

World Bank Report on Doing Business 2018

Background

The World Bank Report on Doing Business seeks to measure regulations that enhance business activity and those that constrain it. The Doing Business ranking evaluates ten aspects of business regulation for small and medium sized firms located in the largest city in each country based on standardised case scenarios. These parameters are: starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts and resolving insolvency.

The World Bank released its Doing Business Report 2018 on October 31, 2017. Brunei Darussalam, Thailand, Malawi, Kosovo, India, Uzbekistan, Zambia, Nigeria, Djibouti and El Salvador were the most improved economies in 2016/17 in the areas tracked by the report. Together, these 10 countries implemented 53 regulatory reforms making it easier to do business.

India has jumped 30 places in the overall ranking from 130 in 2016 to 100 in 2017. The highest jump of 53 positions has been registered in the Paying Taxes indicator where the ranking improved from 172 in 2016 to 119 in 2017. In the 'Enforcing Contracts' indicator, the ranking has improved 8 positions, i.e. from 172 in 2016 to 164 in 2017.

The following table depicts the change in India's ranking across the different indicators specified in the Report:

Topic	DB 2018 Rank	DB 2017 Rank	Change in Rank
Overall	100	130	30
Starting a Business	156	155	-1
Construction Permits	181	185	4
Getting Electricity	29	26	-3
Registering Property	154	138	-16
Getting Credit	29	44	15
Protecting Minority Investors	4	13	9
Paying Taxes	119	172	53
Trading across Borders	146	143	-3
Enforcing Contracts	164	172	8
Resolving Insolvency	103	136	33

- As can be seen from the above table apart from the 'Paying Taxes' indicator, there has been a substantial improvement in the 'Resolving Insolvency' and 'Getting Credit' indicator.
- There has also been a decline in some indicators namely Registering Property and Getting Electricity.

Enforcing Contracts

As indicated above, India's ranking improved by 8 points in this indicator. As per the report, Namibia has shown the most marked improvement in the Enforcing Contracts indicator which is a result of a seven-year reform process in case management and information communication technology systems. In 2014, it adopted new case court rules which incorporated many case management principles such as pre-trial conferences and time limits for key events. Guyana, Nicaragua, the Slovak Republic and Vietnam strengthened their regulatory environment by introducing a new Code of Civil Procedure.

The Enforcing Contracts indicator measures the time and cost for resolving a commercial dispute through a local first-instance court (competent court), and the quality of judicial processes index, evaluating whether the country has adopted a series of good practices that promote quality and efficiency in the court system. To assess the enforcement of contract indicator, the World Bank circulates a questionnaire based on a standardised case study¹. As per the 2018 Report, it takes 1,445 days to dispose²a commercial case (this has increased from 1420 days in the 2017 report). Out of the 1,445 days, 1095 days are spent on the trial and judgment phase and 305 days on enforcement of the judgement.

The following table provides information on the time, cost and the quality of judicial process indices

Indicator	Delhi	Mumbai
Time (days)	1445	1445
Cost (% of claim value)	31.0	31.0
Quality of Judicial Index	10.5	10.0

*Delhi has been assigned an additional 0.5 score as the World Bank has acknowledged that the Court Fees (Delhi Amendment) Act permits refund of court fees in cases where the parties agree to settle the dispute through mediation or conciliation.

The quality of judicial processes index covers a set of good practices across four areas, corresponding to the four components of the index: court structure and proceedings, case management, court automation and alternative dispute resolution. The index ranges from 0 to 18, with higher values indicating better and more efficient judicial processes. In the 2017 Report, India's Quality of Judicial Process had an overall score of 9 out of 18. In the 2018 Report, the score had improved to 10 out of 18 for Mumbai & 10.5 out of 18 for Delhi. The increase in the points has been due to the improved scoring in the Case Management index and for Delhi in the Alternate Dispute Resolution Index.

¹As per the said case study, a seller delivers custom-made goods (the value of the goods is Rs. 3,21,665) to a buyer who refuses delivery, alleging that the goods are of inadequate quality. To enforce the sales agreement, the seller files a claim with a local court, which hears arguments on the merits of the case and the court decides in favour of the seller, and orders the buyer to pay the contract price.

²The World Bank team noted the amendments made to the Arbitration and Conciliation Act, 1996 to streamline the arbitration procedure and to ensure that the arbitration procedure is completed within a stipulated time period. However, the World Bank team has stated that the assumptions in the case study are that the case is resolved as per the formal court system and therefore cases settled by way of mediation are not considered for evaluating the data.

The following table provides the points assigned to the competent court in Delhi and Mumbai for each of the four components of the Quality of Judicial Process. A detailed breakup of the different indices is provided in **Annexure A**.

