMENT ON THE DRAFT COMMERCIAL COURTS (AMENDMENT) BILL, 2024

Section	Draft's Proposed Amendments	Our Recommendation
Section 12A	<p>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.</p> <p><i>Provided that in case where an urgent interim relief was sought and has been granted or denied by the court, it shall thereafter, refer the parties to mediation and the procedure for pre-institution mediation, shall mutatis mutandis apply.</i></p> <p>(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).]</p>	<p>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</p> <p><i>The settlement arrived at under this section shall have the same status if it is a mediation settlement agreement under section 19 of the Mediation Act (32 of 2023) and shall have the same effect as under section 27 of the Mediation Act, 2023 (32 of 2023).</i></p>
Section 26 of CPC, 1908	<p>26. Institution of suits. — (1) Every suit shall be instituted by the presentation of a plaint or in such other manner including e-filing, as may be prescribed by the concerned High Courts. (2) In every plaint, facts shall be proved by affidavit. Provided that such an affidavit shall be in the form and manner as prescribed under Order VI of Rule 15A.</p>	<p>26. Institution of suits. — (1) Every suit shall be instituted by the presentation of a plaint or <i>through electronic filing as may be prescribed by the Supreme Court of India.</i> (2) In every plaint, facts shall be proved by affidavit. Provided that such an affidavit shall be in the form and manner as prescribed under Order VI of Rule 15A.</p>
Order V, Rule 1(1), proviso, CPC, 1908	<p>(1) When a suit has been duly instituted, a summons, including through electronic communication may be issued to the defendant to appear and answer the claim and to file the written statement of his</p>	<p><i>(1) When a suit has been duly instituted, a summons, including through electronic communication, may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days</i></p>

	<p>defence, if any, within thirty days from the date of service of summons on that defendant: Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaintiff's claim: 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 sixty days from the date of service of summons and on expiry of sixty 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.</p>	<p>from the date of service of summons on that defendant: Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaintiff's claim: Provided further that where the defendant fails to file the written statement within the said period of thirty days, the Court may, for reasons to be recorded in writing and on payment of such costs as it deems fit, extend the period for filing the written statement: (i) For a further period not exceeding thirty days from the expiry of the initial thirty-day period; and (ii) In exceptional circumstances, for an additional reasonable period as determined by the Court upon sufficient cause being shown by the defendant, with the extension granted in the interest of justice.</p> <p>Failure to file the written statement within the prescribed or extended period, as applicable, may result in the defendant forfeiting the right to file the written statement. However, the Court retains the discretion to allow the filing of a written statement where extraordinary circumstances or significant procedural lapses warrant such relief, in alignment with the principles of equity and access to justice.</p>
<p>Order V, Rule 20(1A)</p>	<p>20. Substituted service.—(1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or</p>	<p>20. Substituted Service.—((1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or posted on</p>

	<p>personally worked for gain, or posted on the Court's official website or in such other manner as the Court thinks fit.</p> <p>(1A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.</p>	<p>the Court's official website, provided that the Court has ascertained the likelihood of the defendant accessing the Court's website, or in such other manner as the Court thinks fit, including through modern digital communication tools such as email, SMS, or social media platforms, if appropriate.</p> <p>(1A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain. The Court may also consider using digital advertisements tailored to the defendant's last known location as an alternative or in addition to traditional print advertisements, ensuring cost-effectiveness and wider reach.</p>
<p>Order VIII Rule 1</p>	<p>1. <i>Written Statement.</i> — The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence including e-filing, as may be prescribed by <i>the concerned High Court:</i></p> <p><i>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 same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.</i></p> <p><i>Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall</i></p>	<p>1. <i>Written Statement.</i> — The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence including e-filing, as may be prescribed by the <i>Supreme Court of India:</i></p> <p><i>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 same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.</i></p> <p><i>Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be</i></p>

	<p><i>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.</i></p>	<p><i>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.</i></p>
<p>Order XX Rule 6B</p>	<p><i>6B. Copies of judgments when to be made available.—Where the judgment is pronounced, copies including electronic copy with digital signature of the judgment shall be made available to the parties immediately after the pronouncement of the judgment for preferring an appeal on payment of such charges as may be specified in the rule made by the High Court.</i></p>	<p><i>6B. Copies of judgments when to be made available.—Where the judgment is pronounced, addressing issues, wholly or in part, copies including electronic copy with digital signature of the judgment shall be made available to the parties immediately after the pronouncement of the judgment for preferring an appeal on payment of such charges as may be specified in the rule made by the High Court.</i></p>
<p>Order XXI of CPC</p>	<p><i>10A. All proceedings, pursuant to the filing of an application for execution, shall be disposed of within twelve months of the filing of the application.</i></p>	<p><i>10A. All proceedings, pursuant to the filing of an application for execution, shall be disposed of within six months of the filing of the application, which may be extended only by recording reasons in writing for such delay.</i></p>
<p>Section 18A</p>	<p><i>18A. Court to dispose of application for injunction within ninety days:</i></p> <p><i>An application for injunction shall be disposed of within ninety days from the date of filing of the said application and where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction or relief was granted; and where it is unable so</i></p>	<p><i>18A. Court to dispose of application for injunction within ninety days:</i></p> <p><i>An application for injunction shall be disposed of within ninety days, subject to reasonable delay, from the date of filing of the said application and where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty to forty-five days from the date on which the injunction or relief was granted; and</i></p>

	<p><i>to do, it shall record its reasons for such inability.</i></p>	<p><i>where it is unable so to do, it shall record its reasons for such inability.</i></p>																
<p>Appendix II</p>	<p>23. After Appendix I of the principal Act, the following Appendix II shall be inserted, namely: —</p> <p style="text-align: center;"><i>Appendix II</i></p> <p><i>Form of List of witnesses. – (i) The list of witnesses will be in the form below:</i></p> <p><i>IN THE __ COURT AT __</i></p> <p><i>Suit No.....of.....</i> <i>Plaintiff/Petitioner..v.</i> <i>..Defendant/Respondent</i></p> <p><i>NEXT DATE OF HEARING</i></p> <p><i>List of witnesses filed by the.....</i></p> <table border="1" data-bbox="386 1010 841 1381"> <thead> <tr> <th><i>Ser</i> <i>al</i> <i>No.</i></th> <th><i>Full</i> <i>name</i> <i>and</i> <i>comple</i> <i>te</i> <i>adres</i> <i>s</i></th> <th><i>Facts</i> <i>Sought</i> <i>to be</i> <i>proved</i> <i>by the</i> <i>eviden</i> <i>ce of</i> <i>the</i> <i>witnes</i> <i>s</i></th> <th><i>Docume</i> <i>nts</i> <i>sought to</i> <i>be</i> <i>proved</i> <i>by the</i> <i>evidence</i> <i>of the</i> <i>witness</i></th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> <p><i>Part—A Witnesses required to be examined on Commission and Video conferencing.</i></p> <p><i>Part—B Witnesses required to produce documents only and who are not required to give oral evidence.</i></p> <p><i>Part—C Witnesses required to give oral evidence and also to produce documents, including expert witnesses.</i></p>	<i>Ser</i> <i>al</i> <i>No.</i>	<i>Full</i> <i>name</i> <i>and</i> <i>comple</i> <i>te</i> <i>adres</i> <i>s</i>	<i>Facts</i> <i>Sought</i> <i>to be</i> <i>proved</i> <i>by the</i> <i>eviden</i> <i>ce of</i> <i>the</i> <i>witnes</i> <i>s</i>	<i>Docume</i> <i>nts</i> <i>sought to</i> <i>be</i> <i>proved</i> <i>by the</i> <i>evidence</i> <i>of the</i> <i>witness</i>					<p>23. After Appendix I of the principal Act, the following Appendix II shall be inserted, namely: —</p> <p style="text-align: center;"><i>Appendix II</i></p> <p><i>Form of List of witnesses. – (i) The list of witnesses will be in the form below:</i></p> <p><i>IN THE __ COURT AT __</i></p> <p><i>Suit No.....of.....</i> <i>Plaintiff/Petitioner..v.</i> <i>..Defendant/Respondent</i></p> <p><i>NEXT DATE OF HEARING</i></p> <p><i>List of witnesses filed by the.....</i></p> <table border="1" data-bbox="873 1010 1360 1381"> <thead> <tr> <th><i>Seri</i> <i>al</i> <i>No.</i></th> <th><i>Full</i> <i>name</i> <i>, complete</i> <i>address,</i> <i>email or</i> <i>contact</i> <i>informati</i> <i>on</i></th> <th><i>Facts</i> <i>Sought</i> <i>to be</i> <i>proved</i> <i>by the</i> <i>eviden</i> <i>ce of</i> <i>the</i> <i>witnes</i> <i>s</i></th> <th><i>Docume</i> <i>nts</i> <i>sought to</i> <i>be</i> <i>proved</i> <i>by the</i> <i>evidence</i> <i>of the</i> <i>witness</i></th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> <p><i>Part—A Witnesses required to be examined on Commission and Video conferencing.</i></p> <p><i>Part—B Witnesses required to produce documents only and who are not required to give oral evidence.</i></p> <p><i>Part—C Witnesses required to give oral evidence and also to produce documents.</i></p>	<i>Seri</i> <i>al</i> <i>No.</i>	<i>Full</i> <i>name</i> <i>, complete</i> <i>address,</i> <i>email or</i> <i>contact</i> <i>informati</i> <i>on</i>	<i>Facts</i> <i>Sought</i> <i>to be</i> <i>proved</i> <i>by the</i> <i>eviden</i> <i>ce of</i> <i>the</i> <i>witnes</i> <i>s</i>	<i>Docume</i> <i>nts</i> <i>sought to</i> <i>be</i> <i>proved</i> <i>by the</i> <i>evidence</i> <i>of the</i> <i>witness</i>				
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	<p><i>Part—D Witnesses required to give oral evidence but from whom no documents are required to be proved.</i></p>	<p><i>Part—D Witnesses required to give oral evidence but from whom no documents are required to be proved.</i></p> <p><i>Part E - Witnesses providing document authentication without oral testimony.</i></p> <p><i>Part F- Expert Witnesses, categorized by specific expertise.</i></p>
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COMMENTS AND SUGGESTIONS ON
THE DRAFT COMMERCIAL COURTS (AMENDMENT) BILL, 2024

SECTION 2 (NEW DEFINITION) OF THE DRAFT COMMERCIAL COURTS (AMENDMENT) BILL

SUMMARY OF RECOMMENDATIONS

The recommendations for *Section 2 of the draft Commercial Courts (Amendment) Bill, 2024*, stress the need for a standardized framework to ensure uniformity in adopting technology across jurisdictions. A central framework, possibly set by the Supreme Court or the Department of Justice, is crucial to avoid discrepancies and improve interoperability. The amendments also call for robust data protection measures, in line with the *Digital Personal Data Protection Act, 2023*, to safeguard digitally transmitted data. Additionally, judicial officers, court staff, and advocates must undergo training to effectively adopt electronic tools. Scaling up the eCourts Project and incorporating accessibility features for persons with disabilities are essential steps.

ANALYSIS

1. SECTION 2 (NEW DEFINITION): THE LACK DATA SECURITY MEASURES MAY HINDER THE SUCCESSFUL IMPLEMENTATION OF THIS DEFINITION

The Draft Bill, in its promotion of live-streaming and video conferencing, reflects the judiciary’s commendable move towards transparency and expedited justice delivery, as evidenced by landmark cases like *Swapnil Tripathi v. Supreme Court of India*.¹ Through these amendments, the Government of India aims to modernize the judicial process by integrating technology into commercial dispute resolution, which will reduce costs and increase procedural efficiency. This is vital in enhancing investor confidence, both domestic and foreign, in India’s legal system. The codification of terms such as “*audio-video electronic means*” and “*electronic communication*” signifies a progressive step in institutionalizing virtual hearings and electronic document submissions—practices that proved essential during the COVID-19 pandemic.² Additionally, the Bill’s inclusive approach can bridge geographical gaps and provide equitable access to justice, even in remote or underserved regions.

¹ *Swapnil Tripathi v. Supreme Court of India*, (2018) 10 SCC 639.

² *Guidelines for Court Functioning through Videoconferencing during Covid-19 Pandemic, In re*, (2020) 6 SCC 686.

However, while the amendment promotes technological integration, it fails to sufficiently address the disparities in digital infrastructure across India. This digital divide poses a significant barrier to access to justice, particularly for litigants in less developed regions with inadequate technological literacy. In contrast, Singapore's judiciary has effectively integrated technology through its eLitigation System,³ supported by nationwide digital literacy campaigns, ensuring that all stakeholders are equipped to engage with the litigation process seamlessly. The absence of such comprehensive support in India could impede the full realization of the Bill's potential. Moreover, the Bill's provision allowing High Courts to notify additional electronic communication methods introduces a concerning lack of uniformity, which could create confusion and practical difficulties for litigants navigating multiple jurisdictions. This decentralization risks complicating the judicial process, undermining the Bill's objective of creating a streamlined and efficient system.

Furthermore, the Bill does not adequately address the crucial issue of data security, particularly with the increased use of electronic devices in court proceedings. Despite the introduction of the *Digital Personal Data Protection Act, 2023*,⁴ India lacks comprehensive provisions to ensure the protection of sensitive court data, unlike the EU's General Data Protection Regulation (GDPR),⁵ which sets clear standards for the processing and security of personal data. The Bill's silence on the standards for securing digital evidence—such as the recording, storage, and transmission of digital materials—further exacerbates the risk of unauthorized access or misuse. Here, India could draw lessons from the U.S. Federal Rules of Evidence,⁶ which impose strict protocols on the chain of custody and admissibility of electronic evidence.

In addition to these concerns, a significant, albeit often overlooked, challenge in virtual courts is the breach of privacy of litigants. In some cases, proceedings have been leaked and made viral on social media platforms. This is a particularly pressing concern in commercial courts, where confidential corporate transactions are frequently shared as part of the dispute resolution process. Leaks of proceedings, as well as documents shared by litigants, can cause substantial harm to the parties involved. Such breaches not only compromise the confidentiality of sensitive commercial data but also create an atmosphere of distrust among parties, making them

³ Integrated Electronic Litigation System 2000.

⁴ Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023 (India).

⁵ General Data Protection Regulation (GDPR) 2016.

⁶ Federal Rules of Evidence 2023, Rule 902.

hesitant to participate in online hearings. This threat to privacy, if not adequately addressed, could undermine the effectiveness and credibility of virtual courts.

Given these risks, it is crucial to consider whether a penal provision could be introduced to hold individuals accountable for leaking court proceedings or documents. While contempt of court might be a possible legal avenue, it may not fully encompass the technical nature of such breaches. The inclusion of technical safeguards in the rules governing virtual hearings, while perhaps too procedural for inclusion in the Act itself, could provide a vital layer of protection against such leaks. These safeguards could include encrypted transmission methods, secure document-sharing platforms, and protocols for monitoring and detecting unauthorized access.

In conclusion, while the amendments introduce beneficial innovations aimed at enhancing the efficiency and accessibility of the judiciary, they fall short in addressing critical challenges related to infrastructure, uniformity, data security, privacy, and procedural clarity. For the Bill to achieve its objectives, it must be accompanied by robust frameworks ensuring digital equity, security, privacy protection, and consistency in judicial practices across jurisdictions.

2. RECOMMENDATIONS

The Bill provides for the High Courts to notify the modalities of using electronic means; however, uniform standards for the adoption of technology are pertinent to avoid discrepancies. A standardized central framework set up by the Supreme Court or the Department of Justice can help enhance interoperability and the functionality of the systems across the different regions. These proposed definitions call for robust data protection measures to safeguard digitally transmitted data, following the tenets of the recent *Digital Personal Data Protection Act, 2023*⁷ and ensuring that the servers are encrypted and secured for the practice of video conferencing and storage of digital evidence.

Furthermore, the rampant digital integration of technology in the Indian judiciary necessitates the orientation and induction of the judicial officers, court staff, and advocates for the better use of electronic means from a smooth adoption. One of the multiple ways to familiarise the key stakeholders with the ongoing changes is through the scaling up of the existing Programs under the eCourts Project, and facilitating such access for persons with disabilities, under the

⁷ Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023 (India).

*Rights of Persons with Disabilities Act, 2016.*⁸ This includes the need to equip video conferencing facilities with screen readers, speech-to-text facilities, and real-time transcription services.

Therefore, it is fair to conclude that the insertion of the definitions of “*audio-video electronic means*” and “*electronic communication*” through the Commercial Courts (Amendment) Bill, 2024, should help in modernising the Indian judiciary and equipping it with the digital times to come. Upon the necessary and timely achievement of standardisation, data security, and access to users, the amendments should go a long way in enhancing the efficiency and inclusiveness of the commercial courts in India.

⁸ Rights of Persons with Disabilities Act, 2016, No. 49, Acts of Parliament (India).

SECTION 19

SUMMARY OF RECOMMENDATIONS

The proposed amendment to *Section 19*, which introduces online proceedings, offers substantial benefits such as reduced travel costs and enhanced accessibility, particularly for individuals with mobility impairments. However, challenges arise regarding the risk of technological limitations and unequal access to digital platforms, potentially excluding marginalized participants. The shift to virtual hearings also raises concerns over data security, with the potential for breaches of confidentiality. Recommendations include conducting a thorough evaluation of virtual platforms to ensure accessibility and technical compatibility, implementing stringent data security measures such as encryption and secure login protocols, and establishing clear guidelines for data recording and storage. Further, punitive measures should be enforced to deter data misuse, ensuring the integrity of online judicial proceedings.

ANALYSIS

The proposed amendment to Section 19 offers several benefits, especially for online proceedings. Digital hearings reduce travel time and costs for litigants, lawyers, and judges. This shift also promotes accessibility and inclusivity for individuals with mobility impairments and enables broader participation from stakeholders, including witnesses and experts, regardless of geographical limitations.

However, while the reduction in travel and time constraints undeniably facilitates greater participation, it is essential to critically examine whether the amendment addresses the underlying structural inefficiencies in the judicial system. The increased flexibility of virtual hearings, allowing courts to resolve scheduling conflicts with greater efficiency, could indeed expedite cases that may otherwise be delayed due to procedural hiccups or the absence of key participants. The real challenge lies in ensuring that such expedience does not inadvertently compromise the quality of the proceedings or lead to undue pressure on courts to prioritize speed over substantive justice.

Another critical concern is the security of sensitive information. The increased use of virtual platforms opens the door to potential breaches of confidentiality and unauthorized access to case materials. To safeguard the integrity of the legal process, robust regulatory measures must

be established to control the flow of information. This should include the use of end-to-end encryption, secure login protocols, and guidelines for the recording, storage, and access of virtual hearing data. Additionally, stringent punitive measures must be implemented to deter the misuse of sensitive data, with a particular emphasis on preventing the unauthorized dissemination of personal and case-related information.

The potential for breaches in privacy extends beyond the digital realm to include concerns over the traceability of IP addresses and other digital identifiers. The digital footprints left by participants could expose personal data, compromising the integrity of the proceedings. As such, technological safeguards such as anonymization protocols and the use of proxy servers must be employed to ensure that confidential information remains protected. Moreover, the implementation of strict legal measures, alongside technological safeguards, will be crucial to maintaining the trust and confidence of litigants in the online judicial system. Therefore, while the proposed amendment presents a progressive step towards modernizing court procedures, it is essential to ensure that the transition to online proceedings is implemented in a manner that upholds the values of fairness, accessibility, and security. Addressing the risks associated with technological limitations and data privacy concerns will be key to realizing the full potential of this reform without compromising the integrity of the legal process.

3. RECOMMENDATIONS

The proposed amendment should be accompanied by careful considerations and regulatory safeguards to ensure its successful implementation. The first recommendation is to assess the risks and limitations associated with the virtual format. It is essential for the Court to conduct a comprehensive evaluation of available virtual platforms to ensure they meet the specific needs of all stakeholders, including the Court, litigants, and other participants. This evaluation should focus on factors such as accessibility, technical capabilities, and the ability to handle complex case requirements. A failure to select the most appropriate platform could result in delays or unequal access to justice, undermining the amendment's intended goals.

The second recommendation is the formulation of robust regulatory measures to ensure data security and control the flow of information during virtual proceedings. Given the sensitive nature of legal matters, it is imperative that the Court implements stringent security measures, including end-to-end encryption, secure login systems, and restricted access to proceedings. These measures would protect confidential information from unauthorized access. In addition,

clear and comprehensive guidelines should be established regarding the recording, storage, and access to virtual hearing data. These guidelines should be communicated effectively to all stakeholders, ensuring that privacy concerns are adequately addressed and that no party's rights are compromised.

Finally, the Court must lay down strict punitive measures to deter the misuse of data in online proceedings. Given the ease with which digital data can be manipulated or misused, it is crucial that strong legal penalties are established to protect the confidentiality of sensitive information. In addition to these legal measures, the Court should employ technological safeguards such as anonymization protocols, proxy servers, and encrypted connections to further protect the identity and security of participants. These combined measures will ensure that data security is maintained and that all parties can participate in online proceedings with confidence in the privacy of their information.

SECTION 12A

SUMMARY OF RECOMMENDATIONS

The proposed amendment to *Section 12A* should allow judicial discretion in mandating pre-institution mediation, particularly in cases involving hostile parties, to prevent inefficiencies and delays when mediation is unlikely to succeed. Additionally, *Section 12A(5)* should be amended to align with the *Mediation Act, 2023*,⁹ which provides a specialized framework for mediated settlements, eliminating redundancy with the *Arbitration and Conciliation Act, 1996*. This adjustment would reinforce mediation as an independent dispute resolution mechanism. Overall, the amendment should ensure mediation remains a structured and time-bound process, promoting efficient dispute resolution while balancing flexibility in its mandatory application to avoid unnecessary delays in litigation.

ANALYSIS

4. SECTION 12A: THE OBJECTIVE BEHIND THE PROPOSED CHANGES

Section 12A, emphasizing pre-institution mediation and settlement, seeks to address the longstanding issue of prolonged resolution of commercial disputes in India. As per the proposed amendment, a proviso is sought to be added to ensure that if the parties approach the court directly in pursuance of urgent interim relief, the court refers them back to pre-institution mediation after the adjudication on such application for interim relief. The amendment seeks to resolve a necessary loophole whereby earlier, parties could bypass the mandatory pre-institution mediation by approaching the court directly to seek urgent interim relief. No matter whether the interim relief was accepted or denied, the parties could just continue with the suit without going through the pre-institution mediation. The inclusion of a provision to refer parties to mediation even after an interim relief request has been addressed reflects the commitment to embedding mediation as a core step in dispute resolution.

In *Patil Automation Private Limited & Ors. v. Rakheja Engineers Private Limited*,¹⁰ the Supreme Court stated that disputes of a commercial nature must be adjudicated with the highest level of promptness and held that pre-institution mediation is a necessary requisite in commercial disputes, except for when an urgent interim relief is claimed.

⁹ The Mediation Act, 2023, No. 27, Acts of Parliament, 2023 (India).

¹⁰ *Patil Automation Private Limited & Ors. v. Rakheja Engineers Private Limited*, 2022 SCC OnLine SC 1028.

The amendment aligns with the objectives of the draft bill, which focuses on ensuring time-bound and efficient mechanisms for dispute resolution, reducing the burden on commercial courts, and promoting amicable settlements. The process outlined under the amendment ensures that mediation is not merely a formality but a structured and time-bound procedure and promotes expeditious disposal of trial court cases, which is in line with *section 14 of the Bill*¹¹ and overall effective disposal of the suits.

5. SECTION 12A: INEFFECTIVENESS OF MANDATORY PRE-INTUITION MEDIATION IN HOSTILE DISPUTES

The mandatory pre-institution mediation proposed by the government under the amendment by utilization of “*shall*” in the proviso could prove counterproductive in cases where parties exhibit overt hostility or aggression towards each other while they approach the court to seek urgent interim relief. In such situations, the likelihood of reaching an amicable settlement through mediation is significantly reduced, rendering the process futile.

To address this concern, the courts should have been granted limited discretion to determine whether mandatory pre-institution mediation is appropriate on a case-by-case basis. While in *Bolt Technology, OU v. Ujoy Technology Private Limited*,¹² the single judge bench of the Delhi High Court held that the conduct of a defendant involving refusal to amicably settle a dispute violates the spirit of *Section 12A of the CCA*, therefore, the defendant cannot turn around and object to the institution of a plaint on the ground of non-compliance with the provision, the Court noted.

However, it has to take into cognizance several cases where mediation would prove to be futile and a rigid, one-size-fits-all approach may inadvertently lead to inefficiencies. If mediation fails, the dispute will ultimately proceed to litigation, resulting in a delay rather than an expeditious resolution of cases. This additional layer of mediation, in such instances, may increase the bureaucratic burden and further strain the judicial system, as the number of unresolved cases requiring litigation will continue to rise.

¹¹ Draft Commercial Courts (Amendment) Bill, 2024, s 14
<<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2071745>>

¹² *Bolt Technology, OU vs. Ujoy Technology Private Limited*, 2022 SCC OnLine Del 2639.

6. RECOMMENDATIONS

Firstly, the addition of proviso to Section 12A should not impose a mandatory obligation upon courts to refer the parties to pre-institution mediation and grant some discretion to courts.

Secondly, Section 12A(5)¹³ of the Act currently provides that “*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).*”

However, this provision requires reconsideration in light of the *Mediation Act, 2023*. Section 27 of the *Mediation Act*¹⁴ explicitly states that a mediated settlement agreement, once signed by the parties and authenticated by the mediator, is final and binding. This provision establishes an independent and specialised framework for mediation settlements, making the reference to the *Arbitration and Conciliation Act, 1996*, redundant. Though the said provision has not been notified as of now, it should be ensured that Section 12A(5) directly aligns with the provisions of the *Mediation Act, 2023*. This amendment would reinforce the specialized nature of mediation as a dispute resolution mechanism and avoid any undue reliance on arbitration laws for enforcing mediated settlements.

¹³ Commercial Courts Act 2015, § 12 cl.5, Acts of Parliament, 2015 (India).

¹⁴ The Mediation Act 2023, § 27, Acts of Parliament, 2023 (India).

SECTION 13

SUMMARY OF RECOMMENDATIONS

The proposed amendments to *Section 13 of the Commercial Courts Act* introduce a proviso for condoning delays in appeals, granting flexibility for litigants with genuine obstacles while maintaining a capped extension of 30 days to ensure expeditious resolution. By including *Section 50 of the Arbitration and Conciliation Act, 1996*,¹⁵ alongside *Section 37*,¹⁶ the amendments expand the scope of arbitration-related appeals under commercial courts, aligning with the Act’s arbitration-focused objectives. However, these changes could risk delays in time-sensitive disputes if misused. Courts must exercise discretion judiciously, and harmonization of procedural laws is essential to ensure clarity and prevent conflicting interpretations. Additionally, it is recommended to implement clear guidelines for courts on the exercise of discretion in condonation applications to ensure consistent and fair application of the proviso.

ANALYSIS

The proposed amendment introduces a stricter limitation period for filing appeals, allowing an additional 30 days beyond the original 60-day period only if “sufficient cause” is shown. This limitation is proposed to apply notwithstanding *Section 5 of the Limitation Act, 1963*.¹⁷ Additionally, the inclusion of *Section 50* of the Arbitration and Conciliation Act, 1996, in the proviso raises potential issues of clarity and scope.

However, the explicit exclusion of *Section 5 of the Limitation Act, 1963*, from the amendment creates a nuanced departure, as *Section 5* does not impose a fixed timeline for condonation, allowing courts to condone delays extending over years. While the 30-day extension under the amendment offers predictability, it may appear more as an additional timeline rather than a genuine tool for condonation.

Similarly, the inclusion of *Section 50* of the *Arbitration and Conciliation Act, 1996*, alongside *Section 37* in the first proviso to sub-section (1A), marks a pivotal development. *Section 50* deals with appeals related to the enforcement of foreign arbitral awards and international

¹⁵ Arbitration and Conciliation Act, 1996, § 50, No. 26, Acts of Parliament, 1996 (India).

¹⁶ Arbitration and Conciliation Act, 1996, § 37, No. 26, Acts of Parliament, 1996 (India).

¹⁷ Limitation Act, 1963, § 5, No. 36, Acts of Parliament, 1963 (India).

arbitration agreements, ensuring that Commercial Courts and Divisions now have a more comprehensive jurisdiction over arbitration-related matters. This aligns well with the arbitration framework, as arbitration disputes often overlap with commercial litigation, thereby reinforcing the Act's broader objective of consolidating arbitration-related appeals within the commercial court system.

Nevertheless, these amendments are not without concerns. The additional 30 days for condonation, while serving justice, could be misused to delay proceedings, particularly in time-sensitive commercial disputes. Courts must exercise their discretion judiciously to mitigate such risks. Moreover, harmonization of procedural laws governing commercial disputes is imperative to avoid conflicting interpretations, particularly concerning the interplay between the Limitation Act, the Arbitration and Conciliation Act, and the Commercial Courts Act. While these amendments are pragmatic and prioritize access to justice, their effectiveness will hinge on careful implementation and monitoring to ensure they do not undermine the Act's core goal of swift and efficient dispute resolution.

In *Collector, Land Acquisition v. Katiji* (1987),¹⁸ the Supreme Court emphasized that courts should adopt a liberal approach in condoning delays to advance substantial justice. The proposed strict cutoff undermines this principle. Similarly, the Supreme Court in *N. Balakrishnan v. M. Krishnamurthy* (1998)¹⁹ reaffirmed that delay caused by genuine reasons should not obstruct access to justice.

7. RECOMMENDATIONS

To address the challenges posed by the proposed amendments, it is imperative to introduce a mechanism allowing courts limited discretion to entertain appeals beyond 90 days in cases of exceptional circumstances. The rigid exclusion of judicial discretion may result in procedural timelines unjustly prevailing over substantive justice, particularly in instances where appellants face genuine, unavoidable impediments. Such a modification would align with the overarching principles of equity and fairness, ensuring that the procedural rigors do not become an impediment to access to justice.

¹⁸ *Collector, Land Acquisition v. Katiji*, 1987 AIR 1353.

¹⁹ *N. Balakrishnan v. M. Krishnamurthy*, AIR 1998 SUPREME COURT 3222.

Moreover, the inclusion of *Section 50* of the *Arbitration and Conciliation Act, 1996*, within the proviso necessitates greater clarity to avoid interpretative ambiguities. Explanatory notes or illustrative examples should be provided to delineate the specific intent and applicability of Section 50 in the context of commercial appeals. Without such clarity, the risk of inconsistent application or confusion in judicial interpretation could undermine the amendment's objectives.

Additionally, provisions for facilitating digital filing of appeals should be incorporated to address delays caused by logistical and geographical constraints. By promoting digital infrastructure, the judiciary can expedite the appeals process and enhance access to justice, particularly for litigants in remote or underserved regions.

Beyond these targeted changes, broader structural measures should also be considered to address systemic inefficiencies. For instance, pre-litigation mediation should be mandated or incentivized in commercial disputes to reduce the appellate burden on courts. Such a framework would align with global best practices and reinforce the objective of expedited dispute resolution.

Furthermore, a mechanism should be established to periodically review the impact of strict appellate timelines. This would allow the legislature to assess whether these timelines are causing undue hardship and make necessary adjustments to strike an optimal balance between efficiency and justice. Finally, specialized training programs for judges in Commercial Appellate Divisions should be instituted to enhance their capacity to handle complex commercial appeals. Such measures would ensure a more nuanced and effective adjudicatory process, thereby reinforcing the efficacy and fairness of the Commercial Courts framework.

SECTION 14

SUMMARY OF RECOMMENDATIONS

The proposed amendment to *Section 14* requires appellants to issue a prior notice to the opposing party before filing an appeal, along with an affidavit confirming compliance. This aims to promote transparency, fairness, and pre-emptive resolution through alternative dispute resolution (ADR). However, the amendment could introduce delays, particularly in urgent matters, and might be exploited for tactical delays. Key recommendations include implementing a fast-track procedure for urgent appeals, establishing clear guidelines to prevent misuse of the notice, introducing penal provisions for violations, and ensuring strict verification of affidavits to maintain procedural integrity. Judicial oversight is essential to prevent abuse and uphold the amendment's objectives.

ANALYSIS

The proposed amendment to Section 14 introduces a requirement for appellants to issue a prior notice to the opposing party before filing an appeal under *Section 13*,²⁰ accompanied by an affidavit confirming compliance with this obligation. This amendment carries significant implications for the legal landscape and deserves careful consideration.

The introduction of a prior notice requirement promotes procedural fairness by ensuring that the opposing party is informed of the intended appeal in advance. This approach reduces the element of surprise and fosters transparency, aligning with the principles of natural justice and due process. By requiring the appellant to notify the other party before initiating the appellate process, the amendment ensures that the respondent is not caught off guard, allowing them to prepare accordingly. This shift promotes a level of accountability and fairness in appellate proceedings, safeguarding the right of the opposing party to be heard.

8. SECTION 14: OPPORTUNITY FOR PRE-EMPTIVE RESOLUTION

The obligation to issue a prior notice introduces an opportunity for the parties involved to explore alternative dispute resolution (ADR) mechanisms or settle the dispute before resorting to the appellate process. This can prevent the prolongation of litigation and foster a more amicable resolution of commercial disputes. In an era where ADR is encouraged, the proposed

²⁰ Code of Civil Procedure 1908, § 13, No. 5, Acts of Parliament, 1908 (India).

amendment provides a platform for parties to resolve their issues outside the courtroom, potentially saving time, costs, and judicial resources. As such, the requirement reflects a proactive attempt to address disputes at an earlier stage, encouraging settlements and reducing the burden on the courts.

Moreover, accompanying the prior notice requirement with an affidavit serves as a safeguard against frivolous claims regarding compliance with the notice provision. By formalizing the process with a sworn affidavit, the amendment ensures that the appellant's notification to the opposing party is properly documented and verified. This provides a tangible record of compliance, deterring abuse of the process and ensuring that the procedural requirement is not overlooked or ignored. The affidavit adds a layer of accountability to the appeal process and serves as an important procedural safeguard.

9. SECTION 14: EXPEDITIOUS DISPOSAL OF APPEALS

Section 14, in its original form, already required the Commercial Appellate Courts and Divisions to aim for the expeditious disposal of appeals, with a six-month timeline. This provision remains unchanged in the proposed amendment but is renumbered as *sub-section (2)*. The retention of this six-month timeline reinforces the Act's overarching objective of facilitating timely dispute resolution. However, the introduction of the prior notice requirement, though well-intentioned, may marginally increase the initial filing timeline. The courts must carefully balance these timelines to avoid delays in the appellate process, ensuring that the amendment does not inadvertently undermine the goal of expediency.

10. SECTION 14: CHALLENGES IN IMPLEMENTATION

Despite the well-intended nature of the amendment, several challenges may arise in its implementation. The requirement for a prior notice and affidavit could add to the procedural burden on appellants, particularly in cases where urgent relief is sought. In such circumstances, the additional steps could delay the filing of appeals, potentially disadvantaging the appellant in time-sensitive matters. Additionally, there is a risk that the notice requirement may be exploited tactically by appellants, particularly in high-stakes commercial disputes. Some appellants may use the notice provision to intimidate or exert pressure on respondents before formal filing, potentially leading to strategic delays rather than facilitating fair dispute resolution. Judicial oversight will be critical to ensuring that the affidavit is not merely a

formality, but serves its intended purpose of substantiating genuine compliance with the notice provision.

The practical implementation of this provision must be closely monitored to avoid any unintended delays or misuse, particularly in high-pressure commercial disputes. To further enhance its effectiveness, the amendment should include clear procedural guidelines, such as specifying a reasonable timeframe for issuing prior notice. Balancing these procedural requirements with the overarching goal of speedy disposal is crucial to maintaining the integrity of the judicial process.

11. RECOMMENDATIONS

The proposed amendment to Section 14, while well-intentioned in fostering transparency and procedural fairness, may inadvertently delay urgent appeals due to its requirement for prior notice and affidavit submission. In cases where immediate relief is necessary, such a delay could undermine the appellant's ability to seek timely judicial intervention. To address this, it is critical to incorporate a *fast-track procedure* that allows appellants to bypass the notice requirement when urgent circumstances arise, subject to judicial discretion. This safeguard would enable appellants to act swiftly in time-sensitive matters without being constrained by procedural formalities. However, the affidavit confirming compliance with the notice provision should still be submitted post-resolution of the urgent relief request, ensuring that the amendment does not become a tool for tactical delay but remains in alignment with its overarching goal of timely and effective dispute resolution.

The introduction of a prior notice requirement could be exploited by appellants seeking to delay the proceedings or exert undue pressure on respondents, particularly in high-stakes commercial disputes. Therefore, it is essential to establish *clear guidelines* defining the purpose and scope of the prior notice. These guidelines should explicitly state that the notice is solely for informing the opposing party of the intention to appeal and cannot be used as a vehicle for coercion or imposing additional demands. Additionally, *penal provisions* should be introduced to deter appellants from misusing the notice requirement to manipulate the process. The courts should be empowered to impose sanctions on those who violate this provision, ensuring that the notice serves its intended purpose of fairness and transparency, rather than tactical

advantage. Judicial oversight should also be enhanced to ensure that the notice provision is implemented in good faith, ensuring the integrity of the appellate process.

To maintain the procedural integrity of the notice requirement, the affidavit accompanying the notice must not be treated as a mere formality but should be subject to strict verification processes. Courts should establish *mandatory checks* to ensure the authenticity of the affidavit and prior notice before allowing the appeal to proceed. This verification could involve appointing a dedicated court officer to review the documentation for compliance with the procedural requirements, preventing the potential for fraud or negligence. Further, the establishment of *penalties* for those submitting false affidavits or failing to comply with the notice provision would strengthen the accountability of appellants. To track the efficacy of the affidavit requirement, the courts should periodically report on its usage and monitor any patterns of abuse, enabling timely corrective measures if necessary.

SECTION 26 OF THE CIVIL CODE OF PROCEDURE, 1908

SUMMARY OF RECOMMENDATIONS

The proposed amendments to *Section 26* and *Order VIII Rule 1 of the CPC, 1908*, aim to modernize judicial processes by integrating e-filing, but delegating procedural authority to individual High Courts risks perpetuating inconsistencies across jurisdictions. This fragmented system burdens litigants and practitioners, especially those from underprivileged or less technologically developed regions, by creating accessibility barriers, inefficiencies, and cybersecurity risks. Drawing from the Federal Rules of Civil Procedure in the United States, the amendment should establish a mandatory, centralized e-filing framework governed by the Supreme Court's Model Rules. Recommendations include implementing uniform technological standards, robust cybersecurity measures, and accessible user-friendly interfaces, alongside targeted digital literacy initiatives and accommodations for individuals with disabilities. These steps will promote efficiency, ensure equal access to justice, and achieve the intended modernization of India's judicial system.

ANALYSIS

12. SECTION 26, CPC, 1908 & ORDER VIII RULE 1, CPC, 1908: LACK OF UNIFORMITY IN E-FILING PROCEDURES

The proposed amendment to Clause 26 of the CPC, 1908, while commendable in introducing e-filing as an alternative to the physical filing of suits, delegates procedural authority to individual High Courts. By stating that “*every suit shall be instituted by the presentation of a plaint or in such other manner including e-filing, as may be prescribed by the concerned High Courts,*” the amendment risks perpetuating a fragmented legal system. Such discretion has already led to substantive differences in e-filing rules across jurisdictions, as evidenced by the Karnataka High Court's *Karnataka Electronic Filing (E-filing) Rules, 2021*²¹ and the Punjab & Haryana High Court's *Electronic Filing (E-Filing) Rules*.²² These inconsistencies create unnecessary confusion for litigants and practitioners engaging with multiple High Court jurisdictions, thereby undermining the amendment's objective of expediting and streamlining the filing process.

²¹ Karnataka Electronic Filing (E-filing) Rules, 2021.

²² The Electronic Filing (E-Filing) Rules.

13. SECTION 26, CPC, 1908: ADVERSE IMPACT ON LITIGANTS

The absence of centralized guidelines on e-filing disproportionately impacts litigants, particularly those from economically or technologically disadvantaged backgrounds. Litigants in states with less robust digital infrastructure or poorly designed e-filing systems face barriers such as limited access to technology, varying levels of digital literacy, and heightened cybersecurity risks. These disparities, coupled with jurisdiction-specific variations, erode the amendment's potential to enhance efficiency and reduce costs, thereby defeating its purpose.

The reference to High Courts prescribing their own rules under *Section 123 of the CPC*,²³ read with *Sections 2(16)*²⁴ and *2(18) of the CPC*,²⁵ is not a novel approach but an extension of the current practice. However, the lack of a uniform framework exacerbates disparities in technological robustness, user accessibility, and cybersecurity standards among states.

The Delhi Court has underscored the inadequacies in the current e-filing framework, observing that e-filing is not yet mandatory across all civil jurisdictions and criminal complaint cases in District Courts.²⁶ The Court emphasized the need to extend mandatory e-filing to these areas, highlighting the efficiency and accessibility benefits of such a system. E-filing, unlike other procedural aspects of suit initiation, is particularly suited to uniformity due to its technological nature. The reliance on disparate systems undermines this potential, creating inefficiencies and inconsistencies across jurisdictions.

The Supreme Court has criticized the burdens imposed by the current discretionary hybrid filing system, where physical filing is often mandatory alongside e-filing. Recently, the Court observed that this practice places undue strain on advocates and litigants alike.²⁷ Earlier, it had deprecated the requirement of physical filing for appeals even after e-filing,²⁸ emphasizing the inefficiency and redundancy it creates. Such judicial observations highlight the pressing need for a uniform and streamlined e-filing framework to reduce procedural complexity. Therefore, reliance on disparate systems contradicts the principle of equal access to justice and adds an unnecessary layer of complexity for stakeholders operating across jurisdictions.

²³ Code of Civil Procedure 1908, § 123, No. 5, Acts of Parliament, 1908 (India).

²⁴ Code of Civil Procedure 1908, § 2 cl.16, No. 5, Acts of Parliament, 1908 (India).

²⁵ Code of Civil Procedure 1908, § 2 cl. 18, No. 5, Acts of Parliament, 1908 (India).

²⁶ Karan S Thukral v. District & Sessions Judge, 2024 SCC OnLine Del 94.

²⁷ USHA GARG VS. UNION OF INDIA W.P.(C) No. 000313 - / 2024.

²⁸ Sanket Kumar Agarwal & Anr v APG Logistics Private Limited 2023 LiveLaw (SC) 406.

14. SECTION 26, CPC, 1908: COMPARISON WITH FEDERAL RULES OF CIVIL PROCEDURE, UNITED STATES

The proposed amendment to *Section 26* of the CPC is a significant step towards modernizing the judiciary and integrating technology into the litigation process. However, India can significantly benefit from adopting certain principles outlined in the Federal Rules of Civil Procedure (FRCP) in the United States, particularly *Rule 5(e)*,²⁹ which provides a comprehensive framework for electronic case filing (e-filing) across federal courts.

One of the most notable aspects of the FRCP is its requirement for uniformity in e-filing across federal jurisdictions. *Rule 5(d)(3)* of the FRCP³⁰ mandates electronic filing in federal courts, with provisions for exemptions for parties unable to meet technological requirements. The FRCP's centralized approach is supported by the Case Management/Electronic Case Files (CM/ECF) system, a unified e-filing platform that provides standardized procedures for all federal courts. This system ensures that e-filing is not only mandatory but also seamless, encouraging efficiency and reducing the potential for confusion or disparity between jurisdictions.

By contrast, the proposed amendment to Section 26 of the CPC allows e-filing but delegates the creation of specific procedures to individual High Courts, thus risking a decentralized system with possible inconsistencies. This variation between jurisdictions could lead to discrepancies in technology, user interface, and operational efficiency, undermining the goal of streamlining judicial processes. While the amendment encourages e-filing, it does not make it mandatory, which may hinder its widespread adoption and create a gap in access for litigants who may not be technologically proficient.

While the FRCP mandates the use of e-filing across all federal courts, making it the default method of filing, the proposed amendment to *Section 26* of the CPC introduces an optional approach. The absence of a mandatory requirement may slow the adoption of e-filing systems, especially in jurisdictions where there may be resistance to technological changes or lack of infrastructure. This decentralized approach fails to ensure that all litigants and legal professionals have equal access to efficient, modern filing systems. Moreover, the lack of a

²⁹ Federal Rules of Civil Procedures, Rule 5 cl. e, Acts of Parliament (United States of America).

³⁰ Federal Rules of Civil Procedures, Rule 5 cl. d, Acts of Parliament (United States of America).

unified framework could lead to confusion and procedural delays, particularly for practitioners who work across different jurisdictions.

The Hon'ble E-Committee of the Supreme Court of India, in its *Model Rules on E-Filing*³¹ dated 24.06.2020, has already outlined a comprehensive framework for standardizing e-filing across jurisdictions. However, its lack of mandatory implementation has resulted in inconsistent adoption, creating a patchwork of rules rather than a cohesive system.

15. RECOMMENDATIONS

Given the shortcomings of the proposed amendment, India should consider adopting a centralized e-filing framework similar to the CM/ECF system under the FRCP. This system would be governed by guidelines set forth by the Supreme Court of India, ensuring uniformity and consistency in e-filing procedures across all High Courts. A centralized system would promote standardization in technology, streamline judicial processes, and reduce operational inefficiencies. It would also provide clear expectations for litigants, legal professionals, and court staff, encouraging quicker and more reliable adoption of e-filing systems nationwide. To ensure that the amendment fulfills its intended purpose, it must go beyond introducing e-filing and establishing a mandatory national framework for uniformity. This framework should:

Firstly, mandate High Courts to adopt a centralized e-filing platform based on the *Model Rules on E-Filing* by the Hon'ble E-Committee.

Secondly, incorporate provisions in the *Model Rules* for ensuring user-friendly interfaces, robust technological standards, and stringent cybersecurity measures across jurisdictions.

Thirdly, address challenges such as unequal digital access and varying levels of digital literacy through targeted interventions, including training programs and subsidies for necessary technological tools. Further, in compliance with the *Rights of Persons with Disabilities Act, 2016*,³² it is critical that e-filing platforms are fully accessible to persons with disabilities, incorporating features such as screen readers, voice commands, and easy navigation options.

³¹ Supreme Court of India, <https://www.sci.gov.in/important-links/e-committee/> (last visited Nov. 19, 2024).

³² Rights of Persons with Disabilities Act, 2016, No. 49, Acts of Parliament (India).

ORDER V, RULE 1(1) OF THE CIVIL CODE OF PROCEDURE, 1908

SUMMARY OF RECOMMENDATIONS

The proposed amendment to *Order V, Rule 1(1) of the CPC* introduces e-summons, which aim to modernize the legal process and improve efficiency in service delivery. While this development is positive, the amendment's provision regarding the reduced extension period for filing a written statement raises significant concerns regarding fairness and access to justice, particularly for defendants who face challenges in complying with the prescribed timelines.

ANALYSIS

16. REDUCTION OF EXTENSION PERIOD: CONCERNS ON EFFICIENCY & FAIRNESS

Currently, under the CPC, a defendant has 30 days from the date of service to file a written statement, with the option to extend the period up to 120 days at the court's discretion. The proposed amendment reduces this extension period from 120 days to 60 days, which is intended to expedite the litigation process and avoid delays. However, this reduction could unduly disadvantage defendants, particularly in complex cases or those requiring additional time for evidence collection or preparing an adequate defense. The aim to reduce delays must not come at the expense of a defendant's right to a fair trial, as litigants may be deprived of sufficient time to respond, potentially forfeiting their right to a defense entirely if they fail to meet the 60-day deadline.

Recognizing this, the Allahabad High Court recently held that Order 8 Rule 1 of CPC is discretionary in nature. The Court further held that "*the extension can only be by way of exception and for reasons assigned by the defendant and recorded in writing by the court to its satisfaction.*"³³ This rationale should apply to *Order V, Rule 1(1)* as well. Hence, possible extensions of time for reasonable cause should be granted on a case-by-case basis, with the court considering the interests of justice.

17. CONSEQUENCES OF AUTOMATIC FORFEITURE: IMPACT ON DEFENDANTS

The proposed amendment also introduces the provision for automatic forfeiture of a defendant's right to file a written statement after the 60-day period has expired. This approach

³³ Devraj Singh vs. Babli Devi 2024 LiveLaw (AB) 187

is stricter than international norms, where courts generally maintain discretion in extending deadlines based on individual circumstances. For example, under the UK Civil Procedure Rules,³⁴ a default judgment may be entered if the defendant fails to file a defense within the prescribed time, but the court has discretion to extend deadlines where the defendant provides a valid reason for the delay. In the United States, the Federal Rules of Civil Procedure³⁵ similarly allow courts to grant extensions if good cause is shown, and forfeiture is not automatic.

The proposed mandatory forfeiture provision in India could undermine the discretion of courts to assess whether a defendant's delay is justifiable. Litigants who are unable to meet the deadline due to factors such as health issues, lack of legal representation, or delays in receiving summons may face severe consequences. This could effectively deprive them of an opportunity to present a defense, contradicting the principles of fairness and access to justice that are fundamental to the judicial system.

18. RECOMMENDATIONS

To address these concerns, it is recommended that the proposed amendment include provisions for flexibility in the application of the 60-day deadline. Courts should be allowed to consider the complexity of the case, the reasons for any delay, and any mitigating factors before imposing the forfeiture of the right to file a written statement. This would align India's legal framework with international standards, where the focus is on balancing the efficiency of proceedings with fairness to all parties involved.

Furthermore, India should consider adopting a framework that permits extensions for filing written statements, provided that the defendant shows good cause for the delay. This would ensure that defendants, particularly in complex or resource-limited situations, are not unduly penalized by a rigid, inflexible timeline. Such flexibility would help uphold the right to a fair trial and support the broader goal of efficient yet just legal proceedings.

³⁴ Civil Procedure Rules, 1998, Acts of Parliament, 1998 (United Kingdom).

³⁵ Federal Rules of Civil Procedures, 1934, Acts of Parliament, 1934 (United States of America).

ORDER V, RULE 20(1A) OF THE CIVIL CODE OF PROCEDURE, 1908

SUMMARY OF RECOMMENDATIONS

The proposed amendment to *Order V, Rule 20(1A)* introducing substituted service via court websites is progressive but requires safeguards to ensure fairness and effectiveness. Courts should verify the defendant's likelihood of accessing the website, drawing from international practices like Australia's Federal Court Rules. The amendment overlooks modern communication tools like email, SMS, and social media, which Indian and international courts have recognized as effective. Additionally, the reliance on newspaper advertisements as a primary service method is outdated; digital advertisements with geographic targeting should replace them. To prevent inconsistent judicial application, the amendment must outline clear criteria for alternative service methods, balancing procedural efficiency with fairness and aligning with *Article 21* of the Indian Constitution's right to justice.³⁶

ANALYSIS

19. ORDER V, RULE 20(1A): NEED FOR ENSURING SAFEGUARDS FOR DIGITAL SERVICE

The proposed introduction of substituted service via court websites is a progressive step, aligning with global trends toward digitization in judicial processes. However, it is crucial to embed safeguards to ensure procedural fairness and prevent undue prejudice to defendants.

Courts must ascertain that the defendant has a reasonable likelihood of accessing the court's website before opting for such a method. Internationally, jurisdictions such as Australia have implemented similar measures under their *Federal Court Rules 2011*, requiring the court to be satisfied that the chosen mode of service is reasonably calculated to bring the summons to the defendant's attention. Without such safeguards, the amendment risks being ineffective, particularly in cases involving defendants with limited digital literacy or access.

Incorporating this safeguard would balance efficiency with the defendant's right to fair notice, a principle enshrined in *Article 21* of the Indian Constitution, which guarantees the right to life and liberty, encompassing access to justice.

The omission of contemporary digital communication tools such as email, SMS, and social media platforms in the proposed amendment reflects an incomplete understanding of the

³⁶ India Const. art. 21.

potential for technology to enhance judicial processes. These methods have proven effective in jurisdictions like the United States, where courts have permitted service through platforms such as Facebook when deemed appropriate.³⁷

Indian courts have also recognized the validity of alternative methods, such as WhatsApp, as seen in *Kusum Devi v. Payal Devi* (2021).³⁸ Integrating these tools into the framework would ensure that substituted service reaches defendants more effectively, particularly in a country like India, where mobile and internet penetration is widespread but uneven. To avoid misuse, courts should verify the authenticity of contact details and ensure reasonable attempts have been made to serve defendants through primary methods before resorting to digital alternatives.

20. ORDER V, RULE 20(1A): NEED FOR MODERNIZING ADVERTISEMENT METHODS

The retention of newspaper advertisements as a mode of substituted service appears outdated, given the declining readership of print media and the reduced likelihood of reaching the intended defendant. While newspapers might still serve a purpose in certain cases, they should not be relied upon as a primary method of service.

Instead, the provision should encourage the use of digital advertisements, such as targeted online ads, tailored to the defendant's last known location. These methods are cost-effective, have a wider reach, and align with the technological realities of the 21st century. For instance, platforms like Google Ads allow for geographic targeting, increasing the chances of the defendant being notified. By incorporating such provisions, the amendment would modernize the procedural framework, enhancing both efficiency and fairness.

The proposed amendment's reliance on judicial discretion, encapsulated in the phrase "*in such other manner as the Court thinks fit*," presents both an advantage and a challenge. While judicial discretion allows the flexibility to adapt to diverse circumstances, it also introduces the risk of inconsistent application across jurisdictions due to the absence of clear guiding principles. To mitigate this, the amendment should specify certain criteria for courts to consider when determining alternative methods of service. These criteria may include the likelihood of the defendant accessing the chosen method, the cost-effectiveness of the method, and the protection of sensitive information to prevent reputational harm or privacy violations.

³⁷ *Baidoo v. Blood-Dzraku*, 5 N.Y.S.3d 309.

³⁸ *Kusum Devi v. Payal Devi*.

ORDER XVII, RULE (1) OF THE CIVIL CODE OF PROCEDURE, 1908

SUMMARY OF RECOMMENDATIONS

The proposed amendments to *Order XVII, Rule 1, sub-rule (1) and (2) of the CPC, 1908*, raise concerns regarding potential complications in case management and fairness. The restriction on adjournments for parties benefiting from injunctions may inadvertently increase judicial workload, slowing proceedings. To address this, the amendment should be revised to provide clear criteria for adjournment requests, allowing judicial discretion while preventing excessive adjournments. The addition of “*progressively higher costs*” for adjournments in *Rule 1(2)* is vague, creating ambiguity in its application. A clear definition tied to the frequency and duration of adjournments should be introduced, along with guidelines ensuring consistency and fairness in cost imposition, while considering the financial capacity of litigants.

ANALYSIS

21. ORDER XVII, RULE (1), SUB-RULE (1) OF THE CPC, 1908: LIMITING ADJOURNMENTS FOR PARTIES BENEFITING FROM INJUNCTIONS

The proposed amendment to *Order XVII, Rule 1, sub-rule (1)*,³⁹ aimed at limiting adjournments for parties benefiting from injunctions, may lead to unintended consequences. While it seeks to reduce delays and speed up dispute resolution, it could complicate case management. Strict adherence to this amendment could increase the time courts spend determining whether adjournments are justified, potentially slowing down proceedings. Existing provisions in the CPC, such as *Section 142*⁴⁰ and *Section 151*⁴¹, already provide courts with flexibility to manage delays. The proposed amendment might conflict with these provisions, creating ambiguity and undermining judicial discretion.

22. ORDER XVII, RULE (1), SUB-RULE (2) OF THE CPC, 1908: UPDATE TO COSTS OF ADJOURNMENTS

The proposed amendment to *Order XVII, Rule 1, sub-rule (2)*⁴², which includes the phrase “*including progressively higher costs*,” creates significant uncertainty due to its lack of

³⁹ Code of Civil Procedure 1908, O XVII, r 1(1), No. 5, Acts of Parliament, 1908 (India).

⁴⁰ Code of Civil Procedure 1908, § 142, No. 5, Acts of Parliament, 1908 (India).

⁴¹ Code of Civil Procedure 1908, § 151, No. 5, Acts of Parliament, 1908 (India).

⁴² Code of Civil Procedure 1908, O XVII, r 1(2).

definition. While the original provision allowed the court to impose “higher costs” as it saw fit to discourage adjournments, the addition of “progressively higher costs” leaves key aspects undefined, leading to potential confusion. It is unclear whether these costs would increase in a fixed manner each time an adjournment is requested or whether they would depend on factors such as the number or duration of adjournments. This absence of clear guidelines creates room for subjective interpretation by courts, which could lead to inconsistent application of costs across different cases. The lack of a standardized approach also raises concerns about fairness and predictability for litigants, who may face unforeseen financial consequences without understanding how these “progressively higher costs” will be determined. This ambiguity undermines the objective of streamlining the adjournment process and could instead lead to further complexity in managing costs and case timelines.

23. RECOMMENDATIONS

The proposed amendment to *Order XVII, Rule 1, sub-rule (1)* of the *Civil Procedure Code, 1908*, aimed at limiting adjournments for parties benefiting from injunctions, should be revised to introduce a more defined framework for managing adjournments. Courts should be granted discretion to evaluate adjournment requests based on specific criteria, such as the impact of the injunction on the case timeline. This would prevent the need for excessive time spent on determining the justification for adjournments, which could otherwise delay proceedings. Furthermore, the amendment should allow for limited exceptions or justifications, ensuring that adjournments are not unduly restricted in cases where they are genuinely necessary. A practical solution would be to introduce a mechanism for automatic adjournment requests, limiting the number of requests permissible in injunction cases, thereby streamlining the process without compromising the objective of reducing delays.

The proposed inclusion of “progressively higher costs” for adjournments in *Order XVII, Rule 1, sub-rule (2)* requires a clear definition to eliminate ambiguity and ensure consistency. The increment of costs should be tied to factors such as the number or duration of adjournments, providing a transparent framework for their imposition. Courts should be given guidelines that enable a fair and predictable approach to adjournment costs, preventing arbitrary decisions. Additionally, the financial capability of the party requesting the adjournment should be considered when determining costs, ensuring that parties are not unduly burdened by the financial consequences of necessary adjournments.

ORDER IX, RULE 7, OF THE CIVIL CODE OF PROCEDURE, 1908

SUMMARY OF RECOMMENDATIONS

To ensure correct summons delivery and prevent abuse by dishonest plaintiffs, courts must be equipped with adequate resources and procedures. *Rule 7A* should be amended to include clear safeguards confirming proper summons service before rendering a decision. Additionally, the term "good cause" for non-appearance must be defined to standardize judicial discretion and ensure consistent application. Defendants should also have clear avenues for post-judgment remedies, such as appeal or review, to protect their rights. These changes would improve judicial efficiency while preserving fairness and the right to a fair trial.

ANALYSIS

24. ORDER IX: RULE 7A'S LACK OF SAFEGUARDS

Rule 7A of Order IX, CPC, 1908, presently lacks the necessary safeguards to ensure that defendants are properly informed of proceedings. The rule grants Courts the authority to rule against defendants without requiring proof of proper summons service. This omission could lead to unjust conclusions, particularly in cases where the summons was incorrectly served or the defendant was unaware of the proceedings. Therefore, Rule 7A must be amended to include a clear requirement that the court verify proper service of summons before rendering any decision. This safeguard would prevent wrongful judgments based on procedural flaws and uphold the defendant's right to a fair trial.

25. ORDER IX: RULE 7A'S AMBIGUITY ON "GOOD CAUSE"

Furthermore, Rule 7A's reference to "good cause" for non-appearance remains ambiguous and undefined, leading to inconsistent application by courts. The absence of clear guidelines creates room for subjective interpretation, resulting in unequal treatment of defendants across cases. To ensure fairness and consistency, the term "good cause" should be precisely defined, either by providing illustrative examples or establishing concrete standards. This would standardize judicial discretion, ensuring that decisions are made on consistent grounds. Additionally, the amendment should include provisions for the review or revocation of judgments in exceptional cases, even after a decree has been passed, in order to avoid unjust outcomes.

While the objective of the amendments is to expedite proceedings and deter unnecessary absences by defendants, it is crucial that these modifications do not undermine the fundamental right to a fair trial. Courts should be equipped with sufficient resources and procedures to ensure correct summons delivery and to prevent plaintiffs from exploiting these rules. Finally, defendants must be provided with clear avenues for post-judgment remedies, such as appeal or review, to safeguard against potential miscarriages of justice. These changes would enhance judicial efficiency while preserving the core principles of justice and fairness.

26. RECOMMENDATIONS

The amendment to *Rule 7A of Order IX, CPC, 1908*, should include specific safeguards requiring the court to verify that proper summons procedures were followed before passing any judgments. This would prevent unjust decisions based on incorrect service or lack of notice to the defendant. Additionally, the term “*good cause*” should be clearly defined to standardize judicial discretion and ensure consistency in its application. To further protect defendants' rights, the amendment should allow for post-judgment remedies, such as appeals or reviews, in exceptional circumstances. This would balance judicial efficiency with fairness, ensuring that defendants are not unduly penalized for procedural oversights.

ORDER XVI, RULE 1 OF THE CIVIL CODE OF PROCEDURE, 1908

SUMMARY OF RECOMMENDATIONS

The proposed amendments aim to enhance procedural clarity and efficiency in commercial disputes by introducing expert testimony, electronic communication for summoning witnesses, and comprehensive witness list requirements. To ensure effective implementation, it is recommended that clear guidelines be established to define expert witnesses and regulate their use to prevent unnecessary costs. Courts should be tasked with scrutinizing the necessity of expert testimony to avoid overuse. Additionally, reliable procedures for verifying the electronic service of summons must be implemented to prevent procedural delays. Finally, while comprehensive witness list requirements foster transparency, care should be taken not to overburden plaintiffs, especially in simpler cases.

ANALYSIS

27. ORDER XVI: IMPLEMENTATION CHALLENGES

The inclusion of expert testimony in commercial disputes is a critical step toward ensuring that decisions are based on accurate and specialized knowledge.⁴³ The necessity of expert witnesses arises particularly in complex business conflicts, where technical expertise is vital for making informed, just determinations. This amendment to *Order XVI, Rule 1* of the Civil Procedure Code (CPC) is a positive development that can promote procedural clarity and transparency, as well as introduce greater consistency in the handling of expert witness testimony.

However, the successful implementation of this provision hinges on the precise definition of what constitutes an “expert witness.” In the absence of a clear and universally accepted definition, disputes may arise over the qualifications and expertise of individuals presented as expert witnesses. These disagreements could lead to procedural delays, hindering the expeditious resolution of disputes. The potential for conflicting interpretations of what qualifies an individual as an expert could create uncertainty, making it more difficult for parties to navigate the litigation process.

⁴³ Oliveira S, “Expert Witness Testimony: Role, Types and Importance” (*Blog | Tech Educators | Blue Ocean Global Technology*, September 6, 2023) <<https://www.blueoceanglobaltech.com/blog/expert-witness-testimony/>>

Additionally, the amendment raises concerns about the potential for overuse of expert witnesses. Parties may feel compelled to present expert testimony in cases where it is not strictly necessary, either out of a desire to strengthen their case or due to the perceived need to meet the expectations of the court. This could result in unnecessary litigation costs, particularly in cases where expert evidence does not materially contribute to the resolution of the dispute. Therefore, it is essential that guidelines be established to delineate the scope of expert witness testimony and ensure that the use of such testimony is appropriate and justified.

28. ORDER XVI: INCLUSION OF ELECTRONIC COMMUNICATION FOR SUMMONING WITNESSES

The proposed amendment to include electronic communication for summoning witnesses is a timely acknowledgment of the increasing reliance on technology in modern litigation. By permitting the use of email and other electronic channels, the amendment seeks to streamline the summons process, significantly reducing the delays associated with traditional methods like physical service. This change aligns with the demands of contemporary legal practice, where efficiency is crucial, particularly in cases requiring swift resolution. The adoption of electronic communication ensures that summonses can be monitored and transmitted with greater speed, thereby expediting the progression of disputes.

However, while the benefits are evident, certain challenges must be considered. The use of electronic methods for service raises the issue of verification, which could give rise to disputes. For instance, questions may arise regarding whether emails were successfully received or if technical issues caused a failure in communication. To mitigate the risk of procedural delays, it is imperative that courts establish reliable procedures for confirming electronic service. Such safeguards would ensure that electronic communication does not compromise the integrity of the legal process and that parties are not prejudiced by technological failures.

29. ORDER XVI: INTRODUCTION OF RULE 1A: COMPREHENSIVE WITNESS LIST REQUIREMENTS

The introduction of Rule 1A, which mandates comprehensive witness list requirements, aims to enhance procedural transparency and efficiency. Requiring parties to provide the full name, permanent address, correspondence address, email address, and phone number of each witness ensures a clear understanding of the role and intent of each witness's testimony. This provision

is designed to eliminate ambiguity regarding the nature of the evidence and the witnesses' involvement in the case. By providing detailed information upfront, the amendment reduces the likelihood of last-minute additions or irrelevant witnesses, thus encouraging a more strategic and thoughtful approach to witness selection.

Moreover, the inclusion of this information ensures that opposing parties have adequate time to prepare, thereby fostering fairness and preventing unnecessary cross-examinations. In turn, this provision is expected to improve the efficiency of the trial process by reducing delays associated with witness-related procedural issues. Furthermore, the imposition of penalties on parties who fail to comply with the updated requirements without justifiable cause serves as a deterrent against carelessness or abuse of the system, promoting accountability.

However, the challenges posed by this amendment should not be overlooked. The logistics of gathering and sharing such detailed witness information could prove burdensome, particularly when multiple witnesses are involved. This may lead to an increase in the early costs of litigation, which could be a financial strain for some parties. While the intention is to ensure fairness and procedural discipline, the courts must carefully consider the practical implications of this provision. In simpler matters, where witness lists may not be as complex, imposing such stringent requirements may unduly burden the parties. A balance should be struck to avoid overburdening plaintiffs, ensuring that the amendment does not impede access to justice by increasing litigation costs unnecessarily.

30. RECOMMENDATIONS

The primary challenges to the successful implementation of this amendment relate to the need for clear guidelines and definitions regarding expert witnesses. While the amendment is an essential update to address the increasing complexity of commercial disputes, its effectiveness will depend on the careful regulation of expert testimony. Courts must exercise diligent oversight to ensure that expert witnesses are only used when their testimony is truly necessary, and not merely as a tactical tool to increase litigation costs. To mitigate the risk of abuse, it is recommended that procedural rules be developed to regulate the qualification and use of expert witnesses. These rules should establish clear criteria for selecting expert witnesses, ensure that their expertise is relevant and directly applicable to the issues at hand, and prevent the unnecessary proliferation of expert testimony in cases where it is not warranted.

ORDER XX, RULE 6B OF THE CIVIL CODE OF PROCEDURE, 1908

SUMMARY OF RECOMMENDATIONS

The proposed amendment to *Order XX Rule 6B* mandates the provision of digital copies of judgments, promoting efficiency and accessibility. However, it lacks clarity on disseminating partial judgments, often deemed pending by copy branches, causing delays. High Courts also lack uniform procedures for digital judgment access. To address this, the amendment should explicitly include partial judgments, ensuring seamless dissemination. Additionally, implementing e-Courts Phase II recommendations—establishing digital access help desks, safeguarding privacy, and regulating authorized access—can streamline the process, enhance transparency, and align with the amendment’s objective of modernizing judicial procedures.

ANALYSIS

The proposed amendment will significantly impact courtroom procedures. Incorporating 'electronic copy with the digital signature of the judgment' aligns with the Act's objectives, ensuring speedy information dissemination. However, an implementation must carefully consider pragmatic complexities. There exists an absence of rules governing the digital dissemination of copies due to lacunae extant in the letters of the law. To address this, correct ascertainment of the base provision is crucial to guide courts in formulating procedures and streamlining the process.

For instance, *Section 2(9) of the Civil Procedure Code*⁴⁴ defines the 'judgment' as a formal statement delivered by a judge, on grounds of a Decree or Order. The ruling in *Balraj Taneja v. Sunil Madan*⁴⁵ further establishes that a judgment need not necessitate a decision on all issues presented in the case. Consequently, cases where judgment is partial, addressing only one issue, are often deemed pending by copy branches. Various High Court copy branches lack clear guidelines for providing digital copies of judgments, specifically when a judgment addresses one issue while leaving others pending, restricting dissemination to parties.⁴⁶

⁴⁴ Civil Procedure Code 1908, s 2(9), No. 5, Acts of Parliament, 1908 (India).

⁴⁵ *Balraj Taneja v Sunil Madan* (1999) 8 SCC 396.

⁴⁶ Punjab and Haryana High Court Rules, Vol V, Ch 5, Pt B (2024).

Additionally, the e-Courts Project's Phase II⁴⁷ envisions remote digital assistance, with courts establishing help desks for digital document access. This includes making case information publicly accessible online, with privacy safeguards, and granting authorized online access to case files, subject to court orders and party consent while ensuring participants retain data ownership and control. Thus, to streamline digital copy dissemination, legal clarity is essential to explicitly include judgments decided in part within the scope of *Order XX Rule 6B*, ensuring seamless accessibility.

31. RECOMMENDATIONS

To streamline the dissemination of digital copies of judgments, it is crucial to introduce legal clarity by explicitly including partial judgments within the scope of Order XX Rule 6B of the Civil Procedure Code. Clear guidelines must be established for High Court copy branches to ensure consistent dissemination practices, including for judgments addressing only specific issues. The e-Courts Project's Phase II should incorporate a robust framework with privacy safeguards, authorized online access to case files subject to court orders and consent, and dedicated help desks to assist litigants with accessing digital documents. Pilot projects should be implemented to evaluate the feasibility and efficiency of these measures before nationwide adoption, addressing operational challenges in real-time. Additionally, mechanisms must ensure robust data ownership and control for parties while enabling public access to non-sensitive case information, fostering transparency and efficiency.

