

ISSN: 2583-8725

# Lex Scripta Journal

Quarterly Online and Print Edition

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**LEX SCRIPTA MAGAZINE OF  
LAW AND POLICY (VOL-4, ISSUE-1)**

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ISSN-2583-8725

Vol - IV, Issue - I

Published by INTEGRITY EDUCATION INDIA

**New Delhi**

First Floor, 4598/12-B, 1st Floor,  
Padam Chand Marg, Daryaganj,  
New Delhi, Delhi 110002

Phone: +91 98 11 66 62 16 (M)

Phone: +91 70 11 60 56 18 (M)

**Bengaluru**

Jallahalli East

Bengaluru, Karnataka. India.

Phone: +91 98 11 66 62 16 (M)

Email: publisher.integrity@gmail.com

**USA**

New Jersey

14 Grandview Ave, Upper Saddle River,  
NJ-07458, USA

Phone: +14805226504 (M)

**London**

37 Degree Media

64, Hodder Drive, Perivale, London UB68LL.  
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Phone: +44 7950 78 18 17 (M)

Website: integrityeducation.co.in

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Printed in India @ New Delhi

ISSN: 2583-8725

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## Contract Enforcement as a Pillar of Commercial Justice

Author  
Karan Verma



# Contract Enforcement as a Pillar of Commercial Justice

Karan Verma

*Amity Law School, Amity University, Noida, U.P.*

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## **Abstract**

*Contract enforcement constitutes a foundational pillar of commercial justice, directly influencing market efficiency, investor confidence, and economic growth. This paper examines the legal and institutional framework governing contract enforcement in India, with particular emphasis on the evolution of commercial dispute resolution mechanisms. It critically analyses the role of the Commercial Courts Act, 2015 in expediting high-value commercial disputes and enhancing procedural efficiency, alongside the introduction of pre-institution mediation under the Code of Civil Procedure, 1908 as a means of reducing litigation burden. The study further evaluates persistent challenges such as judicial delays, procedural complexities, infrastructural limitations, and uneven implementation across jurisdictions, which continue to undermine effective contract enforcement. Drawing comparative insights from global best practices, the paper highlights the significance of alternative dispute resolution mechanisms, technological integration, and specialized adjudication in strengthening commercial justice systems. It argues that robust contract enforcement is not merely a legal necessity but an economic imperative, forming the backbone of a predictable and stable business environment. The paper concludes by proposing reforms aimed at harmonizing legal procedures, enhancing institutional capacity, and fostering a culture of timely dispute resolution, thereby reinforcing the credibility and efficiency of India's commercial justice system.*

**Keywords:** *Contract Enforcement, Commercial Justice, Commercial Courts, Mediation, Dispute Resolution, India, Legal Reform*

## **Contract enforcement meaning importance**

This manuscript will be brought by the Commercial Courts Act along with rules on early mediation, such tools serve a larger purpose. What really matters in commercial dispute resolution is less about how fast decisions emerge or whether reports get submitted, more about whether agreements actually cause real-world outcomes. That shift - from paper promise to actual performance - is what contract enforcement reflects, forming the quiet backbone of business law and enabling markets to operate reliably.

## **Understanding How Contracts Are Enforced**

Legally speaking, a contract counts as an agreement that courts can uphold. Yet in actual business practice, such a document holds little weight - just lines on paper assigning gains and losses - unless government authority steps in. When one side fails to deliver, enforcement becomes how the justice system pushes compliance or provides redress. This step turns written promises, say under laws like the Indian Contract Act of 1872, into real-world results. Without it, legal claims stay hollow despite clear rules.<sup>1</sup>

A win in court means little without fast access to the loser's assets or payment. When outcomes stall, legal victories lose value quickly. From clear rules to fair hearings - whether judged or mediated - the path must stay steady. Execution of rulings needs speed; hesitation weakens results.<sup>2</sup> Each phase matters equally. Break one step, the whole system falters. Contracts gain worth only when every stage works.<sup>3</sup>

## **The Foundation of Institutional Trust**

The core role of enforcing contracts connects directly to trust - the essential medium through which exchange thrives. Where legal systems are underdeveloped or outdated, commerce tends to stay limited to tight-knit circles. Transactions happen solely among those linked by blood, shared background, or enduring familiarity, since breaking an agreement carries heavy reputational consequences instead of legal ones. Even though such personal confidence keeps small-scale economies running, it blocks broader growth. Expansion becomes impossible when dealing only with known parties due to worries about non-payment.

What happens when contracts are enforced well shifts how economies operate. Instead of deals depending only on who you know, confidence grows through reliable systems. Because courts act quickly and fairly, firms take chances working with strangers across regions or borders. As a result, cooperation stretches further - suppliers link across longer distances, trading expands into new areas.<sup>4</sup> Financial tools gain stability because promises hold weight. Commerce opens up; performance matters more than ties by blood or friendship. Where rules work, opportunity follows ability, not just whom someone trusts personally.

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<sup>1</sup> Sanjeev Kumar, *Commercial Courts Act, 2015: A Comprehensive Commentary* 112 (Bloomsbury India, New Delhi, 2020).

<sup>2</sup> *Iridium India Telecom Ltd. v. Motorola Inc.*, (2005) 2 SCC 145.

<sup>3</sup> NITI Aayog, *Strategy for New India @ 75* 142 (Government of India, New Delhi, 2018).

<sup>4</sup> Shreyas Jayasimha, "Commercial Dispute Resolution in India: Tracing the Impact of the 2015 Act" 12 *Asian Journal of Law and Economics* 201 (2020).

## **Market Efficiency Affects Capital Costs**

Because contract enforcement ties closely to how well markets work, its impact can be seen clearly in economic behavior. When outcomes are predictable, companies spend less navigating legal uncertainty during deals. Where courts move slowly - India being one example - delays have long shaped business decisions behind the scenes.<sup>5</sup> That lag isn't invisible; it shows up as added cost baked into pricing and planning.<sup>6</sup>

Because court delays extend repayment timelines to ten years, suppliers protect themselves by requiring large initial payments - this drains the buyer's available funds. In much the same way, slow legal processes warp how banks assess risk. Since recovery often fails or drags on, lenders build potential losses directly into loan terms, so even reliable customers face steeper borrowing costs.