Quality of Judicial Process (0-18)	Existing		Proposed
	Delhi (10.5/18)	Mumbai (10/18)	
Court structure and proceedings (0-5) ³	4.5	4.5	5
Case Management (0-6)	1.5	1.5	5
Court automation (0-4)	2	2	4
Alternative Dispute Resolution (0-3)	2.5	2	2.5

- As can be seen from the above table, case management index has scored the least points.
- Delhi has attained 0.5 points more than Mumbai as points have been assigned to Delhi for the refund of court fees as per Section 16A of Court Fees (Delhi Amendment) Act, 2010.

World Bank Observations

1. Court Structure & Proceedings (Competent Court)

The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (**Commercial Courts Act**) provides for the establishment of commercial division or the commercial court as the case may to adjudicate upon commercial disputes where the specified value of the subject matter is Rs 1 crore or more.

The value of the dispute in the case study provided by the World Bank for the 2018 Report was Rs. 3.2 lakhs and therefore, the dispute would not come within the ambit of the Commercial Courts Act, and would instead fall within the jurisdiction of the Delhi/Mumbai District Courts. Therefore, the measures introduced to streamline commercial disputes under the Commercial Courts Act have had no impact on the indicator's data.

2. Performance Measurement Reports

The indicator measures whether there are any performance measurement reports that can be generated about the competent court to monitor the court's performance, to track the progress of cases through the court and to ensure compliance with established time standards. A score of 1 is assigned if two of the following reports are publicly available: (i) time to disposition report; (ii) clearance rate report; (iii) age of pending cases report; and (iv) single case progress report.

Three of the four reports namely; (i) time to disposition report; (ii) age of pending cases report; and (iii) single case progress report are available to the public through the National Data Judicial Grid. The World Bank team confirmed the same through an independent analysis of the NJDG

³The court structure and proceedings index includes the following indicators (a) Is there a court of division of a court dedicated solely to hearing commercial cases; (b) Is there a small claims court or a fast track procedure for small claims and whether self-representation is allowed; (c) whether pretrial attachment is available; (d) whether new cases are randomly assigned to judges.

data and consultations with local practitioners and therefore, we have been accorded 1 point for this measure.

3. E-Court services

(i) Electronic filing at the Delhi and Mumbai District Courts

As the proposal to implement electronic filing at the District Court level is still under consideration, no points have been assigned for this indicator. The World Bank team will continue to monitor the situation and make necessary changes if required

(ii) Electronic Service of Summons

The World Bank recognizes that the Code of Civil Procedure and the Delhi Courts Service of Process by Courier, Fax and Electronic Mail Service (Civil Proceedings) Rules, 2010 expressly permits electronic service of document, however, the World Bank team consulted with local lawyers who said that they were not aware of such provisions. The local lawyers also stated that e-service was not functional and was used as last resort by few judges, often with an obligation to serve a hard copy on the defendants too. As a result, no points were accorded on this front.

4. Electronic Case Management tools for lawyers and judges

As per the methodology, a score of 1 is assigned is when lawyers and judges can use electronic case management tools for at least 4 of the purposes identified in the questionnaire. We had informed the World Bank team that lawyers can use/access five out of the seven case management tools for lawyers and judges can also access five out of the six case management tools. However, no points have been assigned on this front as the legal practitioners informed the World Bank that only limited electronic case management tools such as the ability to receive and send notifications and the ability to view court orders in a particular case are available.

5. Power to grant adjournments

The World Bank team recognized that Order XVII, Rule 1 of the Code of Civil Procedure, 1908 (CPC) prescribes the maximum number of adjournments that can be granted during the hearing of the suit. However, the World Bank has not assigned any score on this front as according to the team the provision only limits the number of adjournments to be granted at the request of the parties and does not limit the number of adjournments that can be granted by the judge at his discretion. This was also confirmed by the lawyers who met the World Bank team.

6. Financial incentives for parties to resort to voluntary mediation

With regard to financial incentives provided to parties for resorting to voluntary mediation, the World Bank recognized that the provision for refund of court fees under Section 16 A of the Court Fees (Delhi Amendment) Act, 2010. Therefore, a score of 0.5 has been assigned to Delhi.

Section 43 of the Bombay Court Fees Act, 1959 provides for the refund of 50% of the court fee if the suit is settled by agreement between the parties, before any evidence is recorded or any appeal or cross objection is settled by agreement of parties before it is called on for an effective hearing by the court. However, the lawyers informed the World Bank team that the provision was not applied consistently across the board and that there was ambiguity regarding the

applicability of this provision to reimbursement of court fees. Therefore, