

# Commercial Courts Act, 2015: An Empirical Impact Evaluation

**This report is an  
independent,  
non-commissioned  
study undertaken by  
the Vidhi Centre for  
Legal Policy,  
an independent  
think-tank doing  
legal research to  
make better laws and  
improve governance  
for the public good.**

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Errors, if any, are of course ours alone.

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# Executive Summary

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The Commercial Courts Act, 2015 was heralded as one of the big legislative reforms to improve India's ranking in the Ease of Doing Business index and augment its reputation as an investment destination by improving the speed at which contracts could be enforced in India. The Act prioritised the expedited disposal of high-stakes commercial litigation by reforming the procedural framework for commercial civil suits. It has been almost four years since the legislation was first enacted and we thought it would be useful to examine the impact of the legislation in meeting its stated objectives. This report undertakes an empirical impact evaluation exercise of the Act to determine how effectively it has accomplished its key objectives. To this end we conducted a three-pronged study.

First, we charted out the legislative history of the Act in order to understand the rationale offered by different authorities for enacting this legislation. The idea of exclusive Commercial Divisions in High Courts was first proposed in the Law Commission's 188th report, as a measure to save the Indian judiciary from the embarrassment of adverse criticism by foreign courts which had been asked to assume jurisdiction by litigants on the grounds that the Indian judicial system had broken down. However, the bill introduced in 2009 to give effect to the recommendations of the 188th report was challenged by the Opposition in Parliament, inter alia, for favouring rich litigants over poorer ones by creating "five-star courts". The 2009 bill lapsed, and subsequently, the Law Commission came out with its 253rd report providing a revised draft bill in 2015 to the new NDA government. This bill was subsequently tabled in April 2015, to target high value commercial litigation for an expedited disposal. There was also a categorical emphasis on scoring a better rank in the Ease of Doing Business index, published annually by the World Bank by improving the speed with which contracts could be enforced by the Indian judicial system. Curiously in 2018, this same idea of high-stake commercial litigation was diluted when the law was amended to reduce the minimum pecuniary value of commercial suits from INR 1 crore to INR 3 lakhs. The reason behind this move appears to have been a late realisation within the government that the district

courts in Bombay and Delhi which were being studied by the World Bank for the purposes of its Index, had a pecuniary jurisdiction of far less than Rs. 1 crore prescribed by the Commercial Courts Act, 2015. As such, the World Bank's evaluation was not covering the Commercial Divisions at the Delhi and Bombay High Courts, and the objective of improving India's ranking on the Ease of Doing Business index seemed to have faltered. Having studied the evolution of the discourse on commercial courts, and the enactment of the Act, we conclude that the government has failed to actually identify or tackle systemic issues of poor litigation culture affecting the Indian judicial system. The LCI in its 253rd report predicted litigation culture as an impediment to implementing procedural reforms including the ones being proposed in the Act. However, while stipulating this challenge the LCI worked within its remit of reviewing and revising the 2009 Bill, and did not make recommendations for improving the litigation culture. Our study finds this prediction to be accurate, given how the present litigation culture is impeding the meaningful implementation of procedural reforms provided under the Act. Rather, it was focused on the political optics of doing well on the World Bank's index.

Second, we examined the implementation of the Act by the High Courts. We gleaned data of the High Court websites to check compliance with Section 17, a unique transparency provision that requires High Courts to release performance statistics in relation to commercial litigation. The requirement to publish such statistics is unique and was meant to provide the means to measure the speed with which commercial litigation was handled by different courts. Our research revealed that of the 24 High Courts, only 8 High Courts (at Bombay, Chattisgarh, Delhi, Gauhati, Himachal Pradesh, Meghalaya, Orissa and Punjab & Haryana) made partial disclosures. However, even these disclosures were not very promising. Bombay, which was noted as one of the states to have complied with the provision, for example, published data for just one of the 35 months. Hoping that courts would have maintained this information, even though they might not have been published it, we filed RTI applications with all the High Courts. In our replies, we did receive

some additional information from some High Courts, while others provided us with the same information or rejected our application. This data under Section 17, is required to provide a cumulative number of cases that have been instituted, disposed and pending before the Commercial Courts or Commercial Divisions of the state, for that month. We analysed this data through a few metrics. We compared the number of cases instituted in the states, the variation in the pendency rates between the states and the increase or decrease in pendency rates between these states.

Our study showed that a significant variation in the average number of commercial cases instituted varied between the courts. The Commercial Divisions at Bombay and Delhi, for example, saw the largest number of commercial cases instituted, while the Commercial Courts under the Orissa and Gauhati High Courts saw the lowest number of institutions. The most interesting data arose from the Commercial Courts at Delhi, which were designated after the 2018 amendment. On an average [between September - October 2018], the court saw the institution of 1608 commercial cases. This high number stands in stark contrast to the 252 cases that were, on average [between August - October 2018], instituted at the Commercial Court at Bombay.

We also analyzed the number of courts that were designated as commercial courts in a state. We found that a disproportionate number of courts were designated vis a vis the number of cases pending in those courts. In Assam for example, courts had been designated in almost every of the 27 districts, but on average only 12 cases were pending across the whole state. Given the difference in the number of institutions across these courts, we argue that, if expeditious disposal was indeed to be achieved, it might be a more prudent policy to designate the number of courts commensurate to the rate of cases instituted in these courts. Our research also revealed that the disposal rates (understood to be the number of cases disposed vis a vis the number of cases pending) in these courts were also very low, with all of them having figures in single digits. Our roster analysis also makes it clear, that judges deciding on these matters are hearing commercial cases in addition to their everyday workload.

Third, we conducted a quantitative impact evaluation exercise by studying 150 cases each, from three courts - the Commercial Divisions at Delhi and Bombay and the Commercial Court at Vadodara, which provided us a granular data set of 450 commercial cases. Our quantitative analysis yielded some interesting findings. Even after the amendments to the CPC to create a new procedural framework for commercial litigation, we found empirical evidence of poor implementation of the same. For instance, 'case-management hearings' which had been introduced mandatorily to streamline the litigation process were hardly

ever conducted. This is evident from the fact that at the Commercial Court at Vadodara (which saw the highest rate of cases holding a case management hearing - CMH), only a meagre 18% of the cases saw a CMH being conducted. Another procedural reform that witnessed a lukewarm reception is the new provision allowing for 'summary judgments'. This provision provides an effective tool for disposing cases summarily but was rarely used across all three courts. We also realized that a very small percentage of cases, in fact went to trial. In only 26%, 5% and 21% of cases, at Delhi, Bombay and Vadodara respectively had issues been framed. These courts also saw a large number of cases which were settled. At Bombay and Delhi for example, 50% and 45% cases respectively had been settled. Therefore, the procedural modifications to the CPC as made under the Act, to expedite trial of commercial cases, seemingly have a limited impact. This is because from our dataset of 450 cases, we found only around 18 percent of cases across the 3 courts were actually going to trial.

Lastly, our study reiterates the urgency for policymakers to recognise the limitations of isolated procedural reforms in tackling judicial delays. This has been a longstanding problem with most stakeholders, time and again, giving effect to sweeping procedural laws in India with the idea of expediting disposal, but to no avail. It is thus time to think beyond mere procedural reforms.

In this background, we are hopeful that this study will allow a rethinking of the Act, specifically, and judicial reforms generally.

# Background

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The Commercial Courts Act, 2015 (Act) was enacted in December 2015, to enable a speedy redressal of commercial disputes in India. It emphasized the need “to expedite the disposal of high stakes’ commercial disputes, and thereby, enhance investor confidence”.<sup>1</sup> This legislation, which has already been amended once in 2018 was a key component of the present National Democratic Alliance (NDA) government’s strategy to improve India’s ranking on the Ease of Doing Business index. In fact, this was stated unequivocally by the then law minister, Shri Sadananda Gowda in his speech in the Parliament on this bill in 2015. Speaking about the intent of the government in introducing this bill, he stated:

“So, this is an attempt to take our country forward so that our ranking goes up in the Ease of Doing Business Index of the world. This Bill has been brought only with that aim in mind.”

The Law Commission of India (LCI) had also discussed in its 188th and 253rd reports how specialised courts in other countries were disposing commercial cases in one to two years, and espoused a similar disposal time frame for India. This was a bit ambitious given that commercial suits in India have been estimated to take 1,445 before regular civil courts, as per the World Bank’s estimate which has been acknowledged by government, in the Department of Justice’s note on Doing Business 2018 report.<sup>2</sup>

Proponents within the government have cited India’s improved ranking in the Ease of Doing Business index (EODB), published annually by the World Bank,<sup>3</sup> as proof of the Act’s positive impact. In fact, the law minister Shri Ravi Shankar Prasad, while introducing the amendment to the

Act in 2018, implicitly emphasised the importance of the legislations enacted by the NDA government (including the Act), in improving India’s rank in the EODB index. It is fair to question the merit of utilizing a foreign ranking system for impact evaluation, or shaping legislative policy based on our ranking in such an index. In this background, we thought it necessary to conduct an empirically researched evaluation study of the Act. Our study focuses on the implementation of the Act, and the extent to which it has expedited the litigation process of high value commercial litigation. Additionally, given how the Act created a unique statutory mandate for High Courts, to collate and publish monthly judicial statistics on commercial cases, we will also study the actual impact of this provision in improving transparency on the functioning of Commercial Courts and Divisions under the Act. It is pertinent to mention here, while existing scholarship has researched and analyzed case flow management processes,<sup>4</sup> none has centered such analyses on the impact assessment of the Act. Seeing this gap in scholarship, we have undertaken this study.

This report is divided into the following chapters:

- i. *Legislative History* – This chapter will put together the chronology of reports and draft bills that culminated in the enactment of the 2015 Act, and its subsequent 2018 amendment.
- ii. *Structure of the Commercial Courts Act* – This chapter will provide a breakdown of the provisions in the Act, including the 2018 amendment.
- iii. *Implementation of the Commercial Courts Act* – Using the information gathered from our RTI responses, we analyse several implementation facets of the Act.

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<sup>1</sup> See, *Statement of Objects and Reasons*, “The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015” <[https://www.prsindia.org/sites/default/files/bill\\_files/Commercial\\_courts\\_bill%2C\\_2015\\_dec\\_0.pdf](https://www.prsindia.org/sites/default/files/bill_files/Commercial_courts_bill%2C_2015_dec_0.pdf)> accessed on 10 January 2019.

<sup>2</sup> Ministry of Law & Justice, ‘World Bank Report on Doing Business 2018’ (2018) <[http://doj.gov.in/sites/default/files/Brief%20Note%20on%20Doing%20Business%20Report-2018\\_2.pdf](http://doj.gov.in/sites/default/files/Brief%20Note%20on%20Doing%20Business%20Report-2018_2.pdf)> accessed on 10 April 2019.

<sup>3</sup> The *Doing Business* reports have been an annual publication of the World Bank since 2004. All reports available at <<http://www.doingbusiness.org/en/reports/global-reports>> accessed 25 February 2019.

<sup>4</sup> Daksh & Vidhi Centre for Legal Policy, *Creating Order from Chaos: A Study on Caseload Management in Courts*, September 2017.

These include, checking the compliance with Section 17 of the Act and the Statistical Data Rules, 2018, the notification and variation in the number of commercial courts established, variation in case institution, disposal and pendency patterns across different states, roster composition and variation in capacity of the different courts under the Act.

- iv. *Quantitative Impact Evaluation Exercise* – This chapter uses case information gathered from the Commercial Divisions at the Bombay and Delhi High Courts, and the commercial courts at Vadodara District Court. It uses different metrics under ongoing and disposed cases, as well as overall case trends to evaluate how effective the Act has been in expediting the disposal of commercial cases in India.
- v. *Concluding remarks* – The concluding chapter highlights our key findings from this study.

# Chapter 1: Legislative History of the Act

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This chapter aims to provide a wholesome picture of the agenda-setting process which has shaped the debate on commercial litigation, culminating with the enactment of the Act, and its subsequent amendment in 2018.

## A. Events Resulting in the 2009 Commercial Divisions Bill

The debate on setting up exclusive commercial courts or benches emanates from the seminal 188th Report of the Law Commission of India (LCI) in 2003.<sup>5</sup> This report was initiated suo-motu by the LCI in view of the spate of criticism by foreign courts of the procedural sluggishness, delays and breakdowns in Indian courts, particularly in commercial civil litigation. In this report, the LCI discussed some cases (three

*Foreign courts assumed extraordinary jurisdiction citing the breakdowns and delays in India's justice system.*

in the USA, and four in the UK) where the foreign courts assumed extraordinary jurisdiction over commercial cases on the ground that the Indian judiciary was unable to provide effective relief.<sup>6</sup> These extraordinary actions stemmed from the doctrine of forum non conveniens (an inconvenient forum). They cited the chronic trend of inordinate delays

in civil litigation in India and concluded that the delays tantamount to providing a litigant with “no remedy at all”.<sup>7</sup> The LCI categorically advocated the creation of exclusive Commercial Divisions in High Courts in India to save further embarrassment to our judiciary. Pertinently, it noted:<sup>8</sup>

“The commission is of the view that on account of the additional reasons referred to above, namely, the generalisations by US and UK courts about long delays in India, the constitution of a separate division called the ‘Commercial Division’ of the High Court for the disposal of high-value commercial cases on fast track with high-tech facilities is necessary. Once that is done, there will no longer be any scope for foreign courts to make generalisations or assumptions about delays in Indian courts.”

As such, the UPA government introduced a bill in 2009, titled The Commercial Division of High Courts Bill, 2009 (2009 Bill). While the bill passed the Lok Sabha without any debate (due to ruckus in the Parliament),<sup>9</sup> it met considerable challenge in the Rajya Sabha. There were two key rebuttals to the 2009 Bill. First, it was argued that the Bill prioritised high-stake commercial litigation, thereby favouring richer litigants over the poorer ones.<sup>10</sup> Second, the lack of adequate judicial infrastructure and resources in the High Courts to deal with this additional workload was another grave concern raised by the opposition parties.<sup>11</sup> Given the strong concerns, the 2009 Bill was referred to a Select Committee of the Rajya Sabha (Select Committee) for a detailed examination. The

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<sup>5</sup> Law Commission of India, ‘188th Law Commission Report: Proposals for Constitution of Hi-tech Fast Track Commercial Divisions in High Courts’ <<http://10.21.88.204/lawcommissionofindia/reports/188th%20report.pdf>> accessed 15 January 2019.

<sup>6</sup> Law Commission of India: Report 188 (n 5) 10-23.

<sup>7</sup> Law Commission of India: Report 188 (n 5). See also, *Shin-ETSU Chemical Co. Ltd. v ICICI Bank* 777 N.Y.S. 2d 69, 75.

<sup>8</sup> *Shin-ETSU* (n 7) 23.

<sup>9</sup> Rajya Sabha Secretariat (Parliament of India), Select Committee, ‘Report of the Select Committee on the Commercial Divisions of High Courts Bill, 2009, as passed by the Lok Sabha’, (2010) <<https://www.prsindia.org/uploads/media/Division%20High%20Courts/Select%20Committee%20Report.pdf>> accessed 15 March 2019 at Introduction. See also, Reddy P., ‘How the government used a flawed ordinance to expedite cases dealing with Rs. 1 crore or more while other cases remain pending’, *The Caravan* (2015) <<https://caravanmagazine.in/vantage/government-flawed-ordinance-expedite-cases-1-crore>> accessed 15 March 2019 where the author discussed how the bill passed in the Lok Sabha in under 4 minutes, without any discussion or debate.

<sup>10</sup> Reddy (n 9).

<sup>11</sup> See Select Committee (n 9) observations [2-4].

aforementioned rebuttals also found vociferous articulation in the dissent notes of two members of the Select Committee (i.e. Mr. P. Rajeeve and Mr. D. Raja).<sup>12</sup>

The Select Committee's report on the 2009 Bill, was tabled on 29 July 2010, in the Rajya Sabha, where the said bill still caused great furore and debate.<sup>13</sup> The left-leaning politicians still decried the bill for envisioning "5 star or 7 star courts" favouring the rich.<sup>14</sup> Additionally, Arun Jaitley (then leader of the opposition in the Rajya Sabha), as an experienced lawyer,

*A key criticism of the bill was the preference given to rich litigants over poorer litigants by setting up '5 star courts'.*

lambasted the 2009 Bill for further burdening the "slowest rung of the Indian judiciary", namely the High Courts, and taking commercial litigation away from the lower courts which were seemingly more expeditious in disposing cases.<sup>15</sup> This transfer of cases to the high court was perplexing and antithetical to the stated objective of the 2009 bill of expediting the hearing of commercial cases. Taking the discontent into consideration, Mr. Salman Khursheed (as the Law Minister) indicated his interest "in amending the 2009 Bill accordingly". Interestingly, in the final year of UPA government (in 2013), the then Law Minister referred the 2009 Bill to the LCI.<sup>16</sup> However, the report of the LCI emerging from this reference, was only published in 2015, after the NDA government had come to power.

## B. The Second Wave and the Commercial Courts Act, 2015

Before venturing into the legislative back-and-forth that transpired around the enactment of the Act in 2015, it is important to revisit some key events that occurred during the downfall of the UPA, and the advent of the new NDA government.

The Bhartiya Janta Party (the lead political party in the NDA coalition) had made reinvigoration of the economy a key electoral promise.<sup>17</sup> A crucial element of this policy was improving investor confidence. To bolster India's credibility as a lucrative destination for foreign investments, it was determined that an image makeover was in order. Right from its election manifesto,<sup>18</sup> to its first full-fledged budget in 2015,<sup>19</sup> the new NDA government touted its agenda of improving India's standing in the annually published 'Doing Business' reports of the World Bank. This improvement was conveyed as a sine qua non to bolster investor confidence, and a vital step in achieving the aforementioned image makeover for the Indian economy. Enforcing contracts is one of the indicators for the ease of doing business index, which studies the time and cost of resolving commercial disputes in the courts of first instance, and the adoption of good practices to improve the quality of justice.<sup>20</sup>

Thus, in order to bolster India's overall ranking, as well its specific ranking for the enforcing contract indicator, the creation of commercial courts was proposed as a necessary legislative reform.<sup>21</sup> This displayed a shift in the reasoning of policy makers on the issue of reforming commercial litigation in India. From being the main procedural reform for civil litigation since the 2002 amendments to the CPC,<sup>22</sup> the Act when it was effectuated in 2015, became a part of the NDA government's policies to bolster economic growth

<sup>12</sup> Select Committee (n 9) [2-4]. See also, Reddy (n 9).

<sup>13</sup> Parliament of India, Rajya Sabha 'Debate on the Commercial Division of High Courts Bill, 2009' <[http://rsdebate.nic.in/bitstream/123456789/596563/1/ID\\_224\\_13122011\\_p319\\_p365\\_20.pdf#search=Commercial%20Divisions](http://rsdebate.nic.in/bitstream/123456789/596563/1/ID_224_13122011_p319_p365_20.pdf#search=Commercial%20Divisions)> accessed 10 April 2019.

<sup>14</sup> Select Committee (n 13) see comments of Sh. T.K. Rangarajan 330-331, Sh. K.P. Ramalingam 335-336 and Sh. D. Raja 353-354.

<sup>15</sup> Select Committee (n 13) see comments of Sh. Arun Jaitley 344-345.

<sup>16</sup> Law Commission of India, '253rd Law Commission Report : Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2011' <[http://lawcommissionofindia.nic.in/reports/Report\\_No.253\\_Commercial\\_Division\\_and\\_Commercial\\_Appellate\\_Division\\_of\\_High\\_Courts\\_and\\_Commercial\\_Courts\\_Bill\\_2015.pdf](http://lawcommissionofindia.nic.in/reports/Report_No.253_Commercial_Division_and_Commercial_Appellate_Division_of_High_Courts_and_Commercial_Courts_Bill_2015.pdf)> accessed 18 January 2019 8-9.

<sup>17</sup> Election Commission of India, Bhartiya Janta Party, 'Election Manifesto 2014' (2014) <[https://www.bjp.org/images/pdf\\_2014/full\\_manifesto\\_english\\_07.04.2014.pdf](https://www.bjp.org/images/pdf_2014/full_manifesto_english_07.04.2014.pdf)> accessed 18 March 2019. See also, Tillin L., 'Indian elections 2014: explaining the landslide' *Contemporary South Asia* (2015) Vol. 23:2, 117-122 at 117.

<sup>18</sup> Election Commission of India (n 17).

<sup>19</sup> Press Trust of India (PTI), 'Investment, ease of doing business, rank high in Jaitley's speech' *The Hindu* (2015) <<https://www.thehindu.com/business/budget/investment-ease-of-doing-business-rank-in-high-jaitleyspeak/article6945001.ece>> accessed 25 February 2019.

<sup>20</sup> World Bank, "Data: Enforcing Contracts" <<http://www.doingbusiness.org/en/data/exploretopics/enforcing-contracts>> accessed 10 April 2019.

<sup>21</sup> The *Doing Business* reports have been an annual publication of the World Bank since 2004. All the reports are accessible online <<http://www.doingbusiness.org/en/reports/global-reports/doing-business-2019>> accessed 25 February 2019. See also, Parliament of India, Lok Sabha, "Further discussion on the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 - speech by Sh. Sadananda Gowda", at pg. 43.

<sup>22</sup> The Code of Civil Procedure (Amendment) Act, 2002 <<https://districts.ecourts.gov.in/sites/default/files/THE%20CODE%20OF%20CIVIL%20PROCEDURE%20%28AMENDMENT%29%20ACT%2C%202002.pdf>> accessed 18 March 2019.

and improve India's image as an investment destination (as stipulated in the statement of objectives annexed to the 2015 Bill).<sup>23</sup>

It is pertinent here to also debate the logic and aptness of using a foreign index like the Ease of Doing Business, is arguably ill-suited for the Indian context, to serve as the main research evidence for a major legislative policy. According to a report published by the Indian Institute of Management (IIM), performance evaluation of the judiciary (including specialised courts like commercial courts and divisions) is vital towards "evaluating, controlling, budgeting, managing, promoting, celebrating, learning, and improving" from our experiences.<sup>24</sup> The report concludes that foreign measurement indicators may be ill-equipped to accomplish these objectives as they are detached from subjective political and institutional contexts of the countries they aim to rank, especially developing countries.<sup>25</sup>

The question of adequacy of the Ease of Doing Business rankings to design and implement pan-India policies and national laws, is even more pertinent in the case of the Commercial Courts Act, 2015. The World Bank only reviews

*The key objective of the 2015 bill was to bolster India's ranking in the Ease of Doing Business Index, published by the World Bank.*

commercial litigation from two cities, namely Delhi and Bombay, and there too, its data gathering process has limitations, as is caveated in the Doing Business report each year. Given the purview of the study being limited to Delhi and Bombay, it would not be appropriate to generalize its findings to the rest of the country, and subsequently use this flawed reasoning to design and implement a central legislation.