When disagreements get settled fast and rulings take effect without delay, money moves quicker through the economy. Fast legal resolution pulls idle funds back into active business use. Because contracts hold weight, lenders face less danger when issuing loans. That reduced risk cuts borrowing costs across markets. With finance flowing more freely, companies find it easier to launch new projects. Money turning over at a faster pace supports fresh investment far beyond single transactions.<sup>7</sup> Employment grows as firms expand using newly available resources. The whole system operates with fewer blockages when agreements are reliably upheld.

## **Dispute Resolution Powers Enforcement**

Broken promises in courtrooms once defined India's contract culture. Years melted away before cases saw resolution, leaving deals unenforced by design rather than accident. When timelines stretched without consequence, delay became a tool - not a flaw - for those who owed money. This habit of stalling made agreements fragile, shaking trust needed for outside investors to commit funds. Mediation now enters as a quiet fix within broader legal shifts like the Commercial Courts Act. Credibility matters more than speed alone; what counts is whether consequences feel real. Without believable follow-through, even strong laws gather dust. Global rankings noticed the gap long before reforms caught up.<sup>8</sup>

So, it goes - the special courts and required mediations from earlier sections need to be seen this way: built lately to shore up trust in what governments claim they

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<sup>5</sup> A. Ayyasamy v. A. Paramasivam, (2016) 10 SCC 386.

<sup>6</sup> Shriram Panchu, *Settle for More: The Why, How and When of Mediation* 55 (Westland, Chennai, 2019).

<sup>7</sup> *BCCI v. Kochi Cricket Pvt. Ltd.*, (2018) 6 SCC 287.

<sup>8</sup> Nitin Jain, "Execution of Civil Decrees: A Critical Analysis of Order XXI" 33 *Journal of the Indian Law Institute* 145 (2015).

will enforce. Fixed deadlines, quick verdicts, settled deals treated like binding rulings - each a legal move meant to drain any gain from breaking agreements.<sup>9</sup> When speed feels certain, when outcomes seem unavoidable, then walking away from promises stops making financial sense. That setup lets commerce run freely, needing little court oversight along the way.

### **India Ranks in Global Enforcement**

Looking back at how India reformed its business courts means seeing where it stood compared to others. Nearly twenty years passed with the World Bank ranking countries by rules affecting companies. A key part of that ranking measured how easily contracts could be enforced. That particular measure exposed deep weaknesses in India's system for handling business disputes. What showed up year after year was a legal process too slow, too tangled. Progress only became visible when changes began altering court procedures.<sup>10</sup>

### **Historical Poor Results**

Long before 2015, contract enforcement in India drew sharp criticism. Back then, the nation landed near the bottom - 178th among 189 countries - in the EoDB rankings, a reflection of conditions before legal changes took hold. Behind that number sat hard figures. A typical business-related lawsuit in cities like Delhi or Mumbai dragged on for about 1,420 days. That is close to four full years. Just as striking, court expenses alone ate up around two-fifths of what was being claimed.

Still, numbers hit hard - foreign backers, global firms, even local founders saw proof of what they long suspected: courts in India move too slow. Evidence showed stakes rise sharply when law becomes a lottery.<sup>11</sup> Risk grows heavier where delays rule. Entry costs climb not just from tariffs but time lost. Waiting reshapes decisions. Money moves elsewhere when justice drags.

### **The Eodb Index Sparks Change**

Poor results over time meant more than bad grades - they hurt the economy at large. Because money moves fast to places where deals are honored without delay, Indian authorities saw EoDB scores as a trigger for wide legal reform.<sup>12</sup> With strong pressure to reach among the best fifty nations in those rankings, leaders noticed one area weighed the most: making contracts work. That single issue held back progress more than any other measure did.

Though driven by multiple factors, India's legal reforms since 2015 reflect a clear alignment with external benchmarks. A tighter schedule for submitting replies -

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<sup>9</sup> *Smt. Sushila Devi v. Ramanandan Prasad*, (1976) 1 SCC 361.

<sup>10</sup> G.B. Born, *International Commercial Arbitration* 540 (Kluwer Law International, The Hague, 3rd edn., 2021).

<sup>11</sup> Rajiv Shankar, "Pre-Institution Mediation: Efficacy and Challenges" 9 *Indian Mediation Review* 11 (2022).

<sup>12</sup> *K. Kishan v. M/s Vijay Nirman Company Pvt. Ltd.*, (2018) 15 SCC 657.

capped at 120 days - entered civil procedure through targeted changes. Case Management Hearings appeared as a new phase in litigation flow. Filing documents online gained stronger institutional backing during this period. Mediation before court submission became mandatory nationwide by 2018. These steps, including the creation of specialized commercial courts, responded partly to measurement criteria set by the World Bank. Reducing the average dispute duration - from an earlier 1,420 days - was central. So was lifting performance scores under the "Quality of Judicial Processes" category.<sup>13</sup>

### **The Path of Progress and Its Boundaries**

India's path in global rankings reveals a complex story where legal changes often outpace real-world execution. After broad economic shifts began, the country climbed fast in the Ease of Doing Business index - jumping from position 142 in 2014 to number 63 by 2020 - the last year such data was released by the World Bank. Though laws changed quickly, actual systems lagged behind. Progress on paper did not always match conditions on the ground. The climb looked sharp at first glance; still, deeper issues remained hidden beneath numbers. One key takeaway emerges: rules alone cannot guarantee results when institutions struggle to keep up.<sup>14</sup>

Looking beyond surface changes, the details of how contracts are enforced tell another story. Though new laws reshaped court procedures and dedicated business courts opened, progress stayed limited - India ranked 163rd worldwide by 2020. Cases still dragged on near 1,445 days without meaningful reduction. Expenses barely shifted, holding firm at about 31% of the disputed amount.

### **Analyzing the Gap Between Policy and Practice?**

Despite major legal reforms, the persistently poor ranking reveals deep issues within India's commercial justice system. Though the law set clear deadlines, Delhi and Mumbai struggled under old case loads, too few expert judges, and cramped facilities. Courtrooms do not appear overnight, even when laws demand speed. Training ordinary judges for intricate business disputes takes time, far beyond statute books. What works on paper often stumbles where courts operate without space, staff, or specialization.