⁴⁷ Supreme Court of India, '*Vision Document for Phase III of eCourts Project*' (2024) <<https://ecommitteesci.gov.in/vision-document-for-phase-iii-of-ecourts-project/>> accessed 20 November 2024.

ORDER XXI OF THE CIVIL CODE OF PROCEDURE, 1908

SUMMARY OF RECOMMENDATIONS

The proposed amendment to *Order XXI of the CPC* introduces a 12-month timeframe for execution proceedings, aiming to expedite case disposal. However, this timeline is excessive and risks compromising due process, particularly in complex cases involving arbitral awards, insolvency, or cross-border disputes. The Supreme Court's guidance in *Rahul S. Shah v. Jinendra Kumar Gandhi* recommends a six-month limit with documented extensions for delays. Aligning with this, the provision should adopt a six-month timeline while incorporating an exception clause for justified extensions. This approach balances efficiency with procedural fairness, ensuring swift resolution without undermining justice in intricate cases.

ANALYSIS

The proposed section demonstrates a progressive approach to streamlining case disposal. However, the prescribed 12-month timeframe is inordinate and warrants revision. To accommodate the diversity of cases, this provision should be tailored to account for differing complexity levels and corresponding time requirements.

The legislation aims to expedite judicial proceedings, addressing India's immense backlog of 4,53,95,841 cases.⁴⁸ However, strict deadlines risk compromising due process, potentially leading to hurried decisions, appeals, and further delays.⁴⁹ While commercial decree enforcement should be swift, complex cases involving arbitral awards, insolvency, inter-jurisdictional execution, or cross-border transactions require adequate time for resolution.⁵⁰ Execution cases often involve multiple parties, asset valuation disputes, and intricate compliance procedures, making strict deadlines impractical in certain scenarios.⁵¹ Therefore, the provision should specify a reasonable deadline and clear guidelines for extensions, including defined criteria and procedures.

⁴⁸ National Judicial Data Grid, *Welcome to NJDG - National Judicial Data Grid* < <https://njdg.ecourts.gov.in> > accessed 19 November 2024.

⁴⁹ *State of Punjab v Shamlal Murari* (1976) 1SCC 719 (India).

⁵⁰ *Swiss Ribbons Pvt Ltd v Union of India* [2019] 4 SCC 17 (India).

⁵¹ *Salem Advocate Bar Association v Union of India* (2005) 6 SCC 344 (India).

Pursuant to the landmark judgment in *Rahul S Shah v. Jinendra Kumar Gandhi*⁵², the Supreme Court of India has issued directives to expedite execution proceedings, mandating that Executing Courts dispose of such proceedings within six months from the date of filing. The court mandated that extensions be allowed only after documenting sufficient reasons in writing. The Court further instructed the High Courts to revisit and revise their rules governing decree execution, ensuring compliance with the directives outlined, within a one-year timeframe.

32. RECOMMENDATIONS

The proposed *Section 10A of the Commercial Courts (Amendment) Bill, 2024*, should include a shorter timeframe of 6 months aligning with the Supreme Court guidelines and preventing inordinate delays in execution. Furthermore, an ‘exception clause’ is needed to enable courts to extend the prescribed timeline beyond 6 months after recording the reasons in writing in order to mitigate the potential challenges of strict timelines for complex cases.⁵³

⁵² *Rahul S Shah v Jinendra Kumar Gandhi* (2021) LL 230 (SC).

⁵³ *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 S.C.C. 17 (India).

SECTION 18A (NEW SECTION)

SUMMARY OF RECOMMENDATIONS

The proposed provision for *Section 18A*, mandating strict timelines for disposing of injunction applications, is a commendable step toward expediting commercial dispute resolution. However, its rigid timelines risk undermining judicial discretion and procedural justice in complex cases. To improve the provision, courts should be allowed limited flexibility to extend deadlines in exceptional circumstances, ensuring equity without diluting the mandate for efficiency. Additionally, technological solutions like automated case tracking and digital filing systems should be implemented to assist courts in meeting these deadlines. Regular performance audits can further promote accountability and ensure sustained compliance with the stipulated timelines.

ANALYSIS

The insertion of *Section 18A*, mandating the disposal of injunction applications within specified time frames, presents several significant benefits for the judicial system, particularly in the context of commercial disputes.

By requiring courts to dispose of injunction applications within ninety days, and within thirty days for those granted *ex parte*, this provision aims to expedite the judicial process. This is crucial in commercial disputes where delays can lead to significant financial losses and uncertainty for the parties involved.

The emphasis on timely disposal can help alleviate the backlog of cases in courts, as it encourages judges to prioritize and resolve injunction applications swiftly. This is particularly important given the high volume of pending cases in many jurisdictions.⁵⁴

By establishing clear timelines, *Section 18A* reduces opportunities for parties to exploit procedural delays. This is especially relevant in commercial contexts where one party may seek to prolong proceedings to gain a strategic advantage. The new provision sets clear expectations regarding the timeline for resolving injunctions. Quick resolution of injunction applications allows businesses to operate without prolonged disruptions caused by legal uncertainties. This

⁵⁴ Sumeda, “Explained | Over 47 Million Cases Pending in Courts: Clogged State of Indian Judiciary” (*The Hindu*, May 13, 2022) <<https://www.thehindu.com/news/national/indian-judiciary-pendency-data-courts-statistics-explain-judges-ramana-chief-justiceundertrials/article65378182.ece>>

is vital in commercial environments where timely decisions can affect market dynamics and business strategies.

Furthermore, the requirement for courts to record reasons for any inability to meet the stipulated timelines promotes accountability and transparency in judicial proceedings. This ensures that parties are informed about the status of their applications and the reasons for any delays.

33. RECOMMENDATIONS

It is recommended that the proposed blanket 90-day timeline for all injunction applications be modified to introduce greater flexibility, allowing for a timeline that varies depending on the complexity of the case. Such an approach would enable courts to balance the need for expeditious resolution with the necessary depth of analysis, especially in more intricate matters, ensuring that justice is both swift and thorough. Additionally, the 30-day deadline for finalizing injunctions granted without notice may be overly restrictive, particularly when the complexity of the issues at hand requires more time for proper hearings. Extending this period to 30-45 days would allow for adequate consideration of the merits of the case, while still maintaining a focus on timely decision-making. Moreover, while the requirement for courts to record reasons for failing to meet the proposed timelines is a positive provision, it would benefit from further clarification. Clear criteria should be established to define what constitutes an “*inability*” to meet the timeline, ensuring consistency and transparency in judicial practices across different cases.

To complement these adjustments, it is crucial to invest in judicial training specifically aimed at managing commercial injunction applications, ensuring that judges are equipped with the requisite skills to handle these matters efficiently. Furthermore, increasing the resources available to courts and introducing technological support for case management and scheduling would further facilitate the prompt disposal of injunction applications, without compromising the quality or fairness of the decisions rendered. These steps would help achieve the amendment’s goals while maintaining the integrity of the judicial process.

APPENDIX II - FORM OF LIST OF WITNESSES

SUMMARY OF RECOMMENDATIONS

The proposed addition of *Appendix II, Form of List of Witnesses*, aims to streamline the witness management process in legal proceedings, improving efficiency and clarity. However, it overlooks the need for a category for document authentication witnesses and lacks subcategories for expert witnesses based on their area of expertise. Additionally, the absence of contact details like email IDs and phone numbers for witnesses limits effective communication and delays the summons process. To address these issues, it is recommended to introduce a category for document authentication witnesses, subcategorize expert witnesses by their specialization, and include email and phone numbers to facilitate smoother interactions, enhancing the overall efficiency and transparency of legal proceedings.

ANALYSIS

The proposed addition of *Appendix II, Form of List of Witnesses*, introduces a structured approach to managing witnesses in legal proceedings by categorizing them based on the nature of their evidence. This approach offers benefits that enhance the efficiency of the legal process.

In India, where case backlogs exceed 4.5 crore pending cases, streamlining court processes is critical for efficiency⁵⁵. Categorizing witnesses, as proposed in *Appendix II*, aids court management by reducing delays, ensuring timely hearings, and enhancing case preparation, thus upholding the fundamental rights enshrined under the Constitution of India.⁵⁶ This structure promotes transparency, reduces surprises, and ensures a more predictable legal process, thus contributing to timely justice delivery.⁵⁷

Furthermore, it helps legal teams better prepare. When parties can see the categories of witnesses beforehand, they can allocate resources more effectively, focusing their preparation efforts on witnesses whose testimony is likely to be central to the case. The clear identification of expert witnesses allows legal teams to anticipate specialized testimony, prepare for detailed cross-examination, and ensure that all necessary documents are available in advance.

⁵⁵ NATIONAL JUDICIAL DATA GRID, https://njdg.ecourts.gov.in/njdg_v3/ (last accessed Nov. 19, 2024).

⁵⁶ INDIA CONST. art. 21.

⁵⁷ Yashpal Jain v. Sushila Devi, 2023 INSC 948.

34. RECOMMENDATIONS

New Category for Document Authentication: In many cases, witnesses may only be required to authenticate documents without giving oral testimony. Adding this category (Part-E) provides clarity on such roles, ensuring that these witnesses are treated appropriately. This distinction will help prevent any confusion in cases where documents are submitted for verification without the need for oral evidence.

While Part-C covers expert witnesses generally, introducing Part-F specifically for expert witnesses categorized by their area of expertise (e.g., medical, financial, technical) ensures better management of complex cases. It also allows courts to better anticipate the nature of expert testimony, helping with case scheduling and preparation.

The inclusion of additional categories and sub-categories ensures that complex cases, such as those involving multiple experts or specific documentation requirements, are adequately addressed. These changes will help courts and legal teams manage witness lists more effectively, especially in large or multifaceted cases.

Moreover, to enhance clarity and ensure effective communication during legal proceedings, it is recommended that the model appendix also incorporate provision for collecting email IDs and phone numbers of witnesses. Including these contact details will not only facilitate smoother interactions between parties but also aid in expediting the summoning process. By integrating this information into the model appendix, potential ambiguities regarding witness communication can be minimized, thereby aligning with the overall intent of improving procedural efficiency and transparency in legal practices.

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