In this background, we must examine the 253rd Report of the LCI on the need for commercial courts (253rd report). First, taking cue from the NDA government's pitch, this report also acknowledged the apparent importance of improving India's standing in the ease of doing business ranking.<sup>26</sup> Secondly, there was recognition of the need to reform civil litigation in totality, and not merely for commercial cases.<sup>27</sup> In fact, the LCI in its 253rd report, has acknowledged as much by stating:

"2.15 Change in litigation culture will also require much wider changes across the board... In spite of amendments to the CPC in 1976 and in 2002, changes in the manner of conducting civil litigation have been minimal and largely cosmetic..."

The latter argument has been a longstanding criticism of the poor litigation culture in India, which has featured in the scholarship of Indian and foreign legal researchers writing on the Indian judiciary.<sup>28</sup> Based on its recommendations, the LCI annexed a revised draft bill titled Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015 (draft bill).<sup>29</sup> This draft bill amended several provisions of the CPC, 1908, and stipulated that these amended provisions will prevail over the existing CPC provisions. Some of the procedural amendments were the following:<sup>30</sup>

- a. Conducting case management hearings to set out a mutually agreeable schedule to conclude the litigation process in a streamlined and time-bound manner;
- b. An upper cap of 120 days to file written statement against a plaint, failing which the defendant will forfeit her right to file such a document;
- c. A new and separate process for a 'summary judgment' which would allow cases to be summarily adjudicated before the actual commencement of trial; and
- d. Strict implementation of the timelines prescribed for different stages in the CPC, 1908.

Following the submission of the 253rd report in January 2015, the draft bill annexed thereto was largely adopted by the NDA government, and introduced as the The Commercial Courts, Commercial Divisions, and Appellate Division of High Courts Bill, 2015 (2015 bill) in the Rajya Sabha on April 29,

<sup>23</sup>The Act in 2015 was introduced along with the Arbitration and Conciliation (Amendment) Act, 2015, which was the other key legislative reform to expedite disposal of cases, and boost investor confidence. See also, *World Bank Doing Business Reports* (n 14).

<sup>24</sup>Department of Justice & IIM, 'Performance indicators for subordinate courts and suggestive policy/ procedural changes for reducing civil cases pendency' (2017) <<http://doj.gov.in/sites/default/files/Final%20Report%20IIM%20Kashipur.pdf>> accessed 15 March 2019.

<sup>25</sup>Department of Justice & IIM (n 24).

<sup>26</sup>*Law Commission of India: 253rd Report* (n 16) 35-36.

<sup>27</sup>It was proposed that the commercial courts be treated as pilot programmes and procedural amendments operating for them, so in time, be effectuated for all civil litigation, to ensure a comprehensive shift in litigation culture. See *Law Commission of India: 253rd Report* (n 16) 36-37.

<sup>28</sup>Moog R., 'Indian litigiousness and the litigation explosion: challenging the legend' (1993) 33:12 *Asian Survey* 1136-1150. See also, Krishnaswamy S., et al. 'Legal and judicial reform in India: A call for systemic and empirical approaches', (2014) 2:1 *Journal of National Law University* 1-25.

<sup>29</sup>*Law Commission of India: 253rd Report* (n 16) 60-98.

<sup>30</sup>*Law Commission of India: 253rd Report* (n 16) 44-45.

2015.<sup>31</sup> The 2015 bill had some key variations vis-à-vis the 2009 bill of the previous government. One main difference was the lowering of specified value to become a “commercial case” from INR 5 crores (in the 2009 bill) to INR 1 crore (in the 2015 bill).<sup>32</sup> Additionally, the 2015 bill introduced for the first time, Commercial Courts at the district level (for areas where the High Courts did not exercise original civil jurisdiction), as the courts of first instance for commercial cases under it. The 2015 bill also created Commercial Appellate Divisions in every High Court, and scrapped the provision of the 2009 bill which allowed a direct appeal to the Supreme Court.

This bill was tabled by Arun Jaitley (Minister of Finance), who, as discussed, had been one of the most vocal critics of the 2009 Bill, and the setting up of Commercial Divisions in High Courts.<sup>33</sup> On April 30, 2015, this bill was referred to the Standing Committee on Personnel, Public Grievances, and Law and Justice (Standing Committee) for its review and inputs. Before discussing the key points emerging from the Standing Committee proceedings, we must mention that while awaiting its report, the government effectuated the provisions of the bill under scrutiny, through a presidential ordinance.<sup>34</sup> The Standing Committee’s report was eventually tabled in November 2015 (in the Winter Session). It made several recommendations including an emphasis on providing better infrastructure and recruiting additional judges for Commercial Courts, and to raise the valuation of commercial cases to INR 2 crores.

The recruitment of additional judges with expertise in commercial law, was to ensure adequate judicial strength to deal with the additional workload such commercial litigation would create for judges of the High Courts.<sup>35</sup> However, as we will subsequently discuss in this study, this proposal for additional judges in High Courts has remained merely a promise on paper, with Commercial Divisions being staffed by existing judges. The other recommendation of raising valuation of commercial litigation to INR 2 crores was ultimately not incorporated. Instead, INR 1 crore was retained as the minimum valuation for a commercial case

to be tried under the provisions of the Act.<sup>36</sup> Nonetheless, keeping the minimum valuation at INR 1 crore, the 2015 Bill ensured that the Commercial Courts and Divisions were to be exclusive forums accessible only for high value commercial litigation.<sup>37</sup> After the report was tabled and considered in the Parliament, the Act was passed in December 2015, replacing the earlier ordinance, and coming into effect from 1 January 2016.

## C. The 2018 Amendment and Shifting Goalposts of Commercial Litigation

As the preceding section demonstrates, the key objective of the Act was to target high value commercial litigation. However, in 2018, an amendment to the Act was introduced in the Parliament (2018 amendment), which inter alia reduced the minimum threshold of specified value of INR 1 crore to INR 3 lakhs.<sup>38</sup> Effectively, this reduction is a volte face on the earlier argued position that exclusive commercial

*2018 Amendment shifted goal posts of the Act, by reducing the minimum specified value from INR 1 crore to INR 3 lakhs.*

forums were needed for high value commercial litigation and expediting their disposal to inspire investor confidence. However, the statement of objects annexed to the 2018 amendment bill tried to pass off this significant shift of policy goalposts as an innocuous change. It noted that lowering the minimum specified value, was to ensure more commercial cases came within the purview of the Act.<sup>39</sup> Furthermore, the statement of Sh. Ravi Shankar Prasad (Law Minister) while introducing the 2018 amendment bill in the Lok Sabha, also tried to justify this reduction to provide the same fast-track

<sup>31</sup> Rao P., ‘Bill Summary: The Commercial Courts, Commercial Divisions, and Appellate Division of High Courts Bill, 2015’ PRS <[https://www.prsindia.org/sites/default/files/bill\\_files/Bill\\_Summary-Commercial\\_Courts\\_Bill\\_0.pdf](https://www.prsindia.org/sites/default/files/bill_files/Bill_Summary-Commercial_Courts_Bill_0.pdf)> accessed 5 March 2019.

<sup>32</sup> Law Commission of India: 253rd Report (n 16) 53.

<sup>33</sup> Select Committee (n 13); and Arun Jaitley *supra* (n 15).

<sup>34</sup> The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015 <[https://www.prsindia.org/sites/default/files/bill\\_files/Commercial\\_Courts%2C\\_Commercial\\_Division\\_and\\_Commercial\\_Appellate\\_Division\\_of\\_High\\_Courts\\_Ordinance\\_2015.pdf](https://www.prsindia.org/sites/default/files/bill_files/Commercial_Courts%2C_Commercial_Division_and_Commercial_Appellate_Division_of_High_Courts_Ordinance_2015.pdf)> accessed 18 March 2019.

<sup>35</sup> Select Committee (n 9). See also, Law Commission of India: 253rd Report (n 16) 18 [2.4.10].

<sup>36</sup> As per the original, unamended Section 2(i) of the Act, the valuation of a commercial case must be at least INR 1 crores.

<sup>37</sup> Select Committee (n 9).

<sup>38</sup> The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018 <<http://legalaffairs.gov.in/sites/default/files/The%20Commercial%20Courts%2C%20Commercial%20Division%20and%20Commercial%20Appellate%20Division%20of%20High%20Courts%20%28Amendment%29%20Act%2C%202018.pdf>> accessed 18 March 2019. The amended section 2(i) defines specified value to be no less than INR 3 lakhs in the Commercial Courts Act, 2015.

<sup>39</sup> (n 38) *statement of objects and reasons*.

adjudication to smaller commercial disputes, as afforded to the bigger ones.<sup>40</sup> This, however, may not have been the complete truth.

The minutes of meetings of a special task force created by the central government, to augment India's ranking for the indicator of enforcing contracts (within the ease of doing business index) shed light on the actual reason for the amendment.<sup>41</sup> They show how this body (headed by bureaucrats of the Ministry of Law & Justice, including the Secretary, Justice), was insistent on creating commercial courts at the district level.<sup>42</sup> In January 2017, at its first meeting, the then Secretary (Justice) informed the taskforce that for the purpose of the World Bank's annual Doing Business report, eleven District Courts in Delhi, and sixty judges of City Civil Courts in Mumbai are essentially reviewed and studied.<sup>43</sup> This indicated how the Commercial Divisions (CD) for the Delhi High Court (DHC) and the Bombay High Court (BHC) were not being evaluated by the World Bank, and as such, their impact was being excluded for the "enforcing contracts" indicator.

To ensure that the next report of the World Bank captures information from these District and Civil courts, the taskforce proposed, and requested the Registrars General of the Delhi and Bombay High Court to set up commercial courts in their district and city civil courts respectively.<sup>44</sup> However, under the proviso to the unamended Section 3 of the Act, such commercial courts at the district level could not have been designated given that the Delhi High Court, and the Bombay High Court, exercised original civil jurisdiction over these districts.<sup>45</sup> Thus, it was decided that this proviso be deleted to remove the statutory bar and facilitate the creation of commercial courts at the district level, as well as commercial appellate courts at the district level.<sup>46</sup> It is pertinent to state how while emphasising the role of the Act in improving India's ranking in the EODB index, the

government initially, perhaps inadvertently, misunderstood the courts that would be covered in the World Bank's study. This realisation becomes evident from the task force

*Internal Task Force minutes reveal that bureaucrats of the central government requested senior registry officials at Bombay and Delhi to notify the commercial courts at the district level seemingly in contravention of the provisions of the unamended Act.*

minutes where the officials have discussed the need to create commercial courts at the district level in Delhi and Bombay, and accordingly, proposed the deletion of the proviso to the unamended Section 3.

What is problematic in this entire situation is that amendments to a national legislation are being proposed, designed, and ultimately enacted, to satisfy an external ranking index, rather than actually targeting the real issue of litigation culture and systemic challenges within the Indian judiciary. Furthermore, bureaucrats of the central government "requested" senior registry officials (at Delhi and Bombay) to accommodate this poorly thought out policy decision, is troubling. There is also a conspicuous absence of real stakeholder engagement or public consultation with lawyers, making the whole process opaque. This lack of transparency was further exposed when we sought a copy of the cabinet note approving the 2018 amendment bill to further substantiate the aforementioned reasoning for the same, under the RTI Act, in three separate applications. In all three applications we have not received any responses.<sup>47</sup>

<sup>40</sup>Ravi Shankar Prasad, 'Statement on the Commercial Courts, Commercial Division, and Commercial Appellate Division of High Courts (Amendment) Bill, 2018' Lok Sabha 116-118 <<http://164.100.47.193/debatetext/16/XV/01-08-2018.pdf>> accessed 11 April 2019.

<sup>41</sup>Sen S., 'Govt forms task force to enforce contracts in move to ease business dealings' LiveMint (2016) <<https://www.livemint.com/Politics/NdrutXp3wnTUPTsgObQxI/Govt-forms-task-force-to-enforce-contracts-in-move-to-ease-b.html>> 28 March 2019. The minutes of meetings of the Taskforce <<http://doj.gov.in/page/minutes-task-force-meeting>> 29 March 2019.

<sup>42</sup>This was discussed at length during the Task Force's first meeting dated 5 January 2017. See Ministry of Law & Justice (GoI), Department of Justice, 'Minutes of the first meeting of the taskforce for improving India's ranking in World Bank report on Doing Business for indicator of enforcing contracts held on 5.1.2017 in New Delhi' <<http://doj.gov.in/sites/default/files/Minutes%20of%20Task%20Force%20First%20%20Meeting.pdf>> accessed 06 April 2019.

<sup>43</sup>Ministry of Law & Justice (GoI) (n 42) 1.

<sup>44</sup>Ministry of Law & Justice (GoI) (n 42). The Registrar Generals of both High Courts were asked to designate 5 district courts (in Delhi) and 5 City Civil Courts (in Bombay) as Commercial Courts.

<sup>45</sup>In the second meeting it was informed that such designations cannot happen without the requisite amendments to Section 3 of the Act. See, Ministry of Law & Justice (GoI) - Department of Justice, 'Minutes of the first meeting of the taskforce for improving India's ranking in World Bank's performance on the parameter of Doing Business: Enforcing Contracts held on 18.4.2017' <<http://doj.gov.in/sites/default/files/2nd%20Task%20Force%20meeting.pdf>> accessed on 06 April 2019.

<sup>46</sup>Ministry of Law & Justice (GoI) (n 45) 3.

<sup>47</sup>The first application was filed originally with the Cabinet Secretariat in December 2018. However, the application has been transferred multiple times to different authorities, including the Department of Legal Affairs in the Ministry of Law & Justice. As such, we filed another two fresh RTIs in April 2019, one with the Department of Legal Affairs, and another with the Department of Legislative Affairs (both in the Law Ministry). However, we are awaiting responses to this two fresh applications, while the first one also appears to be pending before the Department of Legal Affairs.

To reiterate, the objective of the Act and the 2018 Amendment, has largely focused on improving India's image as an investment destination. This was to be accomplished by raising India's rank in the EODB index. However, as the LCI pointed out, such procedural reforms will prove to be ineffective and cosmetic changes, unless they are supplemented with long-term reforms for improving the litigation culture in India. This latter issue has seemingly been left on the backburner, and remains unaddressed by the government in its policies and legislative reforms. It also reinforces how policymaking and its agenda-setting processes are not entirely rational and evidence-based in practice.<sup>48</sup>

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<sup>48</sup>Cairney P., *'The politics of evidence-based policy making'* (Stirling (UK), Palgrave Macmillan 2016) 7-8, and 19-24.

# Chapter 2: Structure of the Act

Fig. 1a : Structure of Courts under the Unamended Act in 2015

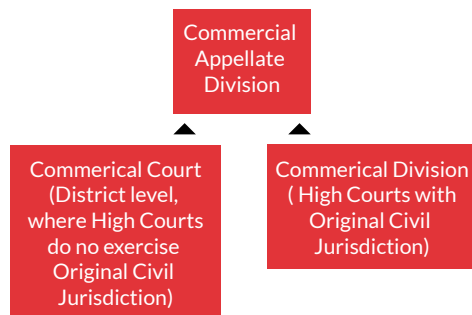
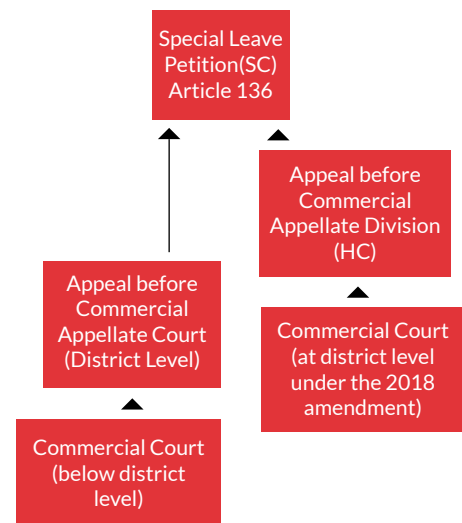


Fig. 1b : Structure of Courts under the Act after the 2018 Amendment



## A. Forums under the Commercial Courts Act, 2015

Since its enactment in 2015, the Act effectuated some modifications for several features of civil commercial litigation. As discussed in the last chapter, the unamended Act in 2015 set-out three commercial fora (Figure 1a).

However, after the 2018 amendment, in an attempt to create Commercial Courts and appellate fora at the district level, Sections 3 and 4 of the Act were amended.

As figure 1b demonstrates, after the 2018 amendment, appeals under Section 13 have been bifurcated. Previously, all appeals from Commercial Courts at the district level, or Commercial Divisions of High Courts, would go before the Commercial Appellate Division set up in each High Court. However, under the amended Section 13, appeals against Commercial Courts' orders will lie before the Commercial

Appellate Court, unless such Commercial Courts of first instance are below the level of a district judge (typically a civil judge).<sup>49</sup> Any appeals from Commercial Courts of first instance at the district judge level, will lie before the Commercial Appellate Division.<sup>50</sup>

*The 2018 amendment split the appellate process, under Section 13, between the Commercial Appellate Courts at the District Courts and the Commercial Appellate Divisions at the High Courts.*

The Act is silent however, on whether orders passed by a Commercial Appellate Court, at the level of the district judge, can be appealed before the Commercial Appellate

<sup>49</sup>Commercial Courts Act 2015 s 13(1).

<sup>50</sup>Commercial Courts Act 2015 s 13(1A).

Division (CAD) of the concerned High Court. Typically, under the CPC 1908, a regular second appeal is available against final orders and judgments of district judges, provided the appellant can satisfy the prerequisites listed for it therein.<sup>51</sup> The second appeal in such cases will lie before the concerned High Court. Pertinent to this discussion is the question, whether the Act ousts the appellate provisions under Section 100 of the CPC. While Section 13 (2) clearly places some restrictions on the process to appeal orders or decrees of Commercial Courts (CC), and Commercial Divisions (CD), no such limitations operates against orders or decrees of a Commercial Appellate Court. Therefore, it can be argued that Section 100 of the CPC affords an opportunity to impugn orders or decrees of Commercial Appellate Courts by way of a regular second appeal, provided the appellant satisfies the conditions set in Section 100.

## B. Definition of ‘Commercial Dispute’ and Valuation

To be adjudicated under the provisions of the Act, a case must qualify as a ‘commercial dispute’ under Section 2(c). This provision broadly defines a ‘commercial dispute’ under the Act. While covering ordinary transactions and contractual enforcement issues, the provisions extend to myriad other commercial transactions, including shareholder agreements, insurance and reinsurance issues, disputes arising out of violations of intellectual property, etc. It also allows the central government to add additional commercial disputes to this list under Section 2(c)(xxii).

In addition to being a commercial dispute, the Act also prescribes a minimum value of the subject matter of suit under Section 2(i). As discussed earlier, the ‘specified value’ under the unamended Act in 2015 was set at a minimum of INR 1 crores. Therefore, any commercial litigation failing such valuation would not be tried under this Act, but instead would be adjudicated as an ordinary civil suit. After the 2018 amendment this specified value clause has been reduced from INR 1 crore to INR 3 lakhs. The previous chapter has made an elaborate case of how this reduction seems to be a

stark shifting of goalposts from only high value commercial litigation to all commercial litigation, and basically served political optics for India’s image makeover as an investment destination.

## C. Key amendments to the CPC, 1908, under the Act

To attain time-bound and streamlined adjudication for commercial cases, the LCI had introduced several procedural amendments to existing provisions of the CPC 1908.<sup>52</sup> The following were some innovative processes melded into the civil procedure, under the Act:

- a. *Case Management Hearings*: A key procedural reform espoused by advocates of the Act, are the provisions under Order XVA, setting down the procedure for case-management hearings (CMH). These hearings essentially require the judge and parties to establish

*The Act introduced amendments to the CPC which includes unique provisions such as case management hearings and summary judgments.*

a mutually agreeable schedule for a smoother, more organised, and time bound trial process. CMH is not a novel idea and its introduction was inspired by similar processes in other jurisdictions.<sup>53</sup> Under the Act, a court must mandatorily hold a case management hearing between the parties (which cannot be adjourned)<sup>54</sup>, and schedule timelines for the different stages of litigation.<sup>55</sup> Once such a CMH has been conducted, Rule 3 of Order XVA requires the conclusion of all arguments within six months. Furthermore, the law also provides for CMH to be held ‘during trial’ to ensure adherence to the timelines scheduled by the court. Such a schedule must comply with the timelines that the Act prescribes for filing appeals,<sup>56</sup> written statements,<sup>57</sup> written arguments,<sup>58</sup> oral

<sup>51</sup> Code of Civil Procedure 1908 s 100.

<sup>52</sup> Law Commission of India: Report 253 (n 16) 44-45.

<sup>53</sup> Federal Court of Australia, ‘Case Management’ <<http://www.fedcourt.gov.au/going-to-court/i-am-a-party/court-processes/case-management>> accessed 28 March 2019. See also, Hon. Jenkins E.A., ‘Case management trends in the U.S. federal courts’, 13th Annual Conference on Legal & Policy Issues in Americas’ (2016) <[https://www.law.ufl.edu/\\_pdf/academics/centers/cgr/13th\\_conference/Jenkins\\_CaseMgtPaperMay2012.pdf](https://www.law.ufl.edu/_pdf/academics/centers/cgr/13th_conference/Jenkins_CaseMgtPaperMay2012.pdf)> accessed 28 March 2019.

<sup>54</sup> Commercial Courts Act 2015 Order XVA: Case Management Hearing - (7): Adjournment of Case Management Hearing.

<sup>55</sup> Commercial Courts Act 2015 Order XVA: Case Management Hearing.

<sup>56</sup> Commercial Courts Act 2015 s 14: Expeditious disposal of Appeals.

<sup>57</sup> Commercial Courts Act 2015 Schedule 4: Amendment of First Schedule - (A).

<sup>58</sup> Commercial Courts Act 2015 Schedule 8: Amendment of Order XVIII: (3A), (3B), (3C), (3D), (3E).

arguments,<sup>59</sup> pronouncement of judgement,<sup>60</sup> and even adjournments.<sup>61</sup> The CMH are therefore, in theory, the lynchpin for ensuring the expedited disposal of cases.<sup>62</sup>

- b. *Summary Judgment*: Apart from prescribing timelines for different stages of litigation, and requiring a timetable to be agreed upon through a CMH, the Act sets out a new process of deciding cases through a summary judgment.<sup>63</sup> Summary judgments can be exercised by either side (i.e. plaintiff or defendant). The process requires either party to apply to for a summary disposal of the suit. In the event that the facts are clearly favouring such an applicant, the judge may rule in favour of such a party without actually going through the elaborate evidence gathering trial process.<sup>64</sup>
- c. *No appeals against interim order*: The Act also mandates that there would be no civil revision application/petition against any interlocutory order of a Commercial Court and any such grievance against the order may only be raised in appeal against the final decree.<sup>65</sup> Interestingly, such interlocutory orders can be assailed under Article 227 of the Constitution, under which a High Court can exercise superintendence powers over all courts and tribunals under its territorial jurisdiction.<sup>66</sup> However, the power under Article 227 is extraordinary, and must be used sparingly where the High Court finds that courts or tribunals under its jurisdiction have acted outside their bounds; the power cannot be used to alter findings or rulings of a subordinate court or tribunal, merely because the High Court might have arrived to a different conclusion.<sup>67</sup>
- d. *Pre-Institution mediation*: After the 2018 amendment, pre-institution mediation has been mandated under the Act.<sup>68</sup> The provision requires parties to attempt an out of court settlement of dispute(s) before approaching the court for litigation. The idea of pre-institution mediation has been advocated consistently in the last few years, with the objective of allowing parties to expedite dispute resolution through an out-of-court settlement.<sup>69</sup>

## D. Section 17 of the Commercial Courts Act and Statistical Data Rules, 2018

The 253rd LCI report noted the inadequacy and inconsistency in recording relevant case data by courts in India.<sup>70</sup> Hence, a need was felt to systematically collect and publish data by courts in a uniform format that would help in assessing the performance of the fora established under the Act. This was believed to be crucial, to increase the confidence of the general public in the functioning of the judiciary and assist the institution in achieving the purpose

*To counter the inadequacy of judicial statistics a unique provision for publication of monthly data has been introduced under Section 17.*

for which it was set up. Therefore, Section 17 was introduced in the Act of 2015. This provision was further supplemented by the introduction of Commercial Courts (Statistical Data) Rules, 2018 (Statistical Data Rules).

These provisions mandate High Courts to maintain and publish statistical data regarding the number of suits, applications, appeals or writ petitions filed under the Act.<sup>71</sup> This data is required to be published on the websites of the respective High Courts on the 10th of every month. A High Court is required to maintain this data at the level of the High Court i.e. Commercial Divisions and Commercial Appellate Divisions, and also at the level of the District Courts i.e. Commercial Courts and Commercial Appellate Courts. In order to ensure uniformity the data is required to be in the form provided in **Appendix 1** of this report.

<sup>59</sup> Commercial Courts Act 2015 Schedule 2: Order XA: Orders to be passed in a Case Management Hearing.

<sup>60</sup> Commercial Courts Act 2015 Schedule 11: Amendment of Order XX.

<sup>61</sup> Commercial Courts Act 2015 Schedule 7: Adjournment of Case Management Hearing, 8. Amendment of Order XVIII: 3E.

<sup>62</sup> Commercial Courts Act 2015 s 16: Amendment to the Code of Civil Procedure, 1908 in its application to commercial disputes.

<sup>63</sup> Commercial Courts Act 2015 Schedule 5: Order XIII A: Summary Judgment.

<sup>64</sup> (n 63). See also, *Bright Enterprises v. M.J. Bizcraft* (2017) SCC Online (Del.) 6394; and *Rockwool Intl. A/s. v. Thermocare Rockwool* (2018) SCC Online (Del.) 11911.

<sup>65</sup> Commercial Courts Act 2015 s 8.

<sup>66</sup> *State of Gujarat v UOI* Special Civil Application No. 737 of 2018.

<sup>67</sup> *Waryam Singh v Amarnath* AIR 1954 SC 215.

<sup>68</sup> Commercial Courts Act 2015 s 12 A and Pre-Institution Mediation and Settlement and The Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018

<sup>69</sup> Vidhi Center for Legal Policy, 'Inefficiency and Judicial Delay: New Insights from the Delhi High Court' (March 2017) <<https://vidhilegalpolicy.in/reports/2017/3/29/inefficiency-and-judicial-delay-new-insights-from-the-delhi-high-court>> 12 April 2019. See also, Department of Justice, 'Minutes of 3-7th meetings of the task force on ease of doing business' <<http://doj.gov.in/page/minutes-task-force-meeting>> accessed 12 April 2019.

<sup>70</sup> Law Commission of India: Report No. 253 (n 16) 42-43.

<sup>71</sup> The Commercial Courts (Statistical Data) Rules 2018 Rule 3.

# Chapter 3: Implementation of the Act

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## A. Disclosures under Section 17

We conducted a review of the 24 High Court<sup>72</sup> websites to determine if they had satisfied the disclosure requirements under Section 17.<sup>73</sup> The findings were underwhelming. Of the 24 High Courts, only 8 High Courts (at Bombay, Chattisgarh, Delhi, Gauhati, Himachal Pradesh, Meghalaya, Orissa and Punjab & Haryana) partially made such disclosures in the format prescribed under the Act. The Bombay High Court, for example, maintained the data only for 1 month, the Orissa High Court for 2 months, the Punjab and Haryana High Court, and the Chhattisgarh High Court maintained it for four months. The Delhi High Court has consistently maintained the records for the longest period of time i.e. 35 months (from November 2015 to October 2018).<sup>74</sup> 12 High Courts made no disclosures at all. These were the High Courts at Allahabad, Calcutta, Hyderabad, Jammu & Kashmir, Karnataka, Kerala, Madras, Manipur, Patna, Rajasthan, Tripura and Uttarakhand. Since Commercial Courts had not been constituted in Kerala and Manipur, these states could not have maintained this information at all. Four High Courts maintained either year wise,<sup>75</sup> case wise<sup>76</sup> and district wise information<sup>77</sup> but not in the consolidated manner, as required by the Act.

Since only partial information had been uploaded on the websites, we filed Right to Information applications (RTIs) with the 24 High Courts seeking the same Section 17<sup>78</sup> information. We did receive information from High Courts, suggesting that some High Courts did compile the data, but failed to publish it on their respective websites. Gauhati High Court was forthcoming, providing us complete data for 15 months, and partial data for 8 months. However, most other

*Most High Courts have not made any disclosures mandated under Section 17. Only 8 High Courts have made partial disclosures.*

High Courts did not follow suit. 9 High Courts (at Allahabad, Chattisgarh, Hyderabad, Jammu & Kashmir, Jharkhand, Madhya Pradesh, Patna, Rajasthan & Uttarakhand) provided us with no information at all.<sup>79</sup> The reply of the Sikkim High Court was particularly interesting since it acknowledged its failure to maintain information under Section 17, but stipulated that it shall do so going forward. A detailed analysis of the information that was both uploaded on the websites, and as was furnished to us in reply to our RTIs, is presented in **Appendix 2** of this report.

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<sup>72</sup>We conducted our analysis on the 20 November 2018, when the High Court of Judicature at Hyderabad had not been bifurcated into the High Court of Andhra Pradesh and the High Court of Telangana.

<sup>73</sup>This information is as on 20 November 2018. It therefore does not include those High Court that have started maintaining and uploading this information on their websites after the above cut-off date.

<sup>74</sup>Delhi High Court did not provide us with data for January 2018.

<sup>75</sup>Gujarat High Court maintained year wise information and not month wise, as required under the Act. However, as on 28 May 2019, month wise data is being recorded. <<http://gujarathighcourt.nic.in/districtCommercialCourts>> accessed 04 April 2019.

<sup>76</sup>Jharkhand High Court maintains a list of cases that are pending, but does not maintain data on the fresh institutions under the Act <<https://jharkhandhighcourt.nic.in/report-commercial-appellate-division-high-court-jharkhand>> accessed 04 April 2019. The Sikkim High Court maintains a list of cases that are pending along with their date of institution under the Act but not consolidated data <<http://highcourtofikkim.nic.in/hcs/sites/default/files/CaseStatment/Commercial%20Cases.pdf>> accessed 04 April 2019.

<sup>77</sup>The Madhya Pradesh High Court provided district wise information through a drop down menu as opposed to publishing consolidated monthly statistics <<https://mphc.gov.in/district-commercial-court>> accessed 04 April 2019.

<sup>78</sup>The RTI applications sought information for 35 months - from the introduction of the Act in December 2015 to October 2018.

<sup>79</sup>If the RTI application was transferred or rejected, we filed appeals before the Appellate Authority seeking the information. The information provided was updated till 06 March 2019.

During the course of our research we realized that the number of courts that had started maintaining the data increased post July 2018. Section 17 had always mandated the disclosure of statistics, but it was the introduction of the Statistical Data Rules that served as an impetus to the practice of maintaining this data. As per the format provided by the Statistical Data Rules, even the average number of days taken for disposal must be recorded. However, only the Delhi and the Himachal Pradesh High Courts presented this information, that too for limited months, and not for all the judges.

As the LCI had noted, there is a dearth of adequate and accurate judicial statistics and data. Section 17 was introduced to remedy this trend, at least for commercial cases. The exercise conducted above shows that these mandatory requirements under the Act are being disregarded by a majority of the High Courts. It is also worrying because many of these High Courts, apart from not publishing this data, are failing to even collate it. One of the key metrics to gauge impact would be through an assessment of the amount of time taken to dispose of cases. However, evidently, almost no High Court is recording this crucial data point. The failure to record and publish data limits the extent to which the effectiveness of the Act can be evaluated, both by policy makers and independent researchers.

## B. Notification of the Commercial Courts Act, 2015

An ordinance in October 2015, effectuated the provisions of the Act, while the actual 2015 bill was passed in December 2015, coming into force from 23 October 2015.<sup>80</sup> As per the Act, every State Government in consultation with the

*Not all High Courts have designated commercial courts in their respective jurisdictions.*

respective High Court, could enact the provisions of the Act, and set up Commercial Courts, Divisions and Appellate Divisions.<sup>81</sup> It is important to note that the language in the Act does not make it mandatory for all the High Courts and

their respective State Governments to notify the Act. We filed RTIs with the various High Courts requesting for the notification published under the Act, for their respective High Court. The first set of High Courts to notify the Act in 2015, were the Gauhati High Court<sup>82</sup> and the Delhi High Court.<sup>83</sup> Most of the other states notified the provisions of the Act only halfway through 2016, around 6 months after the introduction of the Act. The last set of states to notify these provisions were Chattisgarh and Uttarakhand, which introduced commercial courts in December 2017. Manipur and Kerala, in their RTI reply noted that no commercial court has been established and the reply from Orissa High Court stated that no judge had been designated to deal with cases at commercial appellate division as on 05 February 2019.<sup>84</sup> Appendix 3 of this report, lists down the exact date of the notification across the High Courts.

## C. Variation in the number of courts notified under the Act

On issuance of a notification, the High Court had the leeway to notify as many courts as it deemed necessary for the expeditious disposal of cases. Following this, Commercial Courts were notified in all districts by the High Courts of Delhi, Bombay, Madhya Pradesh, Madras, Sikkim and Punjab.<sup>85</sup> The other High Courts however, selectively

*There is no reasonable correlation between the number of courts designated and the number of pending commercial cases in these courts.*

designated courts - such as Gujarat and Karnataka (three courts), Orissa (three courts)<sup>86</sup> and Calcutta (four courts). As we shall explain below, there does not seem to be correlation between the number of courts that have been designated and the average number of pending cases. Figure 2 shows the number of courts that have been instituted in every state vis-a-vis the average number of cases pending in those courts for the time period of April 2017 - October 2018. In this figure we have not recorded the number of courts designated as Commercial Divisions in states where the High Court has

<sup>80</sup>With the passage of the bill, the Commercial Courts Ordinance of 2015 was repealed. See Section 1(3) of the Act.

<sup>81</sup>Commercial Court Act 2015 s 1.

<sup>82</sup>Government of Assam Notification No. JDJ.136/2015/24-A dated 28 December 2015. Copy received via RTI reply dated 04 January 2019.

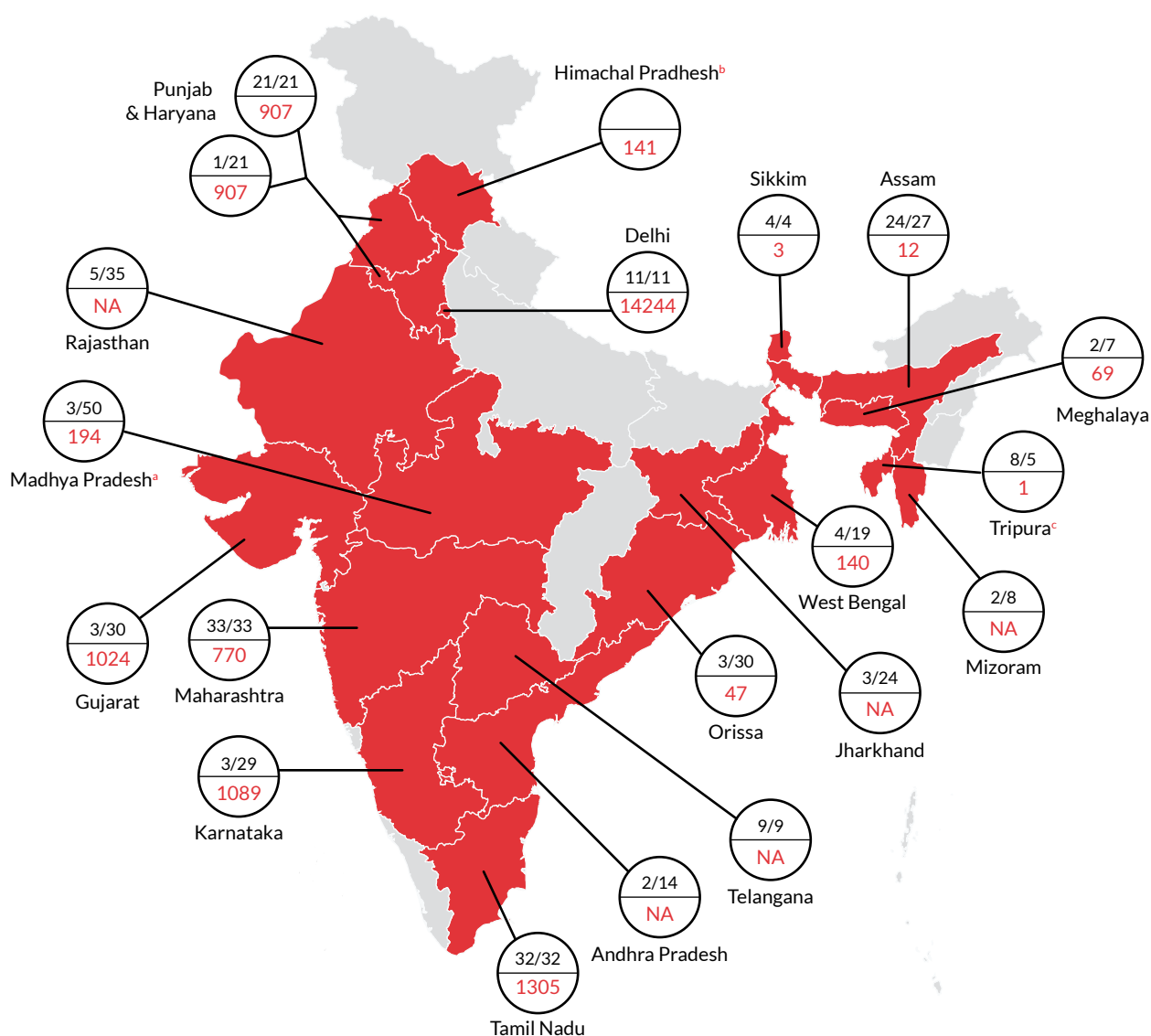
<sup>83</sup>High Court of Delhi Circular dated 17 November 2015. Received via RTI reply dated 17 December 2018.

<sup>84</sup>We did not receive information from the Allahabad High Court and the Jammu and Kashmir High Court on the date of notification of the Act. This information was also not available on the High Court websites.

<sup>85</sup>In Punjab and Haryana, commercial courts had been constituted in all districts in Punjab, while only one special court had been constituted in Gurugram, Haryana.

<sup>86</sup>Khurda and Bhubaneswar, Ganjam at Berhampur and Sambalpur

**Fig. 2: Number of Courts Designated under the Act vis a vis the Number of Pending Cases**



<sup>a</sup> Notification dated 20 September 2017 designates 3 commercial courts. However, data maintained under Section 17 of the Act, seems to suggest commercial courts have been designated in all 50 districts

<sup>b</sup> Has 2 CDs and 3 CADs

<sup>c</sup> There are 5 judicial districts but commercial courts have been instituted at 8 locations.

Number of Courts Designated	Total Number of Districts in The State
Number of Pending Cases	

■ Data Available  
 ■ Data Not Available  
 NA Data Not Available

Map by Free Vector Maps: <http://freevectormaps.com>

original civil jurisdiction. A clear case of disproportionate designation of courts is that of Himachal Pradesh. There two judges at the High Court were designated to form the Commercial Division<sup>87</sup> to deal with an average of 125 cases that were pending with the Commercial Division.<sup>88</sup> However, three benches, i.e. 6 judges were designated as the Commercial Appellate Division at the High Court<sup>89</sup> which would be sitting in appeal over fewer number of cases.

Therefore, there does not seem to be an exact correlation between the number of courts and the number of pending cases. A more targeted approach to dispose of cases would be to designate the number of courts based on the number of cases pending in that district. In the case of Karnataka for example, the average number of cases pending before all the Commercial Courts across the states was 1089 cases.<sup>90</sup> The average number of cases pending, for the same time period, only before the Bengaluru City Civil Court was 531.<sup>91</sup> Thus, around 50% percent of the cases pending across the state are concentrated in one district court i.e. at Bengaluru.

Rajasthan saw a reverse trend in the institution of Commercial Courts, where the number designated courts were lesser than the requirement of the state. A news article suggests that, Commercial Courts had been constituted in every district across the state, however on 08 August 2017, a notification reduced the number of courts to just one Commercial Court with its headquarter in Jaipur.<sup>92</sup> A challenge to this notification argued that abolishing Commercial Courts in all district headquarters would hamper the speedy redressal of high value of commercial disputes. As a consequence of this petition, and after the introduction of the 2018 amendment, it seems, that the Rajasthan High Court has increased the number of courts from 1 to 5 across the state.<sup>93</sup>

The next section explains the difference in the number of cases instituted in the various states. Especially after correlation of that data it becomes clear that the courts are being designated across districts without attention to the number of cases they would be adjudicating on. A more prudent approach to designating Commercial Courts would be align them with their the number of cases that are pending in those states. We have not qualified the term 'pendency'. It does not refer to a backlog of cases or arrears of the court. It merely refers to the number of cases pending before that particular court. Section 17 disclosures require that data be maintained under the headings of - cases instituted, cases disposed and cases pending. We have utilized this 'cases pending' data as the number of pending cases. Thus, there is a need to constitute courts that correlate to the number of pending cases, while keeping in mind the geography of the place for litigants.

## D. Variation in the Number of Cases Instituted under the Commercial Courts Act, 2015

In this segment we compare the difference in the average number of cases instituted in the various courts across India. The time period selected for this analysis is from April 2017 to October 2018. This was chosen on account of availability of data.<sup>94</sup> A comparison between the different courts is provided in the figure 3. Additionally, we also conducted a month wise analysis of this data i.e. a breakup of the number of cases instituted per month, per court starting from April 2017 till October 2018. This month wise analysis is provided in **Appendix 4** of the report. Since information on the number of fresh institutions was not uploaded on the websites or provided in reply to our RTI application by the following High Courts - Allahabad, Hyderabad, Jammu and Kashmir,

<sup>87</sup> High Court of Himachal Pradesh, Notification No. HHC/Admn. 10(155)92-XVII-15467-15500 dated 19 April 2016.

<sup>88</sup> Information received via reply dated 07 January 2019.

<sup>89</sup> High Court of Himachal Pradesh, Notification No. HHC/Admn. 10(155)92-XVII-15501-34 dated 19 April 2016.

<sup>90</sup> Information received via RTI reply dated 26 December 2018 and 04 February 2019. The number of pending cases between the months of July 2018 and October 2018.

<sup>91</sup> Information received via RTI reply dated 18 February 2019 from the City Civil Court, Bengaluru. The number of pending cases between the months of July 2018 and October 2018.

<sup>92</sup> 'HC notice on the abolition of commercial courts in Rajasthan' *Times of India* 08 December 2017 <<https://timesofindia.indiatimes.com/city/jodhpur/hc-notice-on-abolition-of-commercial-courts-in-raj/articleshow/61971791.cms>> accessed 04 April 2019.

<sup>93</sup> Government of Rajasthan - Law & Legal Affairs Department, Notification No. F.1.(2) Nyay/2016, 08 August 2018 <[http://law.rajasthan.gov.in/content/dam/law-justice/Law%20%26%20Legal%20Affairs%20Department/PDF/Circulars/CommercialCourt\\_Notification0001.pdf](http://law.rajasthan.gov.in/content/dam/law-justice/Law%20%26%20Legal%20Affairs%20Department/PDF/Circulars/CommercialCourt_Notification0001.pdf)> accessed 27 April 2019.

<sup>94</sup> Data was available for differing number of months for the various courts. For example, we obtained data from the Delhi High Court for the longest time period - from November 2015 to October 2018 and from the Gujarat High Court for the second longest time period - from April 2017 to October 2018. Similarly, data was available for the Commercial Division at Bombay only from August 2018 whereas for the Commercial Court at Gauhati from July 2017. Since data was available for three courts from April 2017 and in an attempt to keep the data sets uniform, April 2017 was selected as the start date for this analysis. Additionally, since data was not available for all the months for all the courts, the average calculated is not derived from the data for all 19 months [from April 2017 - October 2018]. Instead, the time period for which it is calculated differs based on the data available for the state. For example, for the Commercial Division of Delhi and Commercial Courts at Gujarat and Madhya Pradesh, the average is calculated for 19 months. However, for the Commercial Division at Bombay it has been calculated for 3 months. The exact number of months (along with the start dates of the time periods) that have been used for these calculations are provided in both appendix 2 and appendix 4.

Jharkhand, Patna, Rajasthan, Sikkim and Uttarakhand, they have not been made a part of our analysis. Kerala and Manipur have not established commercial courts and hence been excluded from our analysis. The data set of these states and the time period of the analysis [from April 2017 - October 2018] continues to be used for calculations even in Section E of this report.

Figure 3 shows that the DHC and BHC, along with their Commercial Courts at the district level, saw the largest volume of cases instituted under the Act. Post the 2018

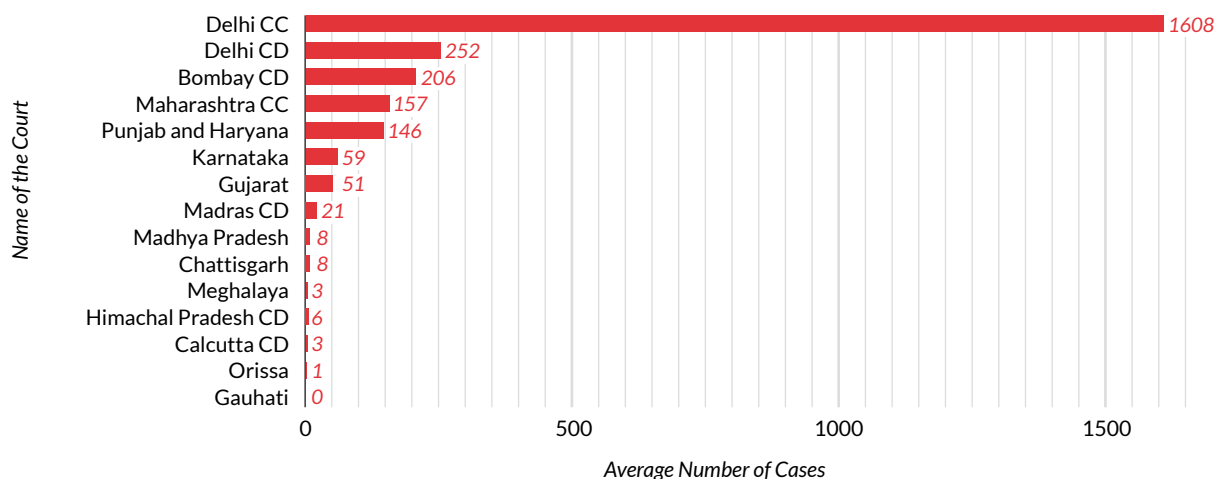
*The Commercial Courts at Delhi saw the highest number of cases instituted (1608) followed by Bombay as a distant second (157).*

amendment, the Commercial Court (which is at the district level) at Delhi has had the highest number of institutions by a large margin. An average of 1,608 cases have been instituted at the Commercial Court in Delhi,<sup>95</sup> while 157 cases were

instituted in the Commercial Court at Bombay.<sup>96</sup> It was followed by the Commercial Courts in Punjab and Haryana<sup>97</sup>, Karnataka,<sup>98</sup> and Gujarat<sup>99</sup> which averaged around 146, 59 and 51 cases, respectively. Orissa<sup>100</sup> and Gauhati High Courts<sup>101</sup> had the least number of commercial cases with an average of 1 or less than 1 case. The Commercial Division numbers saw some parity, with Delhi<sup>102</sup> (252) having an average just greater than Bombay<sup>103</sup> (206), disproportionate to the numbers from Madras<sup>104</sup> (21), Himachal Pradesh<sup>105</sup> (6) and Calcutta<sup>106</sup> (3). These numbers therefore suggest that there is a great variation in the number of cases being instituted across the courts, especially in Delhi as compared to the other states. Thus, a more targeted approach at a micro level, that takes into consideration the peculiar institution trends in these courts might be more effective than instituting courts across all districts in the state.

Another noteworthy trend was the variation in the number of cases instituted across courts after the introduction of the 2018 amendment. This increase in the number of cases filed, can be directly attributed to the reduction in pecuniary jurisdiction from INR 1 crore to INR 3 lakhs. For example, the Punjab and Haryana High Court recorded an increase from 101 to 121<sup>107</sup> cases, Karnataka saw an increase from

**Fig. 3: Average Number of Commercial Cases Instituted Between April 2017 - October 2018**



<sup>95</sup> Between September and October 2018.

<sup>96</sup> Between August and October 2018.

<sup>97</sup> Between July and October 2018.

<sup>98</sup> Between July and October 2018.

<sup>99</sup> Between April 2017 and October 2018.

<sup>100</sup> Between September 2018 and October 2018.

<sup>101</sup> Between July 2017 and October 2018.

<sup>102</sup> Between April 2017 and October 2018.

<sup>103</sup> Between August 2018 and October 2018.

<sup>104</sup> Between June and October 2018.

<sup>105</sup> October 2017 and October 2018.

<sup>106</sup> For the month of October 2018.

<sup>107</sup> From July to August 2018

47 to 72 cases.<sup>108</sup> In Delhi and Bombay where Commercial Courts have been constituted in addition to the Commercial Division, after the 2018 amendment, the number of cases at the Commercial Division level saw a decline. At the DHC the number reduced from 305 cases to 212 and at the BHC the number reduced from 354 to 136.<sup>109</sup> Madras only saw a minimal decrease with the numbers reducing from 25 to 22<sup>110</sup> cases. These numbers suggest that while there was

*Despite the reduction in the pecuniary value from INR 1 crore to INR 3 lakhs, there is no drastic increase in the number of commercial cases filed.*

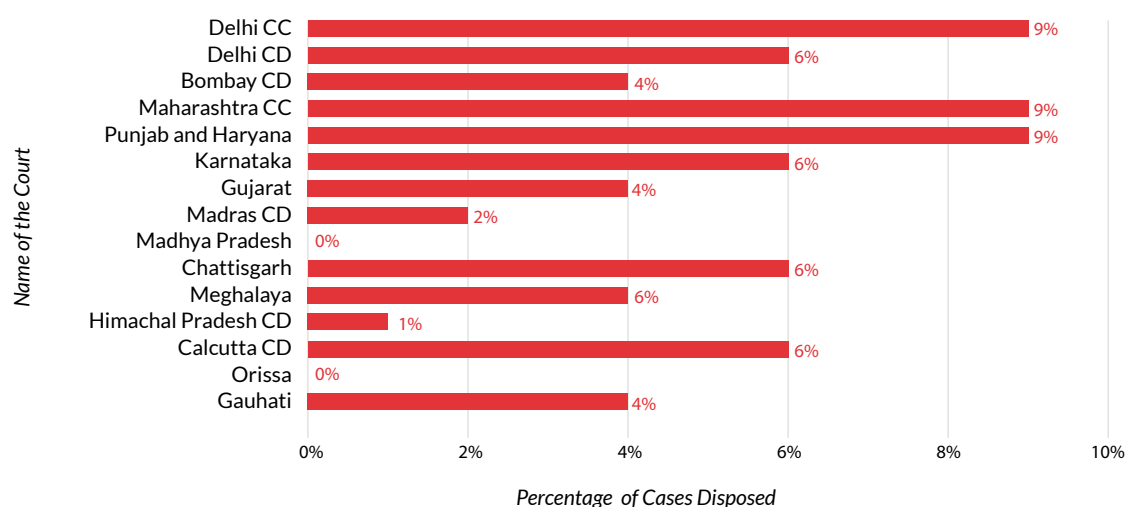
certainly an increase in the number of cases, the values were not a drastic increment. The courts that saw the largest volume of litigation, after the introduction of the amendment were the freshly instituted Commercial Courts at Delhi and

Maharashtra with an average of 1,608<sup>111</sup> and 157<sup>112</sup> cases respectively. Appendix 4b shows the trend in cases instituted after the introduction of the 2018 amendment.

## E. Disposal Rates across the Various States

Akin to a difference in the number of cases instituted, the number of cases disposed<sup>113</sup> also varied across the Commercial Courts and Commercial Divisions. In this segment, we compared the disposal rates between the different courts. The disposal rate is understood to be the percentage of the total number of cases disposed to the total number of commercial cases that were pending<sup>114</sup> in those courts. The Commercial Court at Delhi for example, has a disposal rate of 9%. This means that for every 100 cases that were pending, the Commercial Courts were able to dispose only 9 cases. This calculation is done between the time period

**Fig. 4: Average Percentage of Cases Disposed Between April 2017 - October 2018**



<sup>108</sup> From July to August 2018.

<sup>109</sup> The numbers reduced from the month of August to September 2018. Data on Commercial Courts at Mumbai were supplied to us from the month of August 2018, suggesting that Commercial Courts were probably also instituted at the same time.

<sup>110</sup> From the month of July to August 2018.

<sup>111</sup> Between September and October 2018.

<sup>112</sup> Between June and October 2018.

<sup>113</sup> The term disposed refers to the number of cases that are listed under the heading of 'disposed' as given under the disclosures of Section 17 by the various states.

<sup>114</sup> We have not qualified the term 'pendency'. It does not refer to a backlog of cases or arrears of the court. It merely refers to the number of cases pending before that particular court. Section 17 disclosures require that data be maintained under the headings of - cases instituted, cases disposed and cases pending. We have utilized this 'cases pending' data as the number of pending cases. We have calculated the number of pending cases based on the data that was obtained under Section 17 of the Act. For the most part, the time period selected for this data, for the courts noted in figure 4 was the same as noted from footnotes 95 to 108, apart from a few changes. The number of pending cases at the Bombay Commercial Division was also provided for June 2018; the time period for the Madras Commercial Division is not for the months of June - October 2018 but January - April 2018. Additionally, the Chattisgarh data was calculated from June - October 2018; Madhya Pradesh from April - October 2018; Sikkim data from July - September 2018 and Meghalaya data from April - October 2018. The Himachal Pradesh High Court data is not from October 2017 - October 2018. We were provided with stand alone data for June, October and December 2017 and quarterly data from January - March 2018, April - June 2018 and monthly data from July - October 2018. These time periods were used for the analysis for calculating the average of a particular High Court or the Commercial Courts covered under it.

of April 2017 and October 2018. As explained in the previous section, his time period has been selected based on the availability of data.<sup>115</sup>

In line with the previous chart, we have ordered the courts on the Y axis based on a descending order of the number of institutions. Therefore, the Commercial Courts at Delhi, which have the largest number of institutions, are at the top of the Y axis. The Commercial Courts at Orissa and Gauhati, which have the lowest number of institutions, are at the bottom of the Y axis. A chart comparing the number of cases disposed vis a vis the number of cases pending, in percentage is provided below. A detailed month wise break up of this data is provided in **Appendix 5** of the report.

The numbers were very underwhelming. Overall, the disposal rates were all in single digits. The Commercial Division at Delhi (at nine percent) only marginally performed better than the Commercial Division in Bombay (at four percent), but the

*The disposal rate across all states was less than 10%.*

Commercial Courts in these two states performed similarly (at 9%). The Commercial Courts at Madhya Pradesh, in total, disposed 1 of the 274<sup>116</sup> case pending before it since April 2017. Figure 4 tells us that very clearly, that courts are able to dispose a very small percentage of pending cases before it. There are likely to be three causes to this poor rate of disposal. Firstly, even though the Act makes considerable alterations to the trial procedure in place, is nonetheless constrained by the capacity of the courts themselves.<sup>117</sup> This can be in the form of infrastructure and personnel, both. Secondly, owing to the introduction of the Act, cases that were identified as commercial suits were renumbered. Thus, in addition to the number of institutions per month, there is additional set of already pending cases that also need to be decided. Thirdly, since the disposal rates are low, there is a progressive increase the pendency over time, which also leads to the accumulation of cases.

While understanding this data it is important to remember that the numbers used for pending and disposed cases are obtained from the data provided by the High Courts under Section 17 (either through disclosures on their websites or in reply to the RTI application). These numbers merely note the number of cases pending in that month and the number

of cases disposed in that month. They do not provide us information on the number of months for which the cases have been in the system. For example, the Commercial Courts in Maharashtra for month of August 2018 have 732 pending cases and just 14 cases that were disposed. The disposal percentage is therefore very low at two percent. However, given that this court was just constituted in that month, a large number of cases were freshly instituted (or renumbered). It would therefore be unfair to expect the suits to be disposed in the very same month. Thus, while the disposal percentage does indeed provide us an idea of the capacity of the courts to be able to dispose of cases, it could also project an unfair image because the time for which the cases have been in the system is indeterminable.

## F. Changing Rates of Pendency across the Courts

As noted above, we thought that one possible explanation for such underwhelming disposal rates vis a vis pending cases could be attributed to a progressive increase in pendency rates.<sup>118</sup> Thus, we also conducted a study to determine the different rates of increase or decrease of pendency across the courts. The time period of January 2017 to October 2018 was chosen for this analysis on account of availability of data.<sup>119</sup> The most comprehensible method for understanding the methodology used for determining the rate of increase/decrease of pendency is through an example. For example, the Commercial Division at Delhi has 3739 cases pending as on April 2018 and 3762 cases pending as on May 2018. Therefore, the average increase in the pending rate (calculated as a month on month increase) for the time period of April 2018 - May 2019 is 0.62%. March - April 2018, on the other hand, saw a decrease in the number of pending cases. Hence, the pending rates had a negative value

*Pendency rates across most states has increased.*

i.e. -0.13%. Similar to these calculations, we determined a monthwise increase or decrease in pendency rate for all the time periods for which we were able to obtain the data. A month wise breakdown of the increase or decrease of pendency rate is provided in **Appendix 6** of this report. In

<sup>115</sup> (n 94).

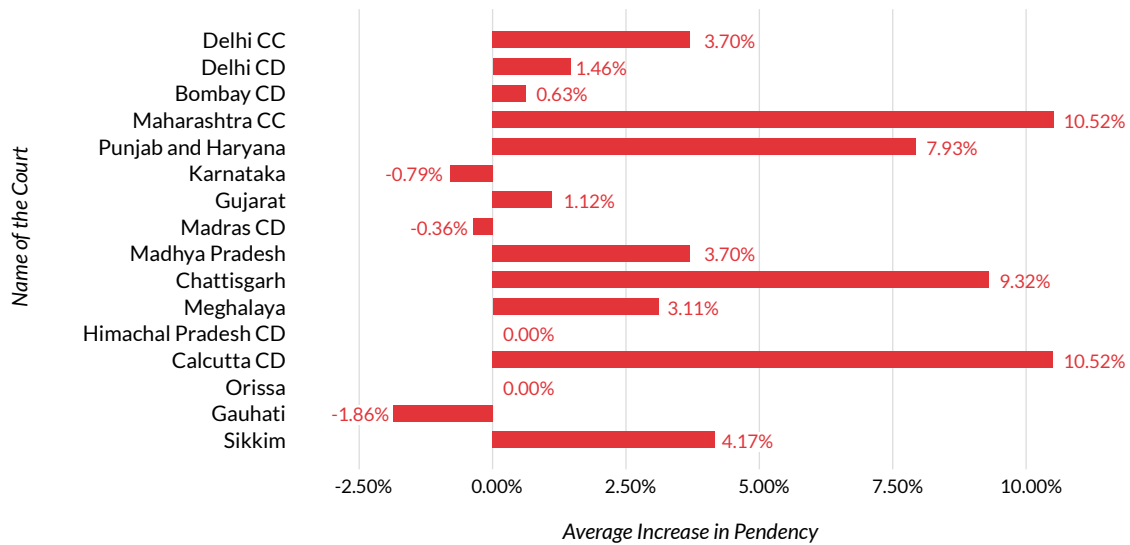
<sup>116</sup> As on October 2018.

<sup>117</sup> In a way, the arguments against the 2009 Bill regarding resource and capacity constraints of existing courts to cope with the additional workload of commercial courts and divisions, has unfortunately, materialised. See Select Committee (n 9).

<sup>118</sup> n 113.

<sup>119</sup> n 94.

**Fig. 5: Average Change in Pendency Rates between January 2017 - October 2018**



order to simplify this data, we determined the average for all these months. The results of the average are represented in Figure 5.

This figure shows us that only three states have pendency rates in negative values. Negative values represent that these states are able to dispose cases over and above the ones that are being freshly instituted in a month. Thus, out of all the courts listed above, these courts have been the most successful in disposing cases. Since we are constrained by the data that was provided to us, it cannot be determined as to why some states were performing better than other. In understanding this data, it is important to remember that increase in pendency rates across the Commercial Courts in Delhi and Bombay can also be attributed to of the large number of cases that were renumbered after the introduction of the Act and not wholly on account of the performance of the court.

## G. Appointment of Designated Judges

In order to ensure that commercial matters are dealt with by persons with the requisite skill-set, the Act specifically prescribes that judges of such Commercial Courts/Divisions/ Appellate Divisions ‘must have experience in dealing with commercial litigation’.<sup>120</sup> Section 20, further requires such judges sitting on Commercial Courts and Divisions to receive continued education and training.<sup>121</sup> The LCI in its 253rd report, envisioned judges to not just be specially trained but also ideally have demonstrable expertise and experience in commercial litigation.<sup>122</sup> Anecdotal examples from the courts however shows that it is not always the case. The data provided by the Uttarakhand High Court notes that the judge assigned to the Commercial Courts at Dehradun was a family court judge from the Pauri district of Uttarakhand.<sup>123</sup>

An analysis of rosters shows that, in practice, the judges of Commercial Divisions and Commercial Courts that adjudicate commercial disputes are also adjudicating matters that are not of a commercial nature.<sup>124</sup> In the Delhi High Court, for example, the judges designated to the

<sup>120</sup> Commercial Courts Act 2015 s 3(3), s 4(2) and s 5(2).

<sup>121</sup> Commercial Courts Act 2015 s 20.

<sup>122</sup> Law Commission of India: 253rd Report (n 16) 41- 42 and 54.

<sup>123</sup> Government of Uttarakhand Notification dated 01 December 2018 No.327 (1)/XXXVII(1)/2018.

<sup>124</sup> For example, the roster from 11 March 2019 and 12 January 2016 of the Delhi High Court and the Saket District Court clearly show how the same set of judges are hearing commercial cases in addition to other civil matters listed on their docket <[http://delhihighcourt.nic.in/writereaddata/upload/Roster/RosterFile\\_ET5ZL73WT47.PDF](http://delhihighcourt.nic.in/writereaddata/upload/Roster/RosterFile_ET5ZL73WT47.PDF)>, <[http://delhihighcourt.nic.in/writereaddata/upload/Roster/RosterFile\\_BVLMITGA.PDF](http://delhihighcourt.nic.in/writereaddata/upload/Roster/RosterFile_BVLMITGA.PDF)> and <[https://services.ecourts.gov.in/ecourtindia\\_v4\\_bilingual/cases/cases.php?flag=civ\\_t&selprevdays=0&appFlag=&lang=&str1=Peyng&lang=](https://services.ecourts.gov.in/ecourtindia_v4_bilingual/cases/cases.php?flag=civ_t&selprevdays=0&appFlag=&lang=&str1=Peyng&lang=)> accessed 08 April 2019.

Commercial Divisions are also marked on other matters in civil litigation such as arbitration matters, company matters, regular hearing matters and other original side cases. We also went through the cause list of the Commercial Divisions and reached the same conclusion. A judge designated to Commercial Division also heard company appeals and criminal original (company) petitions while another judge heard arbitration applications, in addition to matters under the Act.<sup>125</sup> A roster that precedes the introduction of the Act, shows that the same bench is hearing similar set of matter.<sup>126</sup> Thus, the difference between the cases heard before after the introduction of the Act, effectively just becomes one of nomenclature. In reality the matters continue to be heard by the same or similar set of judges, who would have anyway heard the same matters regardless of the introduction of the Act. Since, an already present set of judges are hearing these commercial matters, it would be a fair inference to draw that no new infrastructure facilities have been introduced to facilitate the working of these courts, contrary to what was envisioned by Section 19 of the Act.

Owing to the introduction of the Act, there has been a substantial increase in the number of cases that designated judges have to adjudicate upon. This issue was brought up through a writ petition before the Bombay High Court.<sup>127</sup> The petition noted that work that was distributed amongst as many as 18 Courts of Civil Judge, Senior Division and 55 Courts of Civil Judge, Junior Division, before the introduction of the Act, was being transferred to one single court of District Judge. In addition to this workload, the same judge

this disproportionate work load could be the notification of just one commercial court for the whole district, under the Act.<sup>129</sup>

The legislative history of the Act is evidence that the goal of the legislation was to expedite only high value commercial litigation. In order to expedite these cases in courts that see high volumes of litigation, there would be a need to appoint judges that solely deal with these commercial matters and provide them with additional infrastructure to facilitate the disposal of cases. Additionally, as noted in Section C, there would also be a need to designate more than one commercial court in a district that sees higher volumes of commercial litigation.<sup>130</sup> If new judges were not to be appointed and judges were only to be designated from the existing roster of judges, this would impact the general pendency of cases that are non-commercial in nature. It would be a diversion and disproportionate reallocation of resources aimed towards benefiting only those individuals that have the capacity to litigate with such high-stake monetary values.

### *Commercial cases litigated under the Act are adding to the work load of existing judges.*

was also designated as a Special Judge, dealing with the cases under the provisions of Prevention of Corruption Act, 1988 apart from hearing the other regular sessions trials, civil appeals, criminal appeals and criminal revisions<sup>128</sup> all of which are not matters related to civil litigation, let alone commercial litigation. This judge in addition to his case disposal duty was also required to perform administrative duties in the absence of Principal District Judge. One of the probable causes for

<sup>125</sup> See the cases listed before the Commercial Division (e.g. Justice Rajiv Shakhder and Justice Jayant Nath) at the Delhi High Court <<http://delhihighcourt.nic.in/parse.asp>> accessed 08 April 2019.

<sup>126</sup> Delhi High Court roster from 07 September 2015 <[http://delhihighcourt.nic.in/writereaddata/upload/Roster/RosterFile\\_70S87ACJ.PDF](http://delhihighcourt.nic.in/writereaddata/upload/Roster/RosterFile_70S87ACJ.PDF)> accessed 09 April 2019.

<sup>127</sup> PIL No. 123/2018 filed with the Bombay High Court. Contents of the Writ Petition available online <<https://barandbench.com/wp-content/uploads/2018/10/Bombay-HC-challenge-to-Commercial-Courts-Act.pdf>> accessed 08 April 2019.

<sup>128</sup> Para 18 of the Writ Petition. Also see, 'Bombay High Court issues notice in petition challenging self defeating impractical provision' *Nagpur Today*, 01 September 2018 <<https://www.nagpurtoday.in/bombay-hc-issues-notice-in-petition-challenging-self-defeating-impractical-provisions/10012229>> accessed 18 April 2019

<sup>129</sup> Law and Judiciary Department Notification No. SPC 1316/133/C.R.14/IX. Copy received via RTI reply dated 14 January 2019 <[https://districts.ecourts.gov.in/sites/default/files/commercial\\_court0001.pdf](https://districts.ecourts.gov.in/sites/default/files/commercial_court0001.pdf)> accessed 18 April 2019.

<sup>130</sup> n 127, see prayer, on further in the alternative (a).

# Chapter 4: Quantitative Impact Evaluation the Act

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## A. Methodology

To determine the impact of the Act on commercial litigation, we analyzed data from 450 cases across 3 different fora. The cases under review included 150 cases each, from the Commercial Divisions at the Bombay and Delhi High Courts, and the Commercial Court at Vadodara (Gujarat).

The Bombay High Court (BHC) and Delhi High Court (DHC) were selected, for they had the largest number of cases instituted under the Act, as evident from the RTI responses that we received.<sup>131</sup> In our RTI applications we also sought information on the exact nomenclature used for categorizing commercial cases by the different courts, which is necessary to do a case wise analysis. Nomenclature is the head for 'case type classifications' used by the High Courts and District Courts. For example, civil suits in the original side of the DHC are termed as CS(OS) [civil suits (original side)]. Commercial civil suits, on the other hand, have the nomenclature CS(Comm) [civil suits (commercial)]. Only Delhi, Bombay and Vadodara provided us with their respective nomenclatures. As such, our case-wise analysis is from these 3 courts.

We selected the first 150 cases instituted under the Act because by December 2018 around two and a half years would have passed since these cases have been instituted.<sup>132</sup> Since, many of these cases have also been renumbered, they would have additionally crossed the two and a half years since their institution. All of these cases were instituted in Delhi either in December 2015 or January 2016, in Gujarat

in July 2016 and in Bombay from May to August 2016. The analysis of the data was conducted till December 2018. The life cycle of the selected cases was comprehensively analyzed by perusing all available order sheets (from the High Court and E-courts website), and scraping off the pertinent information.<sup>133</sup>

Before going into the analyses, it will be helpful to identify the broad stages of a civil suit, which would help readers understand the importance of the indicators we have studied in this chapter. The complete lifecycle of a suit goes through many stages in court. First, the plaint along with supporting documents, is filed by the plaintiff.<sup>134</sup> Second, the plaint is considered and on its satisfaction the court issues summons to the defendant(s).<sup>135</sup> If the respondent does not file an appearance through a regular process of issuance of summons, there are also processes of substitution of summons such as publication of the summons in a local newspaper.<sup>136</sup> If the respondent does not make an appearance, then the court can continue ex-parte with the proceedings.<sup>137</sup> Third, if the respondent does appear, then she is given an opportunity to file a written statement<sup>138</sup> in response to the plaint, followed by the petitioner having the opportunity to file a rejoinder, by the leave of the court<sup>139</sup> and thereby complete the stage of pleadings. At anytime after the appearance of the respondent, interlocutory proceedings can take place.<sup>140</sup> They are intended to determine the rights of the parties in the interim, till the plaint is finally adjudicated upon. Fourth, in order to obtain documents from the other party, the process of discovery and inspection is

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<sup>131</sup> See appendix 4.

<sup>132</sup> All of these cases were instituted in Delhi either in December 2015 or January 2016, in Gujarat in July 2016 and in Bombay from May to August 2016. The analysis of the data was conducted till December 2018.

<sup>133</sup> All orders given after December 31, 2018 have not been made a part of our analysis.

<sup>134</sup> Code of Civil Procedure 1908 Order VII: Plaint.

<sup>135</sup> Code of Civil Procedure 1908 Order V: Issue and Service of Summons.

<sup>136</sup> Code of Civil Procedure 1908 Order V Rule 20: Substituted Services.

<sup>137</sup> Code of Civil Procedure 1908 Order IX Rule 6: Procedure When Only Plaintiff Appears.

<sup>138</sup> Code of Civil Procedure 1908 Order VIII Rule 1: Written Statement.

<sup>139</sup> Sunil and Vasanth Architects and Consulting Engineers and Anr v Tata Ceramics Ltd. AIR (1999) Ker 88.

<sup>140</sup> Code of Civil Procedure 1908 Order XXXIX: Temporary Injunctions and Interlocutory Orders.

conducted.<sup>141</sup> Since documents are obtained as a result of these proceedings, they are either admitted or denied by both the parties.<sup>142</sup> Fifth, the court frames the issues in the case after which the process of trial commences.<sup>143</sup> Sixth, a list of witnesses is filed by both the parties and the witnesses are summons by the court.<sup>144</sup> Evidence is led and the parties have an opportunity to cross examine the witnesses.<sup>145</sup> Seventh, the parties deliver their final arguments.<sup>146</sup> Finally, the judgment is delivered by the court.<sup>147</sup> This judgement can then be a subject matter of appeal, revision or review.<sup>148</sup> Otherwise, the decree is executed.<sup>149</sup>

We broke down this long process into the following heads and collated the information to create a dataset including:

- a. The date of institution and disposal of a suit (if not ongoing);
- b. The numbers of days taken to dispose the suit;
- c. The subject matter type classification;
- d. Method of disposal (by adjudication by the court, settlement or otherwise);
- e. Time taken to complete the process of summons, pleadings, framing of issues, plaintiff & respondent evidence, and arguments;
- a. Dates on which the court (if so) decided to move ex-parte;
- b. Interim injunction(s) granted (and dates of such interim orders);
- c. Case management hearing(s) (and dates recording such orders); and
- d. Whether summary judgment was delivered.

Based on the information that we then received, the analysis between the three courts has been done under the following headings:

1. The number of cases instituted versus cases disposed;
2. The manner of disposal of cases [settled, withdrawn, decided by the court];
3. The number of cases that are ongoing and disposed, after trial has been initiated (i.e. after framing of issues);
4. Causes for delay in ongoing cases; and
5. Miscellaneous trends arising from our analysis.

We want to caveat our data analysis before venturing further. Even though order-sheets for all 450 cases were studied, complete information was not available on the High Court and E-Courts websites for all these cases. Therefore, our findings are constrained by the inadequacy of the data available on the websites. While the sample size was of 150 cases per court, the final sample size used for the analysis of Delhi and Bombay High Court was of 144 cases. Since we were able to obtain all the data for Gujarat the sample size continued to be 150 cases. The enormity of the data gathering process required us to use law students to assist us in this process. They were assigned with the task of going through the order sheets and recording the data on an excel sheet. The data entry was supervised by the authors of this report who then reviewed the data collected.

## B. Analysis of Disposed Cases vis a vis Ongoing Cases

The first major point of difference was the overall disposal rates, that varied significantly between all the three courts. Vadodara had the least number of pending cases, where 32 of the 150 cases (21%) were ongoing. The DHC saw a slightly larger number, with 45 of its 144 cases (31%) pending. Finally, the BHC saw the largest number of pending cases with 95 of its 144 cases (66%) ongoing. These numbers were

*The Commercial Division at the Delhi High Court and Commercial Court at Vadodara have a disposal rate of more than 50%.*

calculated as on 31 December 2018, which meant that all the cases noted above neared or exceeded two and a half years from their date of institution. Since, some of these cases were renumbered on the introduction of the Act, they would have been pending for more than two and a half or three years. We also tried to determine the date of institution of the case that has been pending with these courts for the longest duration. The oldest case before the Bombay High Court was from 2005, before the Vadodara District Court from 1972 and

<sup>141</sup> Code of Civil Procedure 1908 Order XI: Discovery and Inspection.

<sup>142</sup> Code of Civil Procedure 1908 Order XII: Admission.

<sup>143</sup> Code of Civil Procedure 1908 Order XIV: Settlement of Issues And Determination of Suit on Issues of Law or on Issues Agreed Upon.

<sup>144</sup> Code of Civil Procedure 1908 Order XVI: Summoning and Attendance of Witnesses.

<sup>145</sup> Code of Civil Procedure 1908 Order XVIII : Hearing of the Suit and Examination of Witnesses.

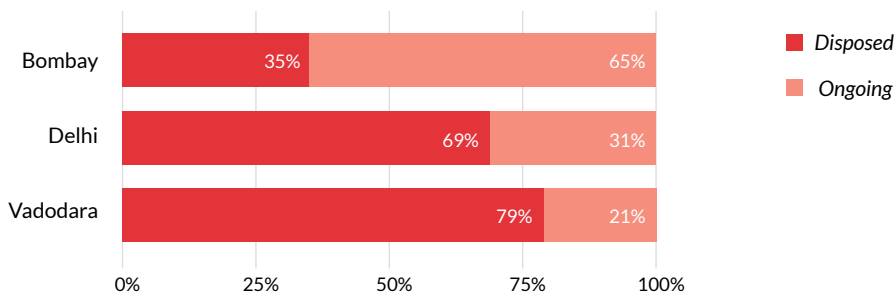
<sup>146</sup> Code of Civil Procedure 1908 Order XX Rule 1: Judgment When Pronounced.

<sup>147</sup> Code of Civil Procedure 1908 Order XX: Judgment and Decree

<sup>148</sup> Code of Civil Procedure 1908 Part VII: Appeals and Part VIII: Reference, Review and Revision

<sup>149</sup> Code of Civil Procedure 1908 Order XXI : Execution of Decrees and Orders

**Fig. 6: Percentage of Cases that have been Disposed vis a vis that are Ongoing**



1993 and before the Delhi High Court from 2009.<sup>150</sup> Figure 6 explains the difference in the number of ongoing cases across the three courts.

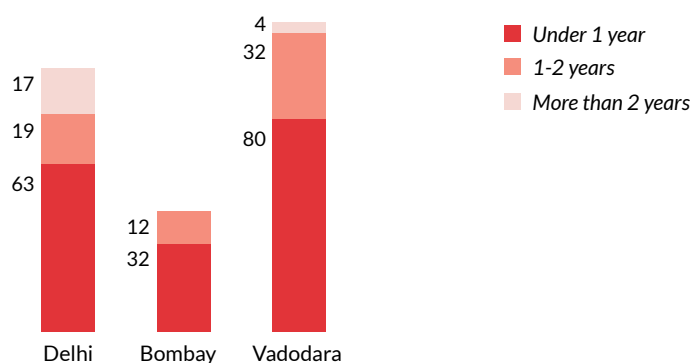
### C. Average Time Taken For Disposal of Cases

A second pertinent metric we have studied across the three courts, is the time taken for the disposal of commercial cases, given the key objective of the Act was providing an expeditious disposal of high-stake commercial litigation.<sup>151</sup> While the Act does not stipulate any specific time duration to define “expeditious disposal”, the LCI’s 188th report suggested that such courts should normally dispose cases one year, and a maximum of two years.<sup>152</sup> Hence, we are studying the time taken on average to dispose commercial

disputes. If cases have managed to meet this ambitious timeline of 2 years for their disposal, that is a positive outcome which may be attributable to the Act.

Figure 6 explains the difference in the number of ongoing cases across the three courts. In BHC, 33 of the 45 disposed cases were completed in under 1 year. However, the bulk of the BHC cases under review (i.e. 99 of the total 144 cases), approximately sixty-eight percent (68%), have significantly breached the two-year time frame, with a large number of these cases pending for almost 1000 days, or more. This context diminishes the significance of the 33 cases disposed under a year, and depicts an overall failure of the Act to expedite the disposal of a majority of commercial cases in the BHC.

**Fig. 7: Time Taken to Dispose Commercial Cases**



<sup>150</sup> There seems to be some discrepancy in the data uploaded by the Delhi High Court. The website does not always note the date on which the suit was first registered. Sometimes, the date on which the case was first instituted is recorded as the filing date while in other cases only the date on which the suit was first recorded as a ‘commercial suit’ is noted as the filing date. Thus, there could be other cases that might have been instituted before 2009.

<sup>151</sup> *Statement of Objects and Reasons* (n 1).

<sup>152</sup> *Statement of Objects and Reasons* (n 1). Also see, *Law Commission of India: 253rd Report* (n 16).

On the other hand, both DHC and Vadodara's Commercial Court manifest a more successful disposal time frame for their respective commercial cases. In DHC, 63 of the 99 disposed cases were completed in under 1 year, and only 17 of the 99 disposed cases took more than two years. The evident success of the DHC in expediting disposal of commercial cases, is significantly attributable to the type of cases being filed there. Our dataset demonstrates that 85 DHC cases, (i.e. 59%), covered issues of intellectual property

*Lesser time taken for the disposal of commercial cases at the Delhi High Court can be attributed to most of them being IPR cases.*

rights (IPR). This is unsurprising given the DHC's reputation as a leading judicial forum in India to enforce IPR.<sup>153</sup> Of these 85 IP cases, only 20 were ongoing, compared to the remaining 58 non-IP cases, where 25 were ongoing. The data, therefore, prima facie, indicates to a faster disposal rate of IP related commercial litigation, which could explain the impressive disposal rates in the DHC.

In Vadodara too, sixty-seven percent (67%) of the total disposed cases studied (i.e. 80 from the 118 cases), had been disposed under one year, with a third of the total disposed cases (i.e. 41 of the 118 cases) being disposed at the stage of issuing summons. Only a miniscule three percent (3%) have been disposed taking more than two years (i.e. 4 of 118 cases). It is also interesting to observe that a commercial court at the district level (in Vadodara) has a better disposal

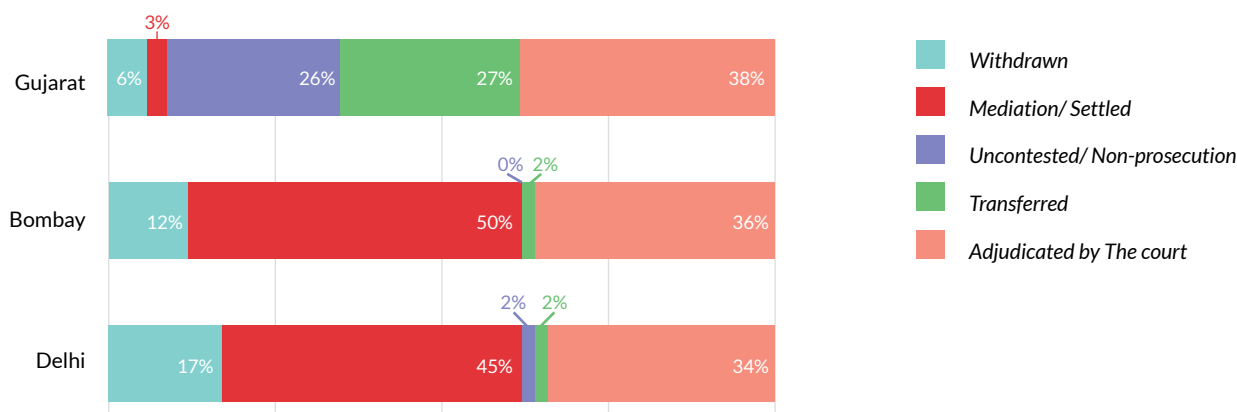
rate, and time taken for disposal, than a major commercial division at the BHC.<sup>154</sup> Being a key commercial hub, the latter would predictably have better and more effective Commercial Courts and Divisions, but the data disproves this assumption. Lastly, all three courts do show a positive trend - only a minor number of disposed cases have taken more than two years.

## D. Difference in the Method of Case Disposal

The disposal rates only tell us part of the story. This section delves into the different methods of disposal within the three courts. We have selected 5 most common methods of disposal of cases across the three courts - withdrawal of the suit, suits decided either by mediation or by mutual settlement, suits that were disposed as uncontested or because of non-prosecution, suits that were transferred because they were not commercial suits and those where the court conclusively adjudicated on the rights of the parties. Figure 8 provides the break up of methods of disposal.

As noted in the earlier sections, the Commercial Court at Vadodara (with a disposal rate of 79%) saw a marked increase in disposal rates when compared to the Commercial Divisions at Delhi (with a disposal rate of 69%) and Bombay (with a disposal rate of 35%). However, our analysis shows that 50% of the total disposed cases are a result of two categories peculiar to Vadodara - cases disposed through non-prosecution and those cases that have been disposed

**Fig. 8: Method of Disposal of Cases**



<sup>153</sup> Reddy P. (2011), 'A critical analysis of the Delhi High Court's approach to ex-parte orders in copyright and trademark cases', SSRN, available online at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1969777](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1969777), last accessed on April 15, 2019.

<sup>154</sup> It is pertinent to reiterate Arun Jaitley's comments lauding the lower courts for their disposal rates while expressing strong concern over the sluggishness of the high courts. See Rajya Sabha (n 15), comments of Sh. Arun Jaitley (344-345).

on account of being transferred. Thus, the 79% disposal rate of Gujarat, cannot be directly correlated to the success of the Act. Instead, it has to be understood in light of these two categories.

Both Bombay and Delhi saw a significantly large of number of cases that were withdrawn, settled or a result of mediation. We argue that these cases would have seen the same outcome even if the Act had not been made applicable to these cases. Cases that are withdrawn or settled between the parties are on account of their own volition and not

*More than 50% of disposed cases at the Vadodara Commercial Court were either transferred or uncontested.*

as a result of a procedural reform such as the Act. Given the significant proportion of cases that were settled due to mediation, one would argue that the Act provided encouraged parties to mediate or settle which would ideally not have occurred otherwise. However, the the Commercial Courts (Pre-institution Mediation and Settlement) Rules that mandate mediation were introduced only in the year 2018, while all of the above cases have been instituted either in December 2015 or January 2016. Thus, in essence the only section of cases that could be a result of the expeditious procedure under the Act, are the cases marked in the segment coloured pink, which form only about 30% of cases across all the three states.

The data from Delhi also provides us an interesting trend. Of the cases that have been settled, issues had been framed in only 9 i.e. 20% of these cases. This means that out of the 45 cases that were disposed, 80% of the cases were settled at the pre-trial stage, even before the issues had been framed. Additionally, of the 29 cases that had been settled 25 i.e. 86% of them were IPR related. The trend continues even with cases that have been withdrawn. Barring three cases, all the withdrawals were also before the issues had been framed. Since these cases were disposed before the issues had been

framed, a legislation that has been specifically introduced to expedite the trial of suits, would not have impacted the outcome of these cases. The disposal of these cases are thus not a result of any expediting procedure, such as the Act.

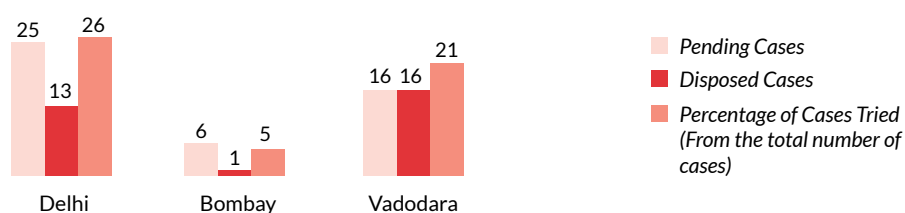
## E. Analysis of Cases which have Actually Gone to Trial

As discussed in the earlier chapters, the Act has effectuated several amendments to provisions of the Civil Procedure Code 1908, with the intention of expediting the process of litigation. However, a meaningful evaluation of the impact of these amended provisions can only happen from cases actually going to trial. Cases which are settled or withdrawn (for any reasons), or which have been transferred out of a commercial court or division, do not test the impact of the Act. Therefore, we used our datasets from DHC, BHC, and Vadodara District Court, to identify:

- The number of pending cases which are actually proceeding to the stage of trial, i.e. where issues have been framed;
- The number of cases which have been disposed after going to trial; and
- The percentage of cases that are going to trial in each of the three courts (in their overall sample size).

At the Delhi High Court, issues have been framed in only 38 of the 144 cases (i.e. 26%). From these 38 cases going to trial, 25 are still ongoing. Thus, almost 66% of the cases going to trial are still pending. Likewise, the BHC also has a low number of cases actually being tried. The dataset reveals that issues have been framed only in 7 of the 144 cases, which is a meagre 5% of the total cases. 6 of these 7 cases being tried (i.e. 85%) are still ongoing. At the Vadodara District Court also, issues have been framed in only 32 of the 150 cases (i.e. 21%), with 16 cases each, being pending and disposed, respectively.

Fig. 9: Distribution of Cases Going to Trial under the Act



All three courts have, therefore, demonstrated a low number of cases actually being tried. This finding becomes relevant when considered in the context of how the Act was designed to expedite procedural processes of trial. However, whether these procedural amendments have actually improved the speed of trying cases is rendered moot given how only a few cases even reach trial. Thus, for most of the cases which are settled, or withdrawn, or transferred, or disposed in some other manner, all the procedural changes may prove to be largely inconsequential.

*A primary objective of this act was to expedite the trial process, which is redundant given that most cases do not even reach trial.*

Another argument to be made from these figures is regarding the actual efficacy of the procedural amendments under the Act in actually hastening the disposal of commercial cases. As figure 9 shows, most of the cases actually going to trial are still pending. It is pertinent to mention here that the delay in disposal also breaches the categorical timeline set out in Rule 3 of Order XV-A, to complete the trial by concluding arguments in six months from the date of the CMH.<sup>155</sup> Thus, arguably, the trial prolongs the time taken to dispose these cases, a finding that impugns the effectiveness of the procedural amendments under the Act, specifically introduced to expedite the trial process.

## F. Cause of Delay in Ongoing Cases

Vadodara, Delhi and Bombay have had 32, 45 and 94 cases that are ongoing respectively, which accounts for 21%, 31% and 66% respectively of the cases filed or renumbered post December 2015. This data shows that all these cases have been pending for almost two and a half years,<sup>156</sup> which is more than the ideal time frame of 2 years proposed by the LCI. In order to determine the causes of delay in all these

cases, we did a qualitative analysis of the different causes of delay in these ongoing cases. The categories of these causes included - the amount of time taken to issue summons, to complete pleadings, on account of evidence, on account of adjournments and on account of delay in admission and denial.<sup>157</sup>

The information and order sheets uploaded on the website of the Bombay High Court were poorly maintained and did not adequately detail the lifecycle of a case. Additionally, it was seen that a large number of hearings were allocated as notice of motion hearings, which also do not outline the stage of a case. Thus, the Bombay High Court was excluded from this part of our analysis. This reduced the sample size for the analysis to 77 i.e. the sum of ongoing cases from the Delhi High Court and the Vadodara District Court.

*Delay on account of pleadings:* 28 of 77 cases (i.e. 36%) saw a delay on account of pleadings. Even though the Act limits the time for the completion of written statement to 30 days (with the maximum time of 120 days), 11 of these 32 cases have had four or more hearings dedicated to the completion of pleadings. Based on an approximate calculation, 11 cases are certain evidence<sup>158</sup> that this provision has not been given effect. A case from the Commercial Court at Vadodara took 8 hearings i.e. 390 days<sup>159</sup> for the pleadings to be completed<sup>160</sup> out of which 6 hearings i.e. 257 days were utilized for the completion of written statement. This is blatant violation of the maximum time limit to file a written statement i.e. 120<sup>161</sup> days. Moreover (including the data from the Bombay High Court), out of the total number of 171<sup>162</sup> ongoing cases, the right to file a written statement was closed in only 1 case [at the Delhi High Court]. This number would arguably have been higher if the Amendment to Order VIII of the CPC would indeed have been applied.