Even so, the EoDB indicators sharply revealed what truly weakened India's business dispute system: actually carrying out court orders. Most of the more than 1,400 days tracked by the World Bank weren't spent on trials, rather they piled up while trying to enforce rulings after verdicts were delivered. Winning a decision in one of the new specialized courts turned out to mean little when enforcement followed old paths. Because execution processes still relied on conventional civil procedure codes, claimants faced drawn-out waits, sometimes

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<sup>13</sup> Marc Galanter, *Law and Society in Modern India* 124 (Oxford University Press, New Delhi, 1989).

<sup>14</sup> Promod Nair, "India's Tryst with International Commercial Courts" 5 *Indian Journal of Arbitration Law* 33 (2016).

stretching several additional years. This happened mainly because losing parties kept filing appeals or seeking revisions, blocking seizure of assets through procedural moves. While recent changes improved how cases are tried, they barely touched how judgments get enforced - so delays lingered where reform mattered most.<sup>15</sup>

Even after the World Bank ended the Doing Business report in 2021 because of data issues, what it revealed still shapes how India thinks about business-related justice. Its influence changed national conversations for good. Instead of just enacting bold laws, leaders had to face an uncomfortable fact: strong contract systems need more than legislation. That mismatch - between India's general economy rank and its weak performance on contracts - showed progress demands relentless effort. Upgrading court capabilities becomes essential. Reforming how judgments are made is urgent. So does changing the mindset within law circles about the worth of time.<sup>16</sup>

### **Judicial Delays and Enforcement Barriers**

Not improving much in how countries rank for handling business agreements makes looking closely at India's court system necessary. Though new laws built complex frameworks for commerce cases, what supports them - the courts and administration overall - is still weak underneath. Hard to carry out deals legally? The numbers show heavy case backlogs, execution paths twist endlessly through rules, while slow institutions keep things stuck deep inside.

### **The Quantitative Crisis Pendency by the Numbers**

What stands out most is how numbers alone undermine enforcing contracts in India. According to the National Judicial Data Grid (NJDG), court dockets at district and lower levels list millions upon millions of unresolved matters. Even though business-related legal issues make up just a portion of these figures, their fate ties closely to broader delays. Because the entire system drags under accumulated volume, even narrowly defined corporate cases lose momentum. Progress stalls - not due to neglect but pressure from above.<sup>17</sup>

A sudden drop in the financial limit set by the 2018 update to the Commercial Courts Act - cutting it from ₹1 Crore down to just ₹3 Lakhs - ended up worsening existing delays. Although designed to open doors for more litigants, this change instead funneled a flood of small-scale debt cases into court tracks meant for complex disputes.<sup>18</sup> Without matching increases in judges or space, these district-level forums quickly buckled under pressure. Now, in numerous areas, what were once called swift commercial benches show backlogs nearly identical to the

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<sup>15</sup> Justice R.V. Raveendran, "Section 89 CPC: Need for a re-look" 4 *Supreme Court Cases (J)* 23 (2007).

<sup>16</sup> Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (wo)manpower* (2014).

<sup>17</sup> Gautam Bhatia, "The Commercial Courts Act: Efficiency at the Cost of Justice?" 54 *Economic and Political Weekly* 18 (2019).

<sup>18</sup> *Syed Dastagir v. J.R. Gopalakrishna Setty*, (1999) 6 SCC 337.

regular trial courts they aimed to streamline. Facing more than eighty cases daily, a commercial judge finds it unworkable to stick precisely to Case Management Hearings and legal deadlines. As things stand, the strength of the Commercial Courts Act weakens sharply - delays become predictable cover for those ignoring court orders.<sup>19</sup>

### **Paper Decree Effect in Practice**

More than one hundred years have passed since the Privy Council noted how legal struggles in India truly start after winning a court decision. Even now, that comment holds true, standing as the main obstacle to enforcing contracts. Without turning a verdict into actual money, every part of the justice system - court hearings, tight deadlines, expert judges for business disputes - fails its purpose. In India, execution processes mostly follow Order XXI of the Code of Civil Procedure. Though comprehensive, this order feels outdated, burdened with excessive procedural detail. Its complexity arms judgment debtors with multiple ways to delay enforcement. After a court issues a decree, resistant companies often exploit Section 47. Using it, they raise repeated challenges - usually about minor technical flaws - to dispute whether the decree can be enforced at all. Sometimes such entities manipulate ownership structures. By shifting holdings into shell firms or relatives' names, they create false claims. These claims insist seized assets were never theirs to begin with.

Execution often drags on, split across disjointed stages. When company assets span several regions, enforcing a court decision means chasing transfer certificates - one by one - each opening doors to fresh regional holdups. Appellate judges guard ownership fiercely; that caution trickles down. Lower-level enforcement officers then pause, reluctant to seize goods fast or jail debtors without long notice periods. Judgments pile up like unopened letters: technically real, yet useless the moment funds move overseas or balance sheets collapse. Worthless paper grows faster than solutions.<sup>20</sup>

### **Institutional and administrative inefficiencies**

Execution of contracts stumbles not just because of Order XXI's legal tangle, but due to deep-rooted flaws in how systems function locally. Courts labeled as commercial often do little more than change their name. They keep handling general cases alongside, which buries enforcement requests under heavier caseloads.<sup>21</sup> With limited time, judges tend to favor ongoing hearings where witness statements unfold rather than revisiting old rulings needing follow-up.

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<sup>19</sup> P.C. Rao and William Sheffield, *Alternative Dispute Resolution: What it is and how it works* 102 (Universal Law Publishing, New Delhi, 1997).

<sup>20</sup> Pramod Rao, "Contract Enforcement and Economic Development: The Indian Narrative" 14 *Law and Economy Journal* 55 (2018).

<sup>21</sup> *State of Maharashtra v. National Construction Co.*, (1996) 1 SCC 735.

Administrative tasks tied to enforcing judgments rarely grab attention when live disputes demand immediate decisions. Often overlooked, those tasked with enforcing legal decisions - bailiffs and neighborhood officers - are poorly matched to today's business debt collection. Tracking down large-scale corporate obligations usually means uncovering digital trails, exposing disguised ownership through layered firms, or halting advanced monetary tools. Not built for such tasks, most frontline enforcers learn only how to deliver documents or seize visible property, leaving them unprepared when money hides behind finance jargon or encrypted systems. Without one unified online system connecting verdicts to bank records, land titles, or company filings, winners of court orders must piece clues together like an amateur detective lost in paperwork.<sup>22</sup>

Though substantive law once posed hurdles, today's main obstacle lies beyond courtroom rulings. Thanks to the Commercial Courts Act, trials now proceed more smoothly. Yet what follows - enforcement - still falters badly. Execution of decrees lacks both expert attention and modern tools.<sup>23</sup> When courts give judgments little follow-through power, confidence in institutions erodes slowly. Markets feel the weight of that neglect. Without treating enforcement like trial work - sharp, focused, equipped - the system stays broken.

### **Commercial courts improve enforcement**

Though outdated enforcement rules and overwhelming case backlogs persist, the story of the Commercial Courts Act isn't purely one of failure. Execution challenges - rooted in Order XXI of the CPC - still loom large; yet these courts reshape how disputes unfold long before judgments face collection. Their power lies not in changing enforcement statutes, but in transforming pre-enforcement stages. Streamlined processes speed up hearings dramatically. A stricter judicial attitude takes hold.<sup>24</sup> Delays once exploited by debtors dissolve under tighter timelines. Tactics like endless adjournments lose their grip when judges refuse passive oversight. What emerges is a system where avoiding contractual duties becomes far more difficult - not because laws changed overnight, but because court behavior did.

### **Front Load the Process With Simple Strict Steps**

Long ago, beating a contract case in India rarely happened at enforcement - delay made the real difference. The trial stretched on, sometimes ten years, while those accused stayed ahead. Once judgment arrived, often too late: wealth moved, firms folded, insolvency claimed. Now the system shifts earlier, thanks to the

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<sup>22</sup> Upendra Baxi, *The Crisis of the Indian Legal System* 65 (Vikas Publishing House, New Delhi, 1982).

<sup>23</sup> Anand Prasad, "The Role of DLSAs in Commercial Mediation: A Step Too Far?" 10 *National Law School Journal* 77 (2021).

<sup>24</sup> *Fiza Developers and Inter-Trade P. Ltd. v. AMCI (I) Pvt. Ltd.*, (2009) 17 SCC 796.

Commercial Courts Act. Legal pressure hits fast, blocking escape routes before they open. One hundred twenty days without filing a written response wipes out the chance to do so later, thanks to fresh changes in the CPC aimed at business conflicts. Should a delay go unexcused by a commercial tribunal, outcomes can follow swiftly - sometimes without full argument from both sides.<sup>25</sup> A required declaration labeled "Statement of Truth," paired with stricter handling of digital evidence under Order XI, forces openness from the start. Early exposure of facts stops one party from holding back key files until late stages. Surprises tucked away for years now face sharp limits within these courts. Because proof settles sooner, rulings rest on clearer ground. Fewer gaps remain open afterward for those ordered to pay, making appeals or enforcement harder to stall. Tight process control reshapes how cases stand once decided.

### **Fast Trials and Quick Court Decisions**

Speed decides whether legal claims succeed or fail. When rulings come fast, money or property can be seized before vanishing. Delays usually mean chasing empty accounts. Under the Commercial Courts Act, tools like early case reviews shape how cases move forward. Quick decisions without full trials also shift outcomes. These methods stand out as central features of modern business litigation.<sup>26</sup>

Through Order XV-A, judges handling commercial cases take charge by scheduling compulsory case management hearings. These sessions lock in fixed timelines for submitting evidence and presenting arguments.<sup>27</sup> Trial progress now depends on judicial oversight rather than party delays. A shift away from endless postponements begins here. Yet more impactful changes appear under Order XIII-A. Known as Summary Judgments, these allow early resolution when defenses lack merit. Before 2015, weak opposition still forced full trials with lengthy witness testimony. Even clear breaches led to drawn-out processes. Now, if a defendant stands little chance of winning, the court may close the matter swiftly. The key test is whether a genuine defense exists at all.

Order XIII-A carries significant consequences for enforcement. When solid documents exist - unpaid bills, confirmed account statements, or violated banking assurances - a claimant may obtain a binding decision in months instead of multiple years. Skipping the drawn-out process of a complete courtroom hearing, summary rulings give the winning party prompt power to block access to the debtor's funds and seize assets before they disappear. Because of how fast commercial judges move, outcomes often lead straight to recovered money.<sup>28</sup>

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<sup>25</sup> K.N. Chandrasekharan Pillai, "Delay in Disposal of Civil Cases: A Critical Review" 41 *Journal of the Indian Law Institute* 302 (1999).

<sup>26</sup> Anil Malhotra and Ranjit Malhotra, *India, Law and Society* 77 (LexisNexis, New Delhi, 2013).

<sup>27</sup> *Kasturi v. Iyyamperumal*, (2005) 6 SCC 733.

<sup>28</sup> Shashank Garg, "Alternative Dispute Resolution and the Commercial Courts Act" 8 *Journal of Dispute Resolution* 45 (2019).

## **A Tougher Court Stance on Enforcing Orders**

Though Order XXI of the CPC hasn't seen targeted changes for commercial cases, how it's applied in practice is shifting noticeably. Judges handling business-related disputes tend to grasp economic contexts more directly than others do. Because of this outlook, delays once accepted during enforcement now face sharper scrutiny. Tactics meant only to stall proceedings rarely succeed as they once did. A stricter mindset has taken root where patience used to linger.

One reason stands out: commercial judges now show more readiness to look beyond company boundaries while enforcing judgments.<sup>29</sup> In past practice, courts avoided seizing a director's private property or linked firms' holdings if a business failed to pay. Because elaborate ownership chains often hide what truly belongs to debtors, recent rulings take sharper steps to follow money trails. This shift means court orders gain real effect instead of sitting unused on shelves.

Now comes a shift: commercial courts increasingly turn to mechanisms such as Order XXI Rule 41 under the CPC, allowing them to question judgment debtors directly about owned property. Instead of leaving investigation solely to the decree holder, judges in these forums issue tough directives requiring company directors who fail to pay to submit detailed sworn statements - covering personal and international holdings, financial records, even tax filings. When such disclosures go unmet, consequences loom fast - detention in civil prison or rulings of contempt often follow. Then silence breaks only when compliance begins.<sup>30</sup>

Now, appellate levels within the commercial judiciary - specifically the Commercial Appellate Divisions - increasingly narrow what kinds of objections qualify under Section 47 of the CPC. Repeated guidance comes down: execution benches should avoid retrial behavior. Objections lacking merit, clearly aimed at stalling property auctions, often get thrown out with significant penalties.

Ultimately, despite ongoing structural barriers, the Commercial Courts Act significantly boosts how contracts are enforced. With much shorter durations between case initiation and final orders, progress becomes visible. A dedicated group of judges now treats enforcement as central, not secondary. This shift challenges long-standing norms where delays favored borrowers. Over time, such changes erode the imbalance once common in India's civil legal system.<sup>31</sup>

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<sup>29</sup> *Renusagar Power Co. Ltd. v. General Electric Co.*, 1994 Supp (1) SCC 644.

<sup>30</sup> N.R. Madhava Menon, "Judicial Reforms and Commercial Justice" 48 *Indian Bar Review* 112 (2016).

<sup>31</sup> Economic Advisory Council to the Prime Minister, *Report on Judicial Delays and Economic Impact* (Government of India, New Delhi, 2019).

## **Mediation Meets Contract Enforcement**

Usually, legal experts see pre-court mediation and after-judgment enforcement as separate steps in how business disputes get resolved. One comes first, seen as peaceful negotiation; the other arrives last, marked by compulsion. Yet recent real-world analysis shows these stages are deeply linked. When courts require mediation before allowing trials, they do more than offer another path - they create a sharper tool for making contracts stick. Agreements built by parties themselves replace top-down pressure. Such deals lead to far greater follow-through. They also sidestep delays that weigh down India's court system, quietly solving what force alone cannot fix.

## **Moving from force to agreement**

State power alone upholds contracts under the classic system. When someone breaks an agreement, a judge steps in - assigning fault and issuing a binding order against the one who lost. This top-down method inherently creates winners and losers. Resentment follows almost predictably. Take a business defendant hit with a monetary ruling: compliance is seldom voluntary. Right away, their focus shifts toward resistance - launching appeals, shielding property, navigating procedural thickets like those found in Order XXI of the CPC. That official command? Far from an ending, it acts more like a signal - one that kicks off years of maneuvering just to enforce what was already decided.

What happens before court involvement changes how people feel about outcomes. Agreement built through discussion replaces pressure from authority figures. Settlements formed under Section 12A come from mutual construction, not top-down decisions. Business decision-makers take part directly, shaping results instead of leaving talks to legal representatives alone. That hands-on role fosters deep personal investment in the outcome reached.<sup>32</sup> Studies on real-world choices show individuals stick with deals they shaped far more often. Thus, agreements made this way fulfill contracts' true aim - delivering actual business value - while sidestepping government force entirely.

## **Bypassing the Execution Maze**

Imagine winning in court, yet getting nothing. That happens often under India's current system, where delayed enforcement turns judgments into empty promises. Settlement through mediation early on stops such outcomes before they begin. Instead of waiting years for resolution, parties avoid the slow machinery altogether. Even if a verdict finally arrives, debtors may have moved everything beyond reach. Earlier agreements sidestep that risk entirely. Victory in law means little without real-world effect - mediation restores that link.<sup>33</sup>

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<sup>32</sup> *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552.

<sup>33</sup> V.N. Shukla, *Constitution of India* 450 (Eastern Book Company, Lucknow, 13th edn., 2017).

Despite a deadlock, talks guided by a neutral party keep business ties alive along with value preservation. When someone owes five crore rupees yet lacks immediate funds, a courtroom ruling might demand full repayment anyway - triggering bankruptcy, reducing recovery chances near zero. Instead, through facilitated dialogue, payments get reshaped into manageable phases matching real-world income patterns. Settlement terms rooted in how businesses actually operate lower failure risks sharply. Flexibility built around practical constraints leads parties toward outcomes courts rarely deliver: agreements people can follow without collapse.<sup>34</sup>

### **The Shadow of Section 12A(5)**

Most people follow through on mediated deals not just because they want to, but because legal frameworks push them toward adherence. The Commercial Courts Act builds a structure that quietly shapes behavior behind the scenes. What looks like choice often unfolds under quiet pressure from existing statutes. Compliance gains strength when rules stand nearby, even if unspoken. Settlements hold better where law and procedure set clear boundaries.

Earlier sections explain how Section 12A(5) gives a settlement reached before formal proceedings the same standing as an arbitration decision based on mutual consent. Because of this rule, mediation gains real weight in practice - its outcomes become enforceable by design. During talks, companies know full well that signing a deal locks them in; breaking it lets the other side skip court filings altogether. Enforcement kicks in without delay once one side fails to comply. What happens afterward depends entirely on adherence, not further legal steps.<sup>35</sup> One key effect of this strong legal provision is how it shapes party behavior during mediation. Because Section 12A(5) exists, agreements reached are rarely taken lightly. Behind the scenes, the possibility of enforcement looms - quiet but firm. When mutual understanding breaks down, authority steps in without delay. What looks like goodwill on the surface rests on a foundation built by law.<sup>36</sup>

### **Keeping the Business Environment Intact**

Looking ahead, how early resolution connects with enforcement depends heavily on broader economic conditions. What matters most in business disputes isn't just recovering funds from those who fail to pay, rather keeping trade moving smoothly.

Out of conflict, little remains whole. When trials drag on, relationships crumble - supply networks snap, trust erodes, standing in the industry fades. Should enforcement come at last by selling off what someone owns, the wider network

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<sup>34</sup> Niranjan Venkatesan, "Cost Imposition in Commercial Courts: A Deterrent to Frivolous Litigation?" 6 *Indian Journal of Commercial Law* 102 (2020).

<sup>35</sup> *Enercon (India) Ltd. v. Enercon GmbH*, (2014) 5 SCC 1.

<sup>36</sup> Sabyasachi Bhattacharya, "The Culture of Adjournments in Indian Courts" 22 *Journal of Legal Studies* 88 (2011).

still ends up poorer than before. Mediation, stepping in early, keeps those connections alive. What survives isn't just agreement - it's continuity.<sup>37</sup> When disputes arise, choosing negotiation over court battles helps firms keep suppliers connected and operations running. Because of this, required mediation supports stronger contract compliance - restoring lost financial worthwhile repairing business ties so work can move forward later.

### **Judicial Methods in Enforcing Rules Examined Through Court Cases**

Understanding shifts in India's system for enforcing contracts means looking past changes in written laws, instead turning attention to rulings shaped by its highest court. Not limited to statutes alone, the Supreme Court has drawn upon tools like the Commercial Courts Act alongside the Arbitration and Conciliation Act, building an environment where enforcement takes priority. With key decisions issued over recent years, judges have worked deliberately to close delays often exploited by those avoiding payment after losing cases. Emphasis now rests on reducing unnecessary court involvement, speeding up recovery processes, while treating government bodies and private entities equally under contractual obligations. This evolution reveals less tolerance for tactics that stall outcomes, favoring consistency and timeliness across dispute resolution.<sup>38</sup>

Final outcomes must remain secure, a principle emphasized in *Kandla Export v. OCI Corporation*.

Much of how expensive business deals are upheld in India relies on enforcing arbitration results from abroad. For a long time, those who lost such cases often fought the outcome inside Indian courtrooms, forcing winners into legal delays that stretched for years while weakening global commerce confidence.

Despite being told they could not challenge the decision, the losing party tried again through another route. A ruling in 2018 involving *Kandla Export and OCI Corporation* became pivotal when courts examined how new procedures might be misused. Instead of accepting the outcome, one side looked for ways to stall enforcement actions under fresh legal rules. That year, a request to enforce a foreign arbitration result appeared before the High Court's commercial section. Objections raised during execution were rejected without success.<sup>39</sup> Then came an unusual move: filing what amounted to a second challenge after already losing once. Claiming wide rights under Section 13 of the updated law, the affected party insisted appeals should remain open regardless. Yet the court saw this as prolonging matters rather than resolving them.

Not once did the Supreme Court entertain this claim. Though framed as a gap, the Court saw it differently - finding the Arbitration Act fully complete on its own. Only appeals under Section 50 qualify in cross-border business disputes;

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<sup>37</sup> *M/s. Reliance Industries Ltd. v. Union of India*, (2014) 7 SCC 603.

<sup>38</sup> Rishab Gupta, "The Evolving Jurisprudence of Section 12A" 5 *Indian Commercial Law Review* 22 (2023).

<sup>39</sup> *Shri Lal Mahal Ltd. v. Progetto Grano Spa*, (2014) 2 SCC 433.

everything else falls outside. Where one law opens wide, another closes tight - the judges refused to let broader appeal rules undermine those limits.

What stands out about *Kandla Export* is how it reshaped enforcement. Through this judgment, the Supreme Court made clear - the goal of the Commercial Courts Act lies in faster dispute settlement, rather than opening doors to delay-seeking challenges. Investors worldwide now see a firmer stance: tactics aimed at postponing fulfillment of international agreements face little room in India's updated judicial framework. Legal strategies built on obstruction find less ground to grow.<sup>40</sup>

### **Pre-Arbitration Enforcement and Economic Duress: NTPC v. SPML Infra Ltd.**

Midway through contract disputes, things frequently stall - not in court, but earlier, when one side questions if an agreement ever existed or had already been resolved. With major construction or government projects, stronger parties sometimes delay closing payments unless contractors first sign what is called a "No-Demand Certificate," framing it as full settlement. Should that contractor later pursue arbitration, arguing the signature came under financial pressure, judges must then assess: act at once, or leave interpretation to the arbitrator.

Though the 2023 ruling in *NTPC Ltd. v. SPML Infra Ltd.*<sup>41</sup> dealt narrowly with Section 11 of the Arbitration Act, its impact proved substantial. From this case emerged what judges now call the "eye of the needle" standard. Where judicial power before arbitration usually bends toward restraint, here the Court insisted on a narrow gatekeeping role. Not every claim should pass through - only those barely surviving basic scrutiny. A door stays open, yet just wide enough to block hopeless cases. When a claim of economic duress appears plainly baseless on its face - especially when key documents directly oppose it - the court ought not send it to arbitration, avoiding unnecessary cost and delay. Yet where the slightest credible uncertainty exists about pressure or compulsion, withdrawal is appropriate; decision power then rests with the arbitral body.

Looking at how rules are applied, the decision hits a precise middle ground between competing business concerns. Rather than allow prolonged court reviews that slow down proper legal processes, it moves things forward swiftly. At the same time, it acknowledges what often happens in practice: stronger parties sometimes pressure weaker ones into unfair deals using financial leverage.<sup>42</sup> The outcome reflects both efficiency and real-world power imbalances.

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<sup>40</sup> B.S. Chauhan, "The Role of Specialized Courts in Dispensing Justice" 2 *Journal of the National Judicial Academy* 44 (2015).

<sup>41</sup> *NTPC Ltd. v. SPML Infra Ltd.*, (2023) 9 SCC 385.

<sup>42</sup> Anurag K. Agarwal, "Business, Courts and the Economy: The Interplay" 41 *Vikalpa: The Journal for Decision Makers* 120 (2016).

## **Leveling the Commercial Playing Field at Pam Developments**

Starting off, consistent application of legal rules matters if contracts are to build real confidence among market players. It makes a difference when everyone faces the same standards, no matter who they are. Often overlooked, the Indian government stands as the biggest player in contractual dealings across the country.<sup>43</sup> Over time, public authorities held onto special advantages in legal processes. Without fail, state agencies could halt enforcement actions against them - stopping judgments from taking effect - even while holding back payment. Rarely did private firms see such leniency under similar circumstances.

In 2019, the Supreme Court addressed unequal treatment in Pam Developments Private Limited versus State of West Bengal.<sup>44</sup> This matter involved enforcing an arbitral decision while the state demanded suspension without conditions. However, judges determined revisions to arbitration law left no room for public authorities to claim unique privileges. Acting commercially, governmental bodies hold no higher ground than regular corporate entities. Just like any business entering contracts, the State follows identical legal expectations during dispute resolution.

A ruling now requires even state entities to convince courts before pausing payment on commercial awards - sometimes through full deposits or strong guarantees. Foundational for today's contract law in India, it signals clearly: agreements with public authorities hold weight. Private firms and funders gain confidence knowing deals stand firm, regardless of outdated legal shields or claims of special status once used to delay accountability.<sup>45</sup>

## **Overhauling the Execution Machinery: Rahul S. Shah v. Jinendra Kumar Gandhi**

What started as a specific case soon reshaped how enforcement works across the country. Though arising beyond the scope of the Commercial Courts Act, its consequences touch each person holding a commercial judgment in India. A deep flaw in the system became undeniable - Order XXI of the Civil Procedure Code failed in practice. Faced with this reality, the Supreme Court acted boldly in Rahul S. Shah v. Jinendra Kumar Gandhi (2021). Instead of limiting itself to legal interpretation, it imposed binding operational orders on every court handling execution. The move bypassed tradition, demanding immediate structural change.

One-way courts now respond stems from how some losing parties conceal property or trigger baseless claims through others. Six months - that is the timeframe set by the highest court for wrapping up enforcement actions after they begin. Right at the start, judges must require those owing money to swear under

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<sup>43</sup> *Mayavati Trading Pvt. Ltd. v. Pradyut Deb Burman*, (2019) 8 SCC 714.

<sup>44</sup> *Pam Developments Private Limited v. State of West Bengal*, (2019) 8 SCC 112.

<sup>45</sup> Arvind Subramanian, *Economic Survey 2017-18* 131 (Ministry of Finance, Government of India, 2018).

oath about every asset held. Penalties grow sharp when anyone pushes forward delays masked as legal challenges.<sup>46</sup> Tougher financial consequences follow if objections serve only to stall. Enforcement steps shift early toward full disclosure, leaving little room for evasion. Speed matters more since time once favored those avoiding payment.

Though putting these ideas into practice still stumbles through lower courts, the ruling in *Rahul S. Shah* marks a turning point - justice means little if it comes too late. Targeting delays buried within Order XXI, the top court handed businesses sharper tools. Recovery now stands a better chance, not just on paper but in actual bank balances.<sup>47</sup>

These rulings together show a court system sharply focused on how economic slowdowns stem from legal delays. Though appeal routes shrink, arbitration gains strong support from judges keen to speed things up. Where the State once held unique powers to enforce claims, those edges now fade under judicial scrutiny. Execution methods shift too - reshaped by direct interventions at the highest levels. Each move strengthens how contracts are upheld across the country.

### **Contract Enforcement Across the UK Singapore and India**

Though India has improved how courts handle business conflicts, judging real progress means comparing its ability to enforce rulings with top international centers. What sets the UK and Singapore apart is not just fair trials but efficient recovery of contested property. These systems excel at turning verdicts into tangible outcomes. India adopted many procedural methods from such places. Yet the capacity to carry court decisions through to completion remains underdeveloped. Execution - the last critical step - still lags behind global leaders. Success lies less in courtroom reforms than in closing the gap after judgment.

### **The United Kingdom Enforces Through Routine Administration**

Under UK law, especially within the London Commercial Court's reach, winning a case typically means getting paid. Execution of judgments operates less like contested litigation and more like a routine procedural step. The framework treats collection as an expected outcome, not a separate battle.<sup>48</sup>

A wide range of strong tools becomes available to judgment creditors under the UK system. Instead of using a broad civil procedure such as India's Order XXI, claimants who win their case may quickly seek a Third-Party Debt Order - this halts access to the debtor's bank funds. Another path opens through a Charging Order, which ties the debt obligation to property owned by the debtor. Execution of High Court rulings then moves outside court staff, handed to specialized agents

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<sup>46</sup> *Pam Developments Private Limited v. State of West Bengal*, (2019) 8 SCC 112.

<sup>47</sup> Richard Susskind, *Online Courts and the Future of Justice* 145 (Oxford University Press, Oxford, 2019).

<sup>48</sup> V.K. Rajah, "The Singapore International Commercial Court: A New Chapter in Transnational Commercial Justice" 27 *Singapore Academy of Law Journal* 3 (2015).

known as High Court Enforcement Officers.<sup>49</sup> These individuals operate independently yet hold official status, driven by performance incentives while wielding authority to take and auction possessions. Their legal reach allows swift action when collecting what is owed.

Right after a ruling, most people in the UK choose to settle without being forced. That outcome stems from strict consequences tied to stalling tactics. Objections seen as pointless lead to heavy expense penalties - paid at once. Because property can be seized quickly, delaying rarely works. As a result, court decisions here almost always turn into real action fast.

### **Singapore Tech Edge and Tracking Assets**

Execution of rulings in Singapore moves fast because delays cost outcomes. While courts elsewhere lag, the system here merges process with technology so tightly that steps overlap almost invisibly. Speed matters not by choice but necessity - modern wealth shifts quickly, often across borders or into forms hard to seize. When money flows through digital channels, old methods fail. That reality shapes how orders take effect locally. Courts adapt not through reform but design: tools embed speed into each phase. Outcomes show not in policy papers but in seized accounts or frozen transfers within hours.

Instant access to justice begins once a ruling arrives through Singapore's digital litigation system. From there, launching enforcement steps like an execution order unfolds without delay. Tracking wealth is high on the legal agenda here. Company leaders may be pulled into court rooms at short notice, required to reveal every financial detail across borders. When verdicts face resistance, executives cannot rely on business structures as shields. Judges apply firm rules drawn from tough oversight frameworks, pushing liability onto individuals when needed. Firms that resist compliance risk being shut down quickly.<sup>50</sup> Close coordination among courts, banks, and watchdog agencies closes most escape routes. Hidden holdings rarely stay hidden long under such scrutiny.

### **Evaluating India's Position The Missing Link**

Contrasted against the UK and Singapore, India's difficulty enforcing contracts stands out sharply. Though the Commercial Courts Act brought Indian trial methods up to international levels - adopting Case Management Hearings similar to those in the UK and mirroring Singapore's dedicated judicial panels - the necessary systems for implementation were overlooked completely. While procedural frameworks crossed borders, the machinery needed to make them work did not follow.<sup>51</sup>

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<sup>49</sup> Harish Salve, "Justice and the Economy: The Unseen Connection" 22 *Journal of National Law University Delhi* 45 (2020).

<sup>50</sup> *United India Insurance Co. Ltd. v. Antique Art Exports Pvt. Ltd.*, (2019) 5 SCC 362.

<sup>51</sup> R.V. Raveendran, "The Challenge of Delay in the Justice Delivery System" 2 *Supreme Court Cases (J)* 35 (2018).

Execution of corporate recovery orders in India runs through Order XXI of the CPC - a legal framework nearly one hundred years old, designed originally for rural land conflicts rather than modern financial claims. Instead of dedicated enforcement officers like those seen in the UK's High Court system, India depends on local bailiffs who lack adequate funding and digital tools. The moment a judgment is issued, obstacles emerge - not from complexity of law but from procedure. Challenges by defaulting companies often take shape as repeated objections, technically permitted under current rules. These appeals do not question facts - they restart arguments. Each round mimics a trial within a trial. What was meant to be conclusive becomes prolonged. Authority of the initial ruling weakens each time it is questioned. Finality fades when delays are built into the process itself.

The findings show India's reforms in commercial justice fall short despite progress. Though court procedures improved under the new Act, getting judgments enforced still operates on outdated methods. Moving forward, matching centers such as London or Singapore means prioritizing implementation over litigation. A break from the conventional Civil Procedure Code becomes necessary here - one that sets up a dedicated enforcement body, built on digital tools and strict timelines. Judges would need to reject delay strategies after rulings, without exception. Without fixing this last stage, rankings will stay low even when growth suggests otherwise.<sup>52</sup>

### **Economic Effects and Policy Considerations**

One way economies stumble isn't through sudden crisis - but slow decay in how deals are upheld. Courts that delay rulings on agreements weaken trust across financial networks. Because promises lose weight when enforcement drags, lenders demand more payback - raising borrowing costs for everyone.<sup>53</sup> Investment shifts toward safer borders when local systems feel unreliable. Small enterprises often bear the brunt, lacking resources to wait years for resolution. A nation's ability to honor contracts quietly shapes its growth path. Legal reliability feeds confidence - not only among lawyers, but investors, workers, even households planning ahead, so courts do more than settle disputes - they set economic rhythms.

### **The Judicial Risk Premium and How It Affects Investment**

Unpredictable environments scare off investment - this fear shapes decisions quietly. Assessing where to place money abroad, global firms weigh legal uncertainty heavily. Their forecasts include hidden costs tied to court systems back home might not protect deals. If contracts cannot be enforced, profits stay locked in distant markets. Calculations shift when judges act arbitrarily. A

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<sup>52</sup> Dipak Misra, "Commercial Disputes: Need for a Robust Regime" 6 *Indian Journal of Arbitration Law* 10 (2017).

<sup>53</sup> *Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engineering Ltd.*, (2019)9 SCC 209.

number gets added behind spreadsheets, reducing expected gains before anything launches. That figure reflects trust, or lack of it, in local rulings.

Years stuck in court chasing payment? That reality pushes investors to insist on much larger profits just to take the chance. When disputes drag on, even strong industrial ventures collapse under financial weight before breaking ground. Fast-track business tribunals change everything - binding timelines and focused judges make outcomes feel certain. Certainty like that pulls money across borders without fanfare or force. Projects once frozen by doubt suddenly move because delay no longer hovers like a tax on doing deals.<sup>54</sup>

### **The Effect on Credit Markets and Bad Loans**

What hurts banks most? A slow system for enforcing contracts. Lenders depend heavily upon fast court decisions to reclaim unpaid debts. If business disputes pile up in overburdened courts, collecting judgments - especially under Order XXI of the CPC - can stretch into many long years. Money owed then stays trapped, showing up as stagnant losses recorded on financial ledgers. Recovery stalls while balances grow heavier with unresolved claims.

This buildup of locked-up money fuels a damaging economic loop. Because recovery risks remain elevated, lenders raise interest charges across the board - honest firms pay more despite lower default chances. When courts move slowly, borrowing becomes pricier nationwide. Timely rulings and faster case resolution break that pattern; the Commercial Courts Act pushes exactly there. Faster decisions free frozen loans, clear bank records, then open space for cheaper financing overall.<sup>55</sup>

### **The Uneven Impact on Small Businesses**

Delayed enforcement hits different players in unequal ways. While big firms carry deep pockets and legal firepower to endure decade-long court fights, smaller outfits lack such buffers. Tiny and mid-sized businesses face sharper risks when rules take too long to apply.

A small delay in payments can unravel an MSME when a large client fails to pay - especially if courts move slowly. Waiting years for legal resolution drains cash needed to operate. Changes made in 2018 to the Commercial Courts Act reflected awareness: lowering the financial limit to ₹3 Lakhs opened access, while mandatory mediation before filing suit aimed at faster outcomes. When disputes stall business funds, speed becomes more than convenience - it determines whether firms live or collapse.<sup>56</sup> These enterprises drive much of India's jobs and production; their endurance hinges on how swiftly justice functions.

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<sup>54</sup> Reserve Bank of India, *Report of the Committee on MSME Sector* (2019).

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## **Courts Shape Economic Systems Through Policy Change**

One outcome of today's economic conditions points clearly toward rethinking government attitudes on the court system. Governments, for generations, saw legal institutions less as vital infrastructure - more like budget line items needing control. Because of such thinking, insufficient financial support became routine across commercial tribunals now struggling to function. Over time, what was once merely frugality hardened into systemic neglect.

A functioning economy depends not just on roads and internet cables, but also on swift dispute resolution. Because without fast courts, deals stall like cargo at an overloaded dock. When legal delays mount, investors hesitate, loans freeze, growth slows. Instead of treating justice as overhead, leaders should see it as leverage - small upgrades can release huge sums now stuck in litigation limbo.<sup>57</sup> Digital filing cuts wait times; trained judges speed decisions; skilled enforcers ensure rulings mean something. These are not expenses, rather catalysts: they turn laws into real outcomes. Even strong statutes fail if implementation drags. So progress hinges less on new rules, more on fixing how existing ones work. Efficiency here pays dividends elsewhere across the system. Without such shifts, good legislation sits unused, like a highway ending in dirt.

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<sup>57</sup> *Emaar MGF Land Ltd. v. Aftab Singh*, (2019) 12 SCC 751.

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