*Time taken to record evidence:* Before the Commercial Division at Delhi, evidence was recorded<sup>163</sup> in only 37% of the ongoing cases (12 of 32 cases) with an average of about four hearings utilized to complete the whole process of evidence. The case with the highest number of hearings totalled to 9. The

<sup>155</sup> Commercial Courts Act 2015 Order XV-A Rule 3: Time limit for completion of trial. See also, *Roland Corp. v Sandeep Jain*, CS (Comm) 565/2018, order dated 15.01.2019.

<sup>156</sup> All of these cases were instituted in Delhi either in December 2015 or January 2016, in Gujarat in July 2016 and in Bombay from May to August 2016. The analysis of the data was conducted till December 2018.

<sup>157</sup> A substantial number of cases in the Gujarat High Court are termed under the heading 'hearing' without providing further information on what constituted these hearings. These 'hearings' formed a substantial chunk of the time utilized by the court, with some cases having upto 12 'hearings' Since, the content of these hearings could not be deciphered, no analysis has been done of this category.

<sup>158</sup> Assuming, even though unlikely, that the average number of days taken between hearings is 10 days, 4 hearings would account for more than 40 days.

<sup>159</sup> Vadodara Commercial Court, cases no: COMM 141/2016.

<sup>160</sup> This includes the time taken for filing of written statement and rejoinder.

<sup>161</sup> This provision has been upheld in *SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd.* 2019 SCC OnLine SC 226 and *Axis Bank Ltd. v. Mira Gehani*, 2019 SCC OnLine Bom 358

<sup>162</sup> Cumulative of the 32, 45 and 94 ongoing cases at Vadodara, Delhi and Bombay.

<sup>163</sup> We are cognizant of the fact that in many cases evidence is not recorded in front of a judge, but before a Commissioner. The dates utilized for the process are not recorded in order sheets of the various courts. Thus, these days do not form a part of our analysis.

numbers were much higher at the Vadodara Commercial Court. Evidence was conducted in 75% of ongoing cases (24 of 32 cases) with an average of about 11 hearings to complete the whole process. The case with the largest number of evidentiary hearings totaled to 27, with one case still being pending at the evidence stage since its institution in January 2016.

*Time taken on account of adjournments:* Before the Commercial Division of the Delhi High Court, 40% of cases saw an average of 5 adjournments being taken per case. The number of cases when the adjournments were

*Excessive adjournments, across all courts, continue to be a major cause of delay and remain unaddressed under the Act.*

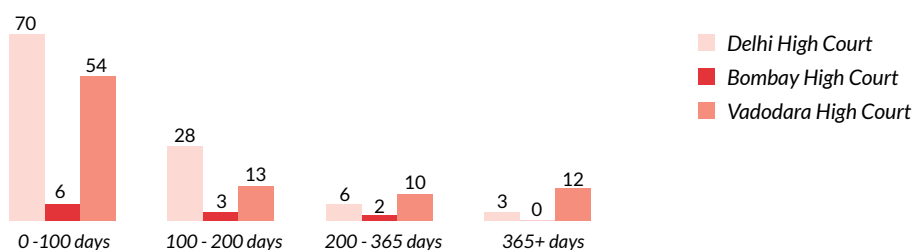
taken were significantly higher in Gujarat, with 93% of the cases having an average of four adjournments case. The primary cause of adjournment in these cases was under the category of 'adjudicator/ presiding judge on leave'. These numbers seem to be the norm even though the Code of Civil Procedure suggests that no more than three adjournments be granted.<sup>164</sup> A previous study conducted by Vidhi finds that the causes of delay are a product of delays from both the side - the bench and the bar.<sup>165</sup> While these numbers are certainly a cause of delay in the courts, they are arguably not a feature of litigation which could be altered by just introducing procedural reforms such as the Act. There seems to be a larger cause at play such as the litigation culture within the bar and the bench, which can only be undone by the bar itself or by the bench taking more control of the court.

*Time taken to complete summons' process:* While conducting our study we realized that a significant portion of time was utilized in the process of completing summons. We therefore, conducted a closer scrutiny of the process, despite the limitations of the data available, from the ordersheets. Firstly, we compared the average number of days taken for the process of summons in all cases across the three courts i.e. the date on which the summons were issued, against the date on which the defendant put in an appearance.<sup>166</sup> Secondly, given the better and more detailed information available for the DHC cases, we conducted a more nuanced analysis of the time taken for the process of summons at the DHC Commercial Division.

Figure 10 below shows the time taken in issuing summons in all three courts, comparatively. It is noteworthy to mention that from the BHC cases, we were unable to extract information on the summons' process only in 11 of the total cases (i.e. approximately 7.6%). As such, we could not produce any conclusive and accurate analysis of such a limited sample set.

Both the DHC and Vadodara cases have the largest chunk of cases, respectively, completing the summons process in around three months (0-100 days). However, Vadodara has the highest number of cases where the summons process has lingered on for over a year (>365 days). Of these 12 cases in Vadodara, it is pertinent to also note that 8 are still pending, and have not even completed the stage of summons. It is interesting to note here that while the Act enacted several procedural changes pertinent to the trial process, the summons' process was left unaltered. Our research indicates that summons is clearly a point where the litigation stalls right at the outset. As such, considering some time bound completion of this process might aid in accomplishing the objective of expediting the process of commercial litigation.

**Fig. 10: Time Taken for Issuing Summons in All Cases**

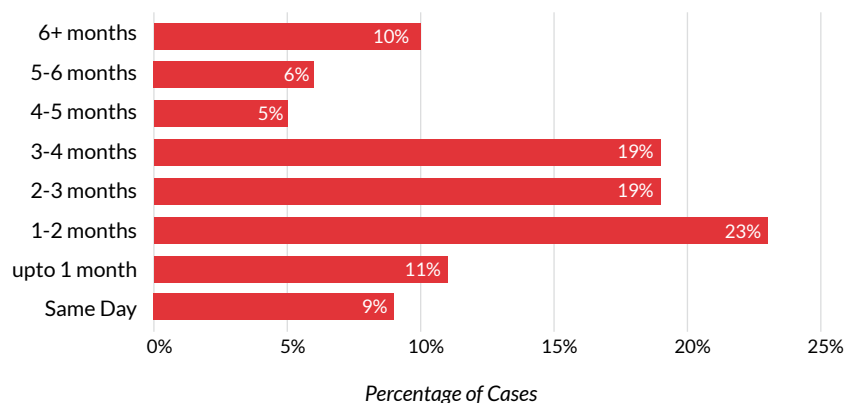


<sup>164</sup> Code of Civil Procedure, Order 17 Rule 1 makes this suggestion for the hearing of a suit.

<sup>165</sup> Vidhi (n 69).

<sup>166</sup> Since we can not ascertain the date on which the summons was indeed served, we have utilized the date on which the defendant puts in an appearance. In the event that there were more than one defendant, we have noted the day on which the court substantively proceeded with the matter.

**Fig. 11: Time Taken on Account of Summons at the Delhi High Court**



Given the relative better performance of Delhi, and the availability of more granular data, we examined all its cases (and not just the ongoing ones) to compute the average time taken for processing summons. While the overall sample size of the Delhi High Court was 144 cases, for the purposes of this analysis it had to be reduced to 117 cases.<sup>167</sup>

Figure 11 tells us that the majority of cases where the process of summons was completed were between one to three months.<sup>168</sup> The numbers above the three month range suggest that there might be larger institutional problems at

*Summons as a cause of delay remains unaddressed under the Act. In Delhi for example, despite taking 958 days and 11 hearings, the summons process is still incomplete.*

play that a procedural law such as the Act might not be able to resolve. A report by Daksh, has also previously noted that one of the largest causes of delay in the litigation process occurs on account of summons.<sup>169</sup> However, the introduction of the Act, has not brought about any amendments concerning the process of completion of summons.<sup>170</sup>

Interestingly, of the cases that we analysed, in 2 cases, the service process has taken more than a year. In one of these cases, the service is still incomplete and the case is still ongoing. In this particular case, 958 days and 11 hearing have been lapsed, yet the defendant has still not been served. In the second case, after the passing of 708 days and incomplete service the case was withdrawn. These timelines have occurred even though there are provisions in place under the CPC, if a party is failed to be served in the first instance. This includes the process of substitution of summons.

However, an interesting trend arose from the cases where the process of summons took six months or more. The average number of hearings was still around one or two hearings, with some cases having three to four hearings. Thus, the cause for cases that have crossed three months is not just because the process of summons occupies time, it is also because matters are getting listed in court after considerable gaps of time. While the Act brings about a lot of changes, they can only be effective if a larger structural change can be brought about which would reduce the gap between the listing dates of a case.

This entire segment also reinforces a notion we have stipulated previously in this study - procedural reforms can only remedy so many ills of litigation. A more holistic reformatory proposal must improve the litigation culture, as procedure alone cannot be a panacea for judicial backlog, and inordinate delays in disposing cases.<sup>171</sup>

<sup>167</sup> In 20 cases, since they were renumbered matters, the orders don't specify the date on which summons were issued by the court and received by the defendant. In 7 cases the plaint was either withdrawn or the petitioner was asked to file a fresh plaint, before service was completed. Thus, 27 cases are not a part of our analysis.

<sup>168</sup> A month is counted as 30 days.

<sup>169</sup> Daksh & Vidhi Centre for Legal Policy, 'Creating Order from Chaos: A Study on Caseflow Management in Courts' (September 2017) 18.

<sup>170</sup> Code of Civil Procedure 1908 Order V and s 20.

<sup>171</sup> Moog (n 28) and Krishnaswamy (n 28).

## G. Overall Trends Emerging from the Datasets

Apart from identifying and studying different metrics for pending and disposed cases, we also found the following interesting overall trends emerging from the dataset:

- a. Cases where a case-management hearing took place;
- b. Cases where summary judgments were delivered; and

### 1. Cases where case-management hearing took place

Of the 450 cases that we analysed, the order sheets of Bombay and Delhi High Court reflected that no case management hearings have taken place. At Vadodara out of the 150 cases that were analysed, a case management hearing was conducted in 28 cases (18%), which even though higher than Mumbai and Delhi is a pretty dismal record. Since the eCourts website does not provide us with details on what occurred in these hearings, the quality of the hearings in Vadodara are unascertainable. However, there have been cases at the Delhi High Court where parties have been told conduct the admission/denial of documents as per the schedule under the Act. There have also been cases where the hearings chart out the time periods for the completion of pleadings and note dates on which issues have been framed. However, since these hearings do not qualify as CMH under the act, they have not be classified as such.

In addition to conducting these hearings the act also deters the hearing from being adjourned.<sup>172</sup> However, in the case of Delhi, we found two cases in which the date of the a case

*CMH, which is mandatory under the Act, was conducted in only 2 out the 150 cases at the Delhi High Court.*

management hearing was decided, and later adjourned and finally never conducted. Through additional research, we also found that even when case management hearings are indeed conducted, there is an improper use of this provision.<sup>173</sup> As general practice however, the Delhi High Court does designate a few dates that need to be followed. These dates

generally include the date on which the written statement or rejoinder can be filed and on occasion when the admission/denial of documents is to be conducted and the issues have to be framed. All of these procedures are however, in the pre-trial stage. The schedule under Order XVA categorically requires that a clear timeline be provided on the exact dates for all the various stages of trial. For example, the date on which list of witnesses has to be provided, the affidavit of evidence is to be filed by the parties and oral arguments are to be conducted. Of the data we have been able to obtain from Delhi and Bombay, the courts do not follow this procedure.

While avoiding repetition of aforementioned arguments, it must be categorically stated that these numbers present an overall dismal picture of the shoddy and haphazard implementation of a procedural reform deemed vital for the streamlining and expediting of commercial litigation.<sup>174</sup> The provisions on CMH mandate judges to hold these meetings and prepare schedules, yet, the empirical evidence raises questions to the real utility and effectiveness of isolated procedural reforms, instead of reforms targeting the overall litigation culture.<sup>175</sup>

### 2. Cases where summary judgment was delivered

Of the 450 cases that were analysed (across all three courts), a summary judgment has not been delivered in any of them. Like CMH, the provision for summary judgments was espoused as useful procedural reform. However, as with CMH, this provision has failed to deliver its intended purpose. The fact that no cases have been disposed through summary judgment(s), shows that the its usage is not a popular tool for expediting disposal. More analysis on why summary judgments are not being applied for by the bar would require some qualitative insights from such commercial litigators. However, the same is not within the ambit of this study.

## H. Miscellaneous findings from the datasets

In addition to these overall trends, we also found an interesting trend from our dataset. A peculiarity reflected by the BHC cases was the significant delay in the time that has lapsed since the last date of hearing, till 31 December 2018

<sup>172</sup> Commercial Courts Act 2015 Schedule 7. Order XVA: Case Management Hearing, Rule 7: Adjournment of Case Management Hearing

<sup>173</sup> An example of this improper usage is evident in the recent order passed by the DHC in *Roland Corp. v Sandeep Jain* (n 155). In this case the court allowed for CMH under Rule 5 of Order XVA 'during the trial'. However, the provision states that such secondary (follow-up) CMH can happen to ensure adherence to a scheduled timeline. This implies an original CMH under Rule 1 which sets out such a timeline (including a timeline for arguments). However, in this case, admittedly no CMH could be held initially because the provision came into existence subsequently. This makes the allowance of a supplementary CMH under Rule 5 questionable, as was permitted and conducted by the DHC.

<sup>174</sup> Law Commission of India: 253rd Report (n 16) 44-45.

<sup>175</sup> Moog (n 28) and Krishnaswamy (n 28).

(i.e. the cut-off date for our data gathering process). In sixty-six percent (66%) of the ongoing cases, the last hearing took place more than a year ago, while in twenty-three percent

*In 23% of commercial cases at the Bombay High Court, no hearing has taken place in over 2 years.*

(23%) of these cases, the last hearing happened more than two years back (i.e. over 730 days). The fact that two-thirds of the ongoing cases are suffering from this lapse in BHC, is a highly worrisome discovery. Compared to this, in the Vadodara district court, all 32 pending cases have had their last hearings in December 2018 thereby showing a continued activity in these cases. It also further lends credence of a District Court seemingly outperforming a High Court.

# Concluding Remarks

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Our study has undertaken an extensive review of the Act's implementation, and actual case data analysis. There are some key conclusions, which become abundantly clear. First, national laws must understand and appreciate nationwide considerations. As we have discussed, while tabling both the 2015 Bill, and the 2018 Amendment, the government has largely targeted the political optics of raising India's rank in the EDOB index, and improving the country's image as an investment destination. In this process, the government has made a foreign index (which only focuses on two cities, i.e., Delhi and Bombay), as the fulcrum of a pan-Indian legislation. This has consequently achieved short-term objectives (of boosting India's rank), but failed to target the real, systemic issues prevailing in our litigation culture, which were also pointed out by the LCI.

While the politics of policy making is an inextricable reality of the whole process, better decision-making can happen by adopting a more evidence-based approach to judicial reforms. This study, therefore, reiterates the importance of meaningful stakeholder engagement, over short-term political gains. The purpose of enacting a law cannot be limited to gaining better reputation on paper (as is visible in India's improved ranking in the Doing Business report). The purpose must focus on actual reform, and the reputational perceptions will follow as incidental gains.

Second, even the procedural modifications under the the Act, as it stands today, leave room for betterment. For instance, presently, there is no provision prescribing a time frame for completing the summons process. As our quantitative analysis showed, issuing summons causes significant delays in a considerable number of commercial cases. Yet, the Act has not identified this a necessary procedural reform. This could, arguably emanate from the lack of adequate research being conducted on such aspects, and is one reason why impact evaluation studies like ours are necessary for better informed policymaking.

Thirdly, while procedural aspects have been introduced under the Act, they have seen a haphazard and poorly designed implementation. Take for example the failure of complying with the provisions of Order XVA (on case management hearings). This onus is imperative and not voluntary, as is evident from a plain reading of the language of governing provisions of the Act. However, the case datasets we have generated clearly expose a lackadaisical implementation of the same. In other jurisdictions like the United States

(commonly cited as a model jurisdiction to promote case management), such hearings set out definitive schedules, which can only be altered, in extraordinary circumstances after a party establishes good cause for such change. Another provision also suffering from poor implementation is the mandate for collating and publishing (monthly) judicial statistics on commercial cases by all High Courts under Section 17 of the Act. Yet again, this demonstrates the systemic apathy to mandates under the law (even from the bench), and exposes the flaws in assuming that the letter of law is implemented in spirit. Lastly, the poor implementation is also exposed by the manner in which commercial courts have been designated in areas with little or no commercial litigation, reducing them to unnecessary fora.

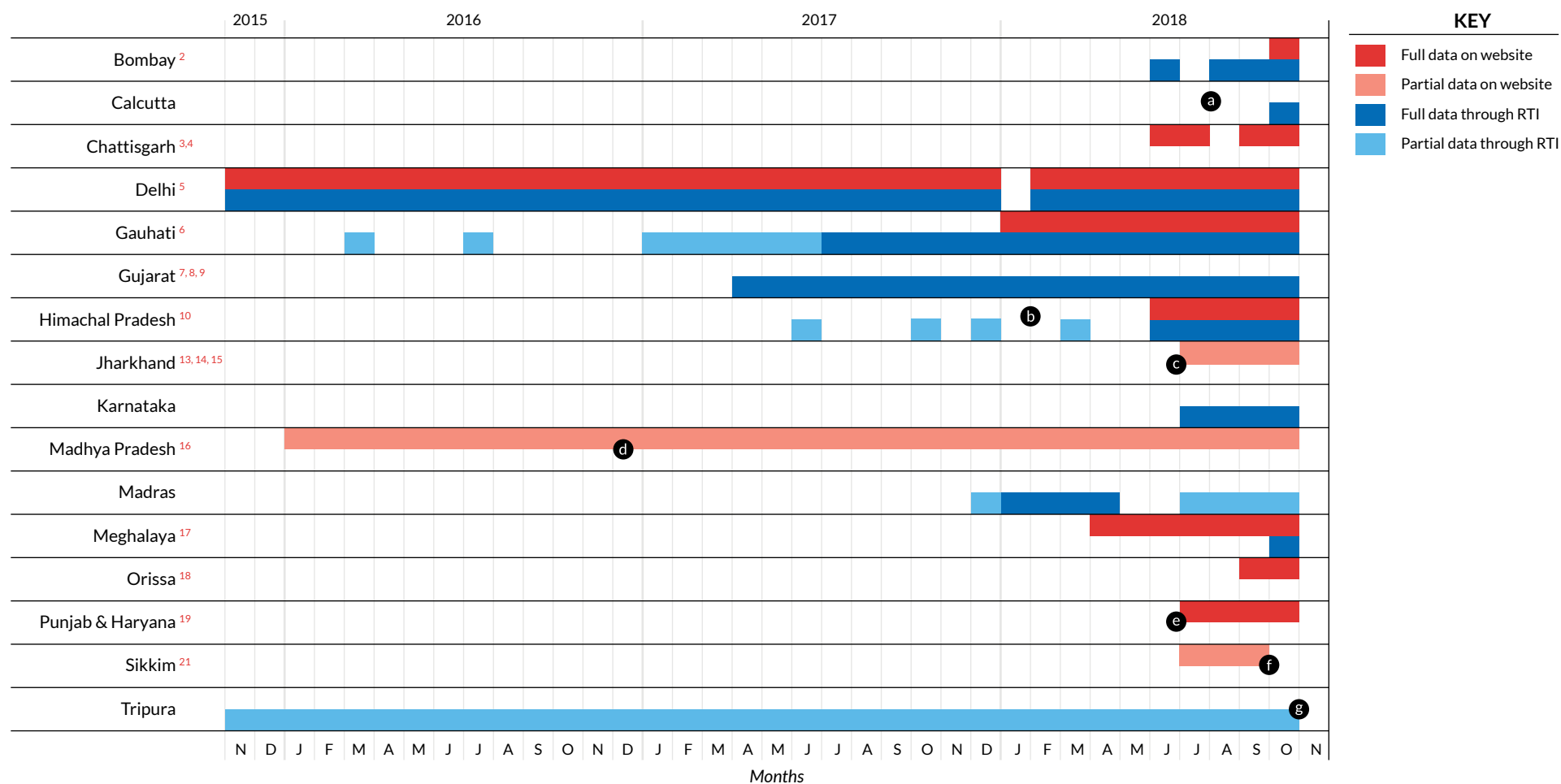
In our evaluation, for these reasons, the Act and its implementation serve as a valuable case study for rethinking the design and implementation of judicial reforms in India.

# Appendices

## Appendix 1: Format for Maintaining Data Under the Section 17 of the Act

Name of the Court	Commercial Courts (if any)	Commercial Appellate Courts (if any)	Commercial Division (if any)	Commercial Appellate Division
No. of Cases pending on the first day of the month				
No. of new cases instituted during the month				
Total cases pending in the court on the last day of the month				
No. of cases disposed during the month				
Average number of days taken to decide the case				

## Appendix 2: Compliance with Section 17 of the Act and Commercial Courts (Statistical Data) Rules, 2018



**a** Data refers only to commercial division. No commercial courts data provided

**b** Partial data is on account of quarterly data being provided

**c** Jharkhand High Court maintains a list of cases that are pending, but does not maintain data on the fresh institutions under the Act <<https://jharkhandhighcourt.nic.in/report-commercial-appellate-division-high-court-jharkhand>> accessed 30 April 2019.

**d** No consolidated data. However, disclosure for both the High Court and the District Courts provided in the form of a drop down menu from January 2016 to October 2018.

**e** Data provided in reply to our RTI application is different from the data uploaded on the website.

**f** However, the RTI reply states that Section 17 information is not recorded but will be maintained going forward.

**g** No Section 17 disclosure made on the website. District wise data provided. Dharmanagar has provided data for all months between 2016 and 2018 where only 1 case has been instituted. Other districts have stated that the information is 'NIL'.

The High Courts of Allahabad<sup>1</sup>, High Court of Judicature at Hyderabad<sup>11,12</sup>, Patna High Court, Rajasthan High Court<sup>20</sup>, and Uttarakhand High Court, did not provide any information to our RTI applications, or publish any data on their websites under Section 17.

Commercial Courts have not been constituted by the High Court at Kerala and the Manipur High Court.

<sup>1</sup>The first round of analysis of the High Court website was conducted on 15 November 2018. No data was found. A second round of verifying exercise was conducted on 12 March 2019 and no data till October 2018 was found. However, data from November and December 2018 has been uploaded was uploaded on 05 January 2019. Interestingly, this information was uploaded after an RTI application seeking Section 17 data was filed with the High Court on 20 November 2018.

<sup>2</sup>Bombay High Court, 'Statistical Data Regarding Commercial Courts' <<https://bombayhighcourt.nic.in/commercialcourt.php>> accessed 30 April 2019.

<sup>3</sup>Chhattisgarh High Court, 'Statistical Report' <[http://highcourt.cg.gov.in/statisticsN/cc/sta\\_cc.html](http://highcourt.cg.gov.in/statisticsN/cc/sta_cc.html)> accessed 30 April 2019.

<sup>4</sup>Central Information Commission in L.G. Dass v Patiala House Court [2014 SCC Online CIC 8330] held that fee for an appeal cannot be prescribed.

<sup>5</sup>Delhi High Court, 'Commercial Court Statistics' <<http://delhihighcourt.nic.in/CommercialCourtStatistic.asp>> accessed 30 April 2019.

<sup>6</sup>Gauhati High Court, 'Statistics' <<http://ghconline.gov.in/statscca.html>> accessed 30 April 2019.

<sup>7</sup>When the RTI was filed, no data was recorded. However, as on 26 March 2019 data is being recorded from December 2018 onwards. This data has not been used for the analysis as it was after the cut off date used for the analysis i.e. October 2018.

<sup>8</sup>A Commercial Division can only be constituted in a High Court which has ordinary original civil jurisdiction. The Gujarat High Court does not have this jurisdiction and hence cannot have a Commercial Division.

<sup>9</sup>Information received via RTI application notes that the closing balance as on 30 November 2018 as 1149. The Gujarat High Court websites notes the opening balance as on 01 December 2018 as 1268. These values are required to be same. Since data for the months used for our analysis (December 2015 - October 2018) is only available in reply to the RTI application, it has been utilized for the purposes of our analysis.

<sup>10</sup>Himachal High Court, 'Announcements' <<https://hphighcourt.nic.in/>> accessed 30 April 2019.

<sup>11</sup>We had filed applications on 20 November, 2018. The High Court of Judicature of Hyderabad had not been bifurcated into the High Court of Telangana and High Court of Andhra Pradesh.

<sup>12</sup>The High Court of Telangana has started maintaining this information from February 2018.

<sup>13</sup>Jharkhand High Court maintains a list of cases that are pending, but does not maintain data on the fresh institutions under the Act <<https://jharkhandhighcourt.nic.in/report-commercial-appellate-division-high-court-jharkhand>> accessed 30 April 2019.

<sup>14</sup>Jharkhand High Court, <<https://jharkhandhighcourt.nic.in/data-related-commercial-courts>> accessed 30 April 2019.

<sup>15</sup>The DoPT circular No. 1/2/2007-IR dated 23 March 2007 and the Central Information Commission decision in Chanderkant Jamnadas Karia v Vice-President's Secretary New Delhi [2010 CIC 426] has held that an RTI application cannot be rejected on the ground that (1) a format has not been followed, till the time that all relevant information required for the purpose of contacting him are provided and (2) declaration requiring a the application to "owe allegiance to the sovereignty, unity and integrity of India" has not been made.

<sup>16</sup>Madhya Pradesh High Court, 'List of Commercial Cases in High Court of Madhya Pradesh' <<https://mphc.gov.in/commercial-courts>> accessed 30 April 2019.

<sup>17</sup>Meghalaya High Court, 'Statistics' <<http://meghalayahighcourt.nic.in/statistics>> accessed 30 April 2019.

<sup>18</sup>Orissa High Court, 'Statistical Data Showing The Pendency, Institution & Disposal of Commercial Suits in the Commercial Courts of the State of Odisha for the Month of September, 2018' <<http://www.orissahighcourt.nic.in/pdf/newstender/stasep2018.pdf>> accessed 30 April 2019 and , 'Statistical Data Showing The Pendency, Institution & Disposal of Commercial Suits in the Commercial Courts of the State of Odisha for the Month of October, 2018' <<http://www.orissahighcourt.nic.in/pdf/newstender/staoct2018.pdf>> accessed 30 April 2019.

<sup>19</sup>Punjab and Haryana High Court, 'Case Statistics' <<https://highcourthd.gov.in/?trs=statistics>> accessed 30 April 2019.

<sup>20</sup>The first round of analysis of the High Court website was conducted on 15 November 2018. No data was found. A second round of verifying exercise was conducted on 12 March 2019 and no data till October 2018 was found. However, data for February 2019 for the Commercial Courts and the Commercial Appellate Division has been uploaded on the website. Interestingly, this information was uploaded after an RTI application seeking Section 17 data was filed with the High Court on 20 November 2018.

<sup>21</sup>Sikkim High Court, 'Information about Commercial Cases in various Commercial Courts constituted under Section 3,4 and 5 of the Commercial Courts Act, 2015 of the High Court of Sikkim and Subordinate Courts of Sikkim for the month of July 2018' <<http://highcourtofsikkim.nic.in/hcs/sites/default/files/CaseStatment/Commercial%20Cases.pdf>>; for the month of August 2018 <<http://highcourtofsikkim.nic.in/hcs/sites/default/files/CaseStatment/Commercial%20Cases%20August.pdf>>; for the month of September 2018 <<http://highcourtofsikkim.nic.in/hcs/sites/default/files/CaseStatment/Commercial%20Cases%20info.pdf>> accessed 30 April 2019.

### Appendix 3: Notification of the Commercial Courts Act

S. No.	High Court	Date on which the Commercial Courts Act was notified
1	Allahabad High Court	<ul style="list-style-type: none"> <li>No information available on the website.</li> <li>No reply to RTI. Appeal filed. No reply.</li> </ul>
2	Bombay High Court	<ul style="list-style-type: none"> <li>31 December 2015: Notification issued to give effect to the provisions of the Act.<sup>22</sup></li> <li>04 May 2016: Commercial Divisions at the High Court [via Practice Note]<sup>23</sup></li> <li>30 June 2016: Commercial Courts at every district outside the ordinary original civil jurisdiction of the</li> <li>Bombay High Court.<sup>24</sup></li> <li>03 November 2016 and 21 December 2017: Commercial Courts at Goa<sup>25</sup></li> <li>24 April 2017: Commercial Court at Diu for Daman &amp; Diu<sup>26</sup></li> <li>18 May 2017: Commercial Court at Silvassa for Dadra &amp; Nagar Haveli<sup>27</sup></li> </ul>
3	Calcutta High Court	<ul style="list-style-type: none"> <li>28 June 2016: 4 Commercial Courts at Alipore, Rajarhat, Asansol, Siliguri<sup>28</sup></li> <li>26 July 2016: Commercial Division and Commercial Appellate Division constituted.<sup>29</sup></li> </ul>
4	High Court of Chhattisgarh	<ul style="list-style-type: none"> <li>No notification on Commercial Courts available on website.<sup>30</sup></li> <li>14 December 2017: Commercial Appellate Division constituted.<sup>31</sup></li> </ul>
5	Delhi High Court	<ul style="list-style-type: none"> <li>17 November 2015: Constitution of Commercial Division and Commercial Appellate Division.<sup>32</sup></li> <li>07 July 2018: The pecuniary value of Commercial Courts at the District Judge level is set at 3 Lakh Rupees.<sup>33</sup></li> </ul>
6	High Court of Gauhati	<ul style="list-style-type: none"> <li>28 December 2015 and 13 February 2019: 24 District Courts appointed as Commercial Courts<sup>34, 35</sup></li> <li>01 April 2016 and 27 February 2017: 1 Bench assigned as the Commercial Appellate Division<sup>36, 37</sup></li> <li>07 March 2016: 2 Commercial Courts in Mizoram.<sup>38</sup></li> </ul>

<sup>22</sup> Page 9 of Writ Petition states that act was put into effect from 23 October 2015 <<https://barandbench.com/wp-content/uploads/2018/10/Bombay-HC-challenge-to-Commercial-Courts-Act.pdf>> accessed 30 April 2019.

<sup>23</sup> Bombay High Court, 'Practice Note 48' <<https://bombayhighcourt.nic.in/notifications/PDF/noticebom20160507173036.pdf>> 30 April 2019.

<sup>24</sup> Law and Judiciary Department, 'Notification No. SPC 1316/133/C.R.14/IX'. Copy received via RTI reply dated 14 January 2019 <[https://districts.ecourts.gov.in/sites/default/files/commercial\\_court0001.pdf](https://districts.ecourts.gov.in/sites/default/files/commercial_court0001.pdf)> accessed 30 April 2019.

<sup>25</sup> Department of Law & Judiciary Law (Establishment) Division, Government of Goa 'Notifications No. 12/05/2-16/LD-(Estt.)/1926' dated 03 November 2016 and No. 12/05/2016/LD-(Estt.)/1850 dated 21 December 2017. Copy received via RTI reply dated 14 January 2019.

<sup>26</sup> Department of Personnel & Administrative Reforms, Secretariat, Daman 'Notification No. LAW/DMN/CCCDT(19)/2016-17/879' dated 24 April 2017. Copy received via RTI reply dated 14 January 2019.

<sup>27</sup> Department of Personnel & Administrative Reforms, Secretariat, Silvassa 'Notification No. LAW/DMN/CCCDT(19)/2016-17/584' dated 18 May 2017. Copy received via RTI reply dated 14 January 2019.

<sup>28</sup> Judicial Department, Government of West Bengal 'Notification No. 196-JL' dated 28 June 2016. Copy received via RTI reply dated 14 January 2019.

<sup>29</sup> High Court of Calcutta, 'Notification No. 2810-G' dated 26 July 2016. Copy received via RTI reply dated 19 December 2018.

<sup>30</sup> However, Chhattisgarh High Court Notification No. 9170/Red(J)/2016 dated 16 November 2016 refers to an already constituted Commercial Division at the High Court <[http://highcourt.cg.gov.in/noti/2016/noti\\_9170\\_16112016.pdf](http://highcourt.cg.gov.in/noti/2016/noti_9170_16112016.pdf)> accessed 30 April 2019.

<sup>31</sup> Chhattisgarh High Court, 'Notification No. 10643/AR(J)/2017' dated 14 December 2017 <[http://highcourt.cg.gov.in/noti/2017/noti\\_10634\\_2017.pdf](http://highcourt.cg.gov.in/noti/2017/noti_10634_2017.pdf)> accessed 30 April 2019.

<sup>32</sup> High Court of Delhi Circular dated 17 November 2015. Received via RTI reply dated 17 December 2018.

<sup>33</sup> High Court of Delhi, 'Notification No. 58/DHC/Gaz/G-1/VI.E.2(a)/2018' dated 07 July 2018 <<https://delhidistrictcourts.nic.in/Circulars/2018/july/9d.pdf>> accessed 30 April 2019.

<sup>34</sup> Government of Assam, 'Notification No. JDJ.136/2015/24-A' dated 28 December 2015 <<http://ghconline.gov.in/General/Notification-28-12-2015.pdf>> accessed 22 May 2019.

<sup>35</sup> Government of Assam, 'Notification No. JDJ-111/2018-ESTT-JUDI-12 dated 13 February 2019 <<http://ghconline.gov.in/General/Notification-08-05-2019.pdf>> accessed 22 May 2019.

<sup>36</sup> The Gauhati High Court, 'Notification No.20' dated 01 April 2016 <<http://ghconline.gov.in/General/Notification-01-04-2016-1.pdf>> accessed 22 May 2019.

<sup>37</sup> The Gauhati High Court, 'Notification No. 15' dated 27 February 2017 <<http://ghconline.gov.in/General/Notification-27-02-2017.pdf>> accessed 22 May 2019.

S. No.	High Court	Date on which the Commercial Courts Act was notified
7	High Court of Gujarat	<ul style="list-style-type: none"> <li>02 April 2016 and 17 May 2016: 3 Commercial Courts constituted<sup>39,40</sup></li> <li>01 June 2016: Commercial Division and Commercial Appellate Division constituted.<sup>41</sup></li> </ul>
8	High Court of Himachal Pradesh	<ul style="list-style-type: none"> <li>19 April 2016: Commercial Division and Commercial Appellate Division constituted.<sup>42</sup></li> <li>No commercial Court or Commercial Appellate Court constituted as on 12 December 2018.<sup>43</sup></li> </ul>
9	High Court of Judicature at Hyderabad	<ul style="list-style-type: none"> <li>08 June 2016: Commercial Division<sup>44</sup> and Commercial Appellate Division<sup>45</sup> constituted for Telangana and Andhra Pradesh</li> <li>21 April 2016 and 10 June 2016: Commercial Courts constituted at all districts of Telangana.<sup>46</sup></li> <li>10 June 2016: Commercial Courts constituted in all districts of Andhra Pradesh.<sup>47</sup> Special Courts at Visakhapatnam and Vijaywada.<sup>48</sup></li> </ul> <p>[NOTE: Commercial Division cannot be constituted in the Andhra Pradesh or Telangana High Court.]<sup>49</sup></p>
10	High Court of Jammu and Kashmir	<ul style="list-style-type: none"> <li>No notification uploaded on the website.</li> </ul>
11	High Court of Jharkhand	<ul style="list-style-type: none"> <li>29 June 2016: Commercial Appellate Division constituted.<sup>50</sup></li> </ul>
12	High Court of Karnataka	<ul style="list-style-type: none"> <li>21 September 2017<sup>51</sup>, 08 November 2017<sup>52</sup> and 31 July 2018<sup>53</sup>: Commercial Courts constituted across all the districts.</li> <li>30 October 2017: Commercial Appellate Division constituted.<sup>54</sup></li> </ul>
13	High Court of Kerala	<ul style="list-style-type: none"> <li>RTI reply states that Commercial Courts have not been notified.</li> </ul>

<sup>39</sup>The Gauhati High Court, 'Notification No. A.45011/1/2015-LJE dated 07 March 2016 < <http://ghconline.gov.in/General/Notification-07-03-2016.pdf>> accessed 22 May 2019.

<sup>40</sup>Legal Department, 'Notification No. GK/8/2016/SPC/102016/GOI-9/D (Part-1)' dated 02 April 2016 <[https://legal.gujarat.gov.in/pdf/2015/commercial\\_Court\\_Constitute1\\_legal\\_05052016.pdf](https://legal.gujarat.gov.in/pdf/2015/commercial_Court_Constitute1_legal_05052016.pdf)> accessed 22 May 2019.

<sup>41</sup>Legal Department, 'Notification No.A.1201/2016' dated 17 May 2016 <[https://legal.gujarat.gov.in/pdf/2015/Legal\\_DATE\\_OF\\_FUNCTIONING\\_OF\\_COMMERICAL\\_COURT\\_OF\\_DISTRICT\\_09062016.pdf](https://legal.gujarat.gov.in/pdf/2015/Legal_DATE_OF_FUNCTIONING_OF_COMMERICAL_COURT_OF_DISTRICT_09062016.pdf)> accessed 22 May 2019.

<sup>42</sup>(n 8).

<sup>43</sup>High Court of Himachal Pradesh, 'Notification No. HHC/Admn. 10(155)92-XVII-9458-92 and No. HHC/Admn. 10(155)92-XVII-9493-527' dated 19 April 2016. Copy received via RTI reply dated 12 December 2018.

<sup>44</sup>Information received via RTI reply dated 12 December 2018. However, a column of the data provided with the Himachal Pradesh High Court states that 128 cases have been pending before the Commercial Courts as on 01 July 2017. However, in the same reply to the RTI application, it has been noted that no commercial courts have been established under the Act, alluding to an internal contradiction in the data provided.

<sup>45</sup>The Telangana and Andhra Pradesh, 'Gazette, Judicial Notification No. 18/SO/2016' dated 08 June 2016 <[https://districts.ecourts.gov.in/sites/default/files/ROC850\\_080616.pdf](https://districts.ecourts.gov.in/sites/default/files/ROC850_080616.pdf)> accessed 22 May 2019.

<sup>46</sup>The Telangana and Andhra Pradesh, 'Gazette Judicial Notification No. 19/SO/2016' dated 08 June 2016 and 'Notification No. 21/SO/2016' dated 23 June 2016 via reply dated 08 January 2019 to RTI application.

<sup>47</sup>Government of Telangana, 'Notification No. G.O.Ms. No. 32' dated 21 April 2016 and Government of Telangana, 'Notification No. G.O.Ms. No. 48' dated 10 June 2016 via reply dated 08 January 2019 to RTI application.

<sup>48</sup>Government of Andhra Pradesh, 'Notification No. G.O.Ms. No. 74' dated 10 June 2016 < <https://www.apindustries.gov.in/APIndus/Data/OtherGOs/G.O.Ms.%20No.%2074%20for%20Constitution%20of%20Commercial%20Courts.PDF>> accessed 22 May 2019.

<sup>49</sup>Government of Andhra Pradesh, 'Notification No. G.O.Ms. No. 251' dated 03 April 2017. Copy received via reply dated 08 January 2019 to RTI application.

<sup>50</sup>Also see (n 8).

<sup>51</sup>High Court of Jharkhand, 'Notification No. 07/2016/R&S' <[https://jharkhandhighcourt.nic.in/node/display\\_pdf/admin\\_order/administration](https://jharkhandhighcourt.nic.in/node/display_pdf/admin_order/administration)> accessed 30 April 2019.

<sup>52</sup>Government of Karnataka, 'Notification No. LAW 39 LCE 2016' dated 21 September 2017. Copy received via reply dated 26 December 2018 to RTI application.

<sup>53</sup>Government of Karnataka, 'Notification No. LAW 39 LCE 2016' dated 08 November 2017. Copy received via reply dated 26 December 2018 to RTI application.

<sup>54</sup>Government of Karnataka, 'Notification No. LAW 35 LCE 2018' dated 31 July 2018. Copy received via reply dated 26 December 2018 to RTI application.

S. No.	High Court	Date on which the Commercial Courts Act was notified
14	High Court of Madhya Pradesh	<ul style="list-style-type: none"> <li>26 September 2017: Commercial Courts set up in 3 districts of Bhopal, Indore, and Jabalpur.<sup>55, 56</sup></li> </ul>
15	Madras High Court	<ul style="list-style-type: none"> <li>28 June 2016: Commercial Courts constituted in all districts apart from Chennai.<sup>57</sup></li> <li>29 November 2017: Commercial Division and Commercial Appellate Division.<sup>58</sup></li> <li>19 July 2018: Commercial Court at Puducherry.<sup>59</sup></li> </ul>
16	Manipur High Court	<ul style="list-style-type: none"> <li>RTI reply confirms that no commercial court has been established.</li> </ul>
17	Meghalaya High Court	<ul style="list-style-type: none"> <li>16 August 2016: Commercial Courts constituted<sup>60</sup></li> <li>19 August 2016: Commercial Appellate Division constituted<sup>61</sup></li> </ul>
18	Orissa High Court	<ul style="list-style-type: none"> <li>26/28 October 2017: Commercial Courts constituted in 3 districts – Bhubaneswar, Berhampur and Sambalpur<sup>62</sup></li> <li>No Commercial Appellate Division.<sup>63</sup></li> </ul>
19	High Court of Judicature at Patna	<ul style="list-style-type: none"> <li>07 March 2017: Commercial Courts constituted in all divisional headquarters of the state.<sup>64</sup></li> </ul>
20	High Court of Punjab and Haryana	<ul style="list-style-type: none"> <li>Chandigarh: Commercial Court constituted in Chandigarh.</li> <li>Haryana: Special Commercial Court constituted in Gurgaon, for the entire state of Haryana.</li> <li>Punjab: Commercial Court constituted in all districts.</li> <li>Punjab and Haryana High Court: Commercial Appellate Division constituted [NOTE: RTI reply confirms that no notification has been published. Instead, a chapter, introduced on 06 July 2016, under the High Court Rules lists out a few rules that are to be followed for commercial cases under the Act.]</li> </ul>
21	Rajasthan High Court	<ul style="list-style-type: none"> <li>08 August 2018: Commercial Courts constituted at Ajmer, Kota, Jodhpur, Udaipur, Jaipur.<sup>65</sup></li> </ul> <p>[NOTE: This notification refers to an earlier notification dated 13 October 2017 and case law refers to an earlier notification dated 20 April 2016<sup>66</sup>, which constitutes commercial courts.]</p>

<sup>55</sup> Government of Karnataka, 'Notification No. LAW 39 LCE 2016' dated 30 October 2017. Copy received via reply dated 26 December 2018 to RTI application.

<sup>56</sup> Department of Law and Legal Affairs, Notification dated 26.09.2017, Madhya Pradesh Government, <[http://www.law.mp.gov.in/sites/default/files/2018-12/adhi\\_soochna1\\_fno17E172016\\_0.pdf](http://www.law.mp.gov.in/sites/default/files/2018-12/adhi_soochna1_fno17E172016_0.pdf)>, accessed 23 May, 2019.

<sup>57</sup> However, data maintained under Section 17 of the Act seems to suggest that commercial courts data has been maintained for all 50 districts <<https://mphc.gov.in/district-commercial-court>> accessed 12 January 2019.

<sup>58</sup> Government of Tamil Nadu, 'Notification No. G.O. (Ms). No. 500' dated 28 June 2016. Copy received via reply dated 12 February 2019 to RTI application.

<sup>59</sup> Government of Tamil Nadu, 'Notification No. Roc No.3233/A/2016/G4' dated 29 November 2017. Copy received via reply dated 12 February 2018 to RTI application.

<sup>60</sup> Government of Punducherry, 'Notification G.O.Ms. No.16/2018-LD' dated 19 July 2018. Copy received via reply dated 12 February 2018 to RTI application.

<sup>61</sup> High Court of Meghalaya, 'Notification No. LJ(B)67/2016/24-' dated 16 August 2016 and 'Notification No. LJ (B) 67/2016/32' dated 20 July 2018. Copy received via reply dated 05 December 2018 to RTI application.

<sup>62</sup> High Court of Meghalaya, 'Notification No. HCM.II/48/2015-Estt/Pt.I/3121' dated 19 August 2016 Copy received via reply dated 05 December 2018 to RTI application.

<sup>63</sup> No information provided to RTI application. Government of Odisha, 'Gazette Notification No. No.12640-LAW-JUDI-ESTT-0014/2017/L' dated 26 October 2017 <<http://govtpress.odisha.gov.in/pdf/2017/1748.pdf>> accessed 30 April 2019.

<sup>64</sup> Information provided via reply dated 05 February 2019 to RTI application - "no judge has been nominated to dealing with Commercial disputes to be a judges of the Commercial Appellate Division as per Section 5(2) of the Act".

<sup>65</sup> Government of Bihar, 'Notification No. S.O. 11' dated 07 March 2017.

<sup>66</sup> Government of Rajasthan, Law and Legal Department, 'Notification No. F.1(2)Nyay/2016' dated 08 August 2018 <[http://law.rajasthan.gov.in/content/dam/law-justice/Law%20%26%20Legal%20Affairs%20Department/PDF/Circulars/CommercialCourt\\_Notification0001.pdf](http://law.rajasthan.gov.in/content/dam/law-justice/Law%20%26%20Legal%20Affairs%20Department/PDF/Circulars/CommercialCourt_Notification0001.pdf)> accessed 30 April 2019.

<sup>66</sup> Rajasthan High Court Advocates v State of Rajasthan D.B. Civil Writ No. 15961/ 2017 <<https://indiankanoon.org/doc/193439114/>> accessed 30 April 2019; see also, 'High Court Notice on Abolition of Commercial Courts in Rajasthan' Times of India (08 December 2017) <<https://timesofindia.indiatimes.com/city/jodhpur/hc-notice-on-abolition-of-commercial-courts-in-raj/articleshow/61971791.cms>> accessed 30 April 2019.

S. No.	High Court	Date on which the Commercial Courts Act was notified
22	High Court of Sikkim	<ul style="list-style-type: none"> <li>17 August 2016: Commercial Division constituted.<sup>67</sup></li> <li>20 August 2016: Commercial Appellate Division constituted.<sup>68</sup></li> <li>06 October 2016: Commercial Courts constituted in all the districts.<sup>69</sup></li> </ul> [NOTE: Commercial Division cannot be constituted at the Sikkim High Court].
23	High Court of Tripura	<ul style="list-style-type: none"> <li>08 April 2016: Commercial Court constituted.<sup>70</sup></li> </ul>
24	High Court of Uttarakhand	<ul style="list-style-type: none"> <li>31 October 2017: Commercial Court constituted at Dehradun.<sup>71</sup></li> </ul>

<sup>67</sup> High Court of Sikkim, 'Notification No. 25/HCS/Judl.' dated 17 August 2016. Received via RTI reply dated 29 December 2018.

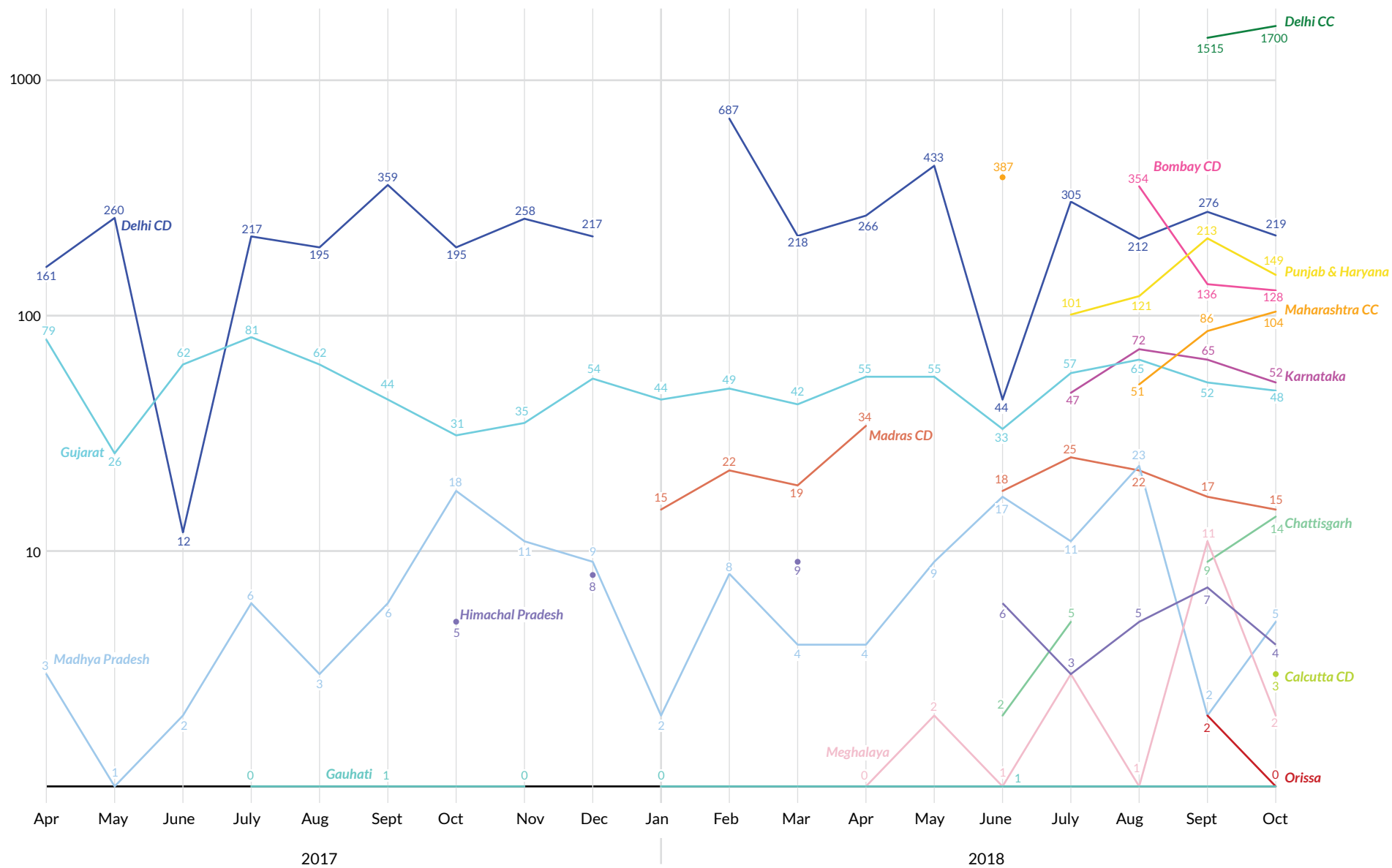
<sup>68</sup> High Court of Sikkim, 'Notification No. 27/HCS/Judl.' dated 20 August 2016. Received via RTI reply dated 29 December 2018.

<sup>69</sup> Government of Sikkim, Home Department, 'Notification No. 58/HCS/Judl.' dated 06 October 2016. Received via RTI reply dated 29 December 2018.

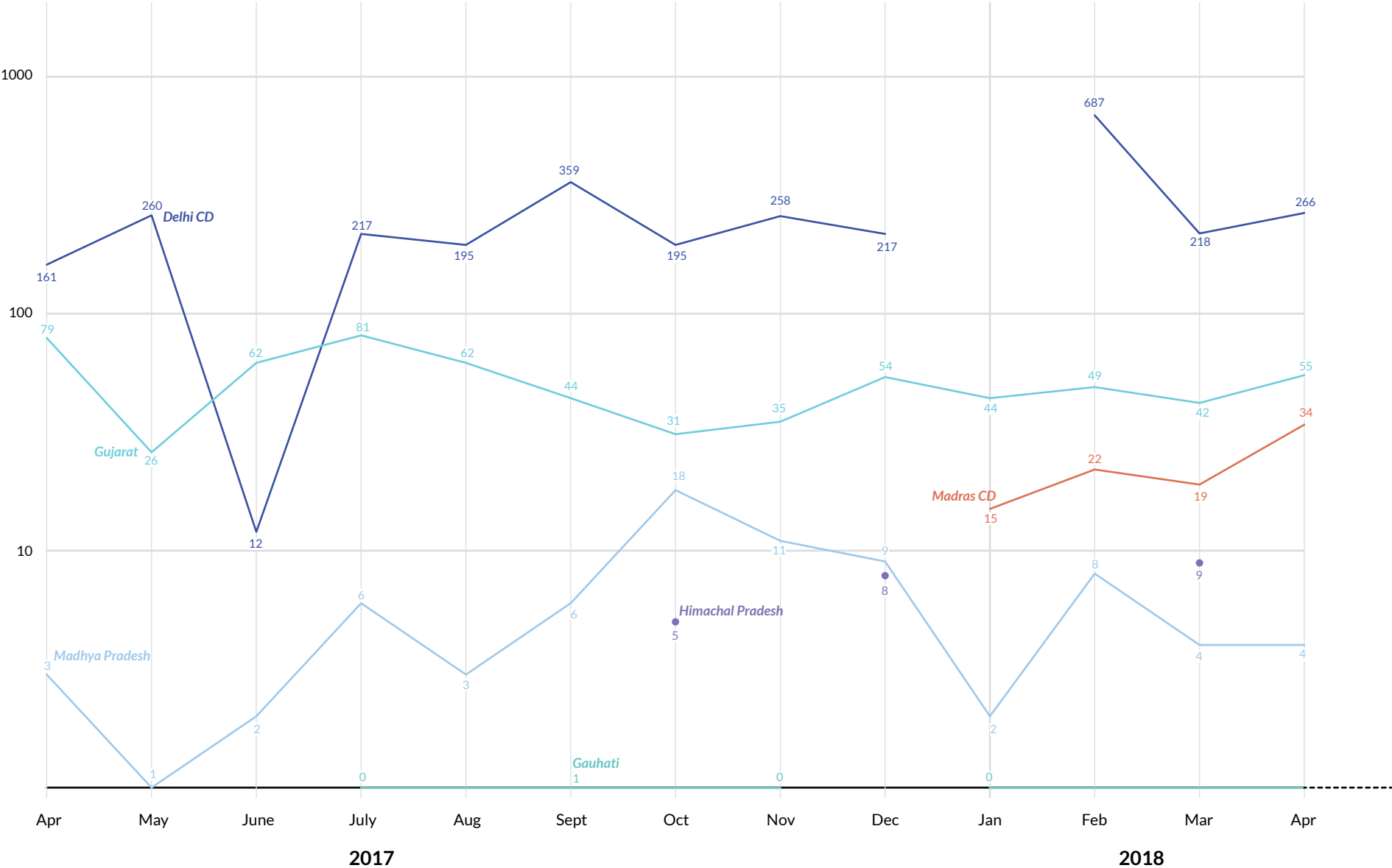
<sup>70</sup> Government of Tripura, Law Department, 'Notification No. F.8(6)-Law/Leg-I/2015/2081-41' dated 8 April 2016. Received via RTI reply dated 16 January 2019.

<sup>71</sup> Government of Uttarakhand, 'Notification No. 328/XXXVI(1)/2017' dated 31 October 2017 and 'Notification No. XXXVI(1)/2018-04' dated 01 December 2018. Received via RTI reply dated 21 December 2018.

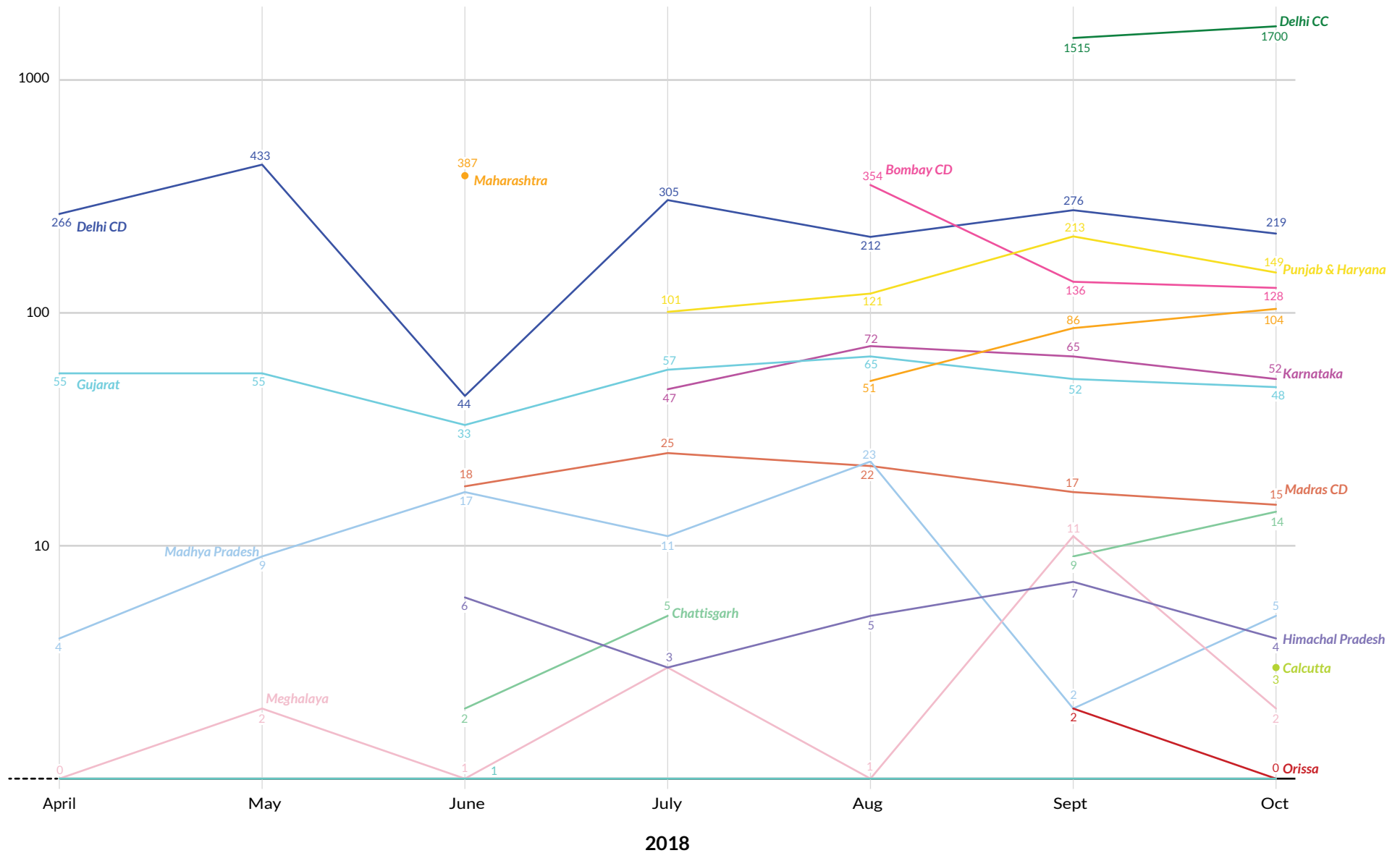
**Appendix 4: Difference between the number of commercial cases instituted across the courts between the months of April 2017 - October 2018**



Appendix 4a: Break up of the chart in Appendix 4 (April 2017 - April 2018)

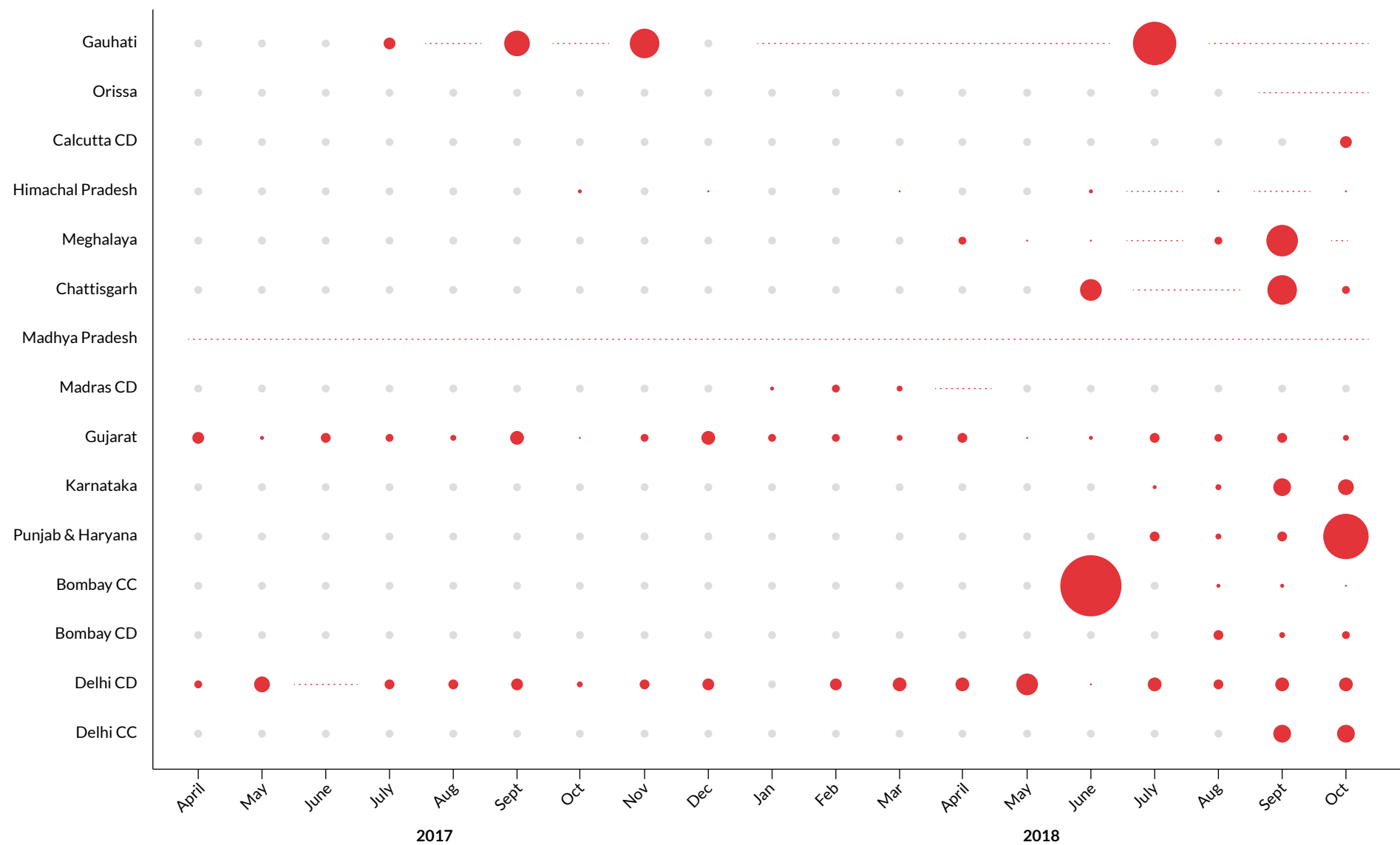
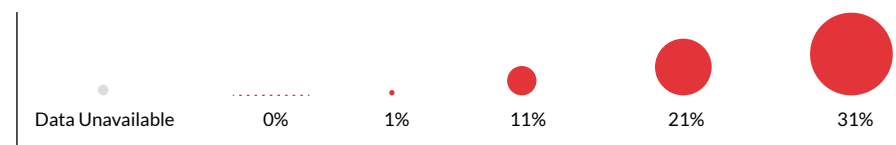


Appendix 4b: Break up of the chart in Appendix 4 (April 2018 - October 2018)



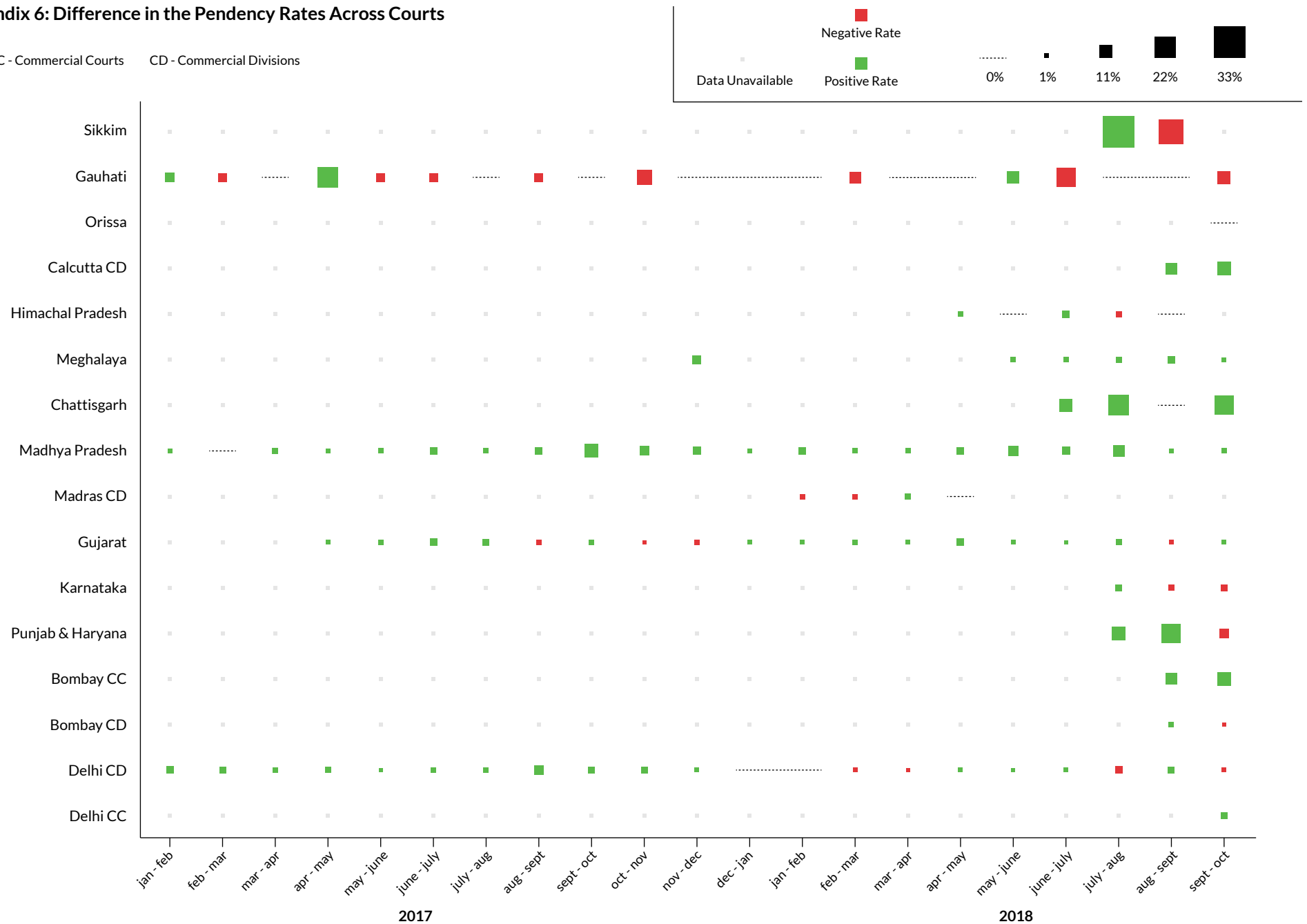
## Appendix 5: Difference in the Disposal Rates Amongst the Courts

CC - Commercial Courts      CD - Commercial Divisions



## Appendix 6: Difference in the Pendency Rates Across Courts

CC - Commercial Courts      CD - Commercial Divisions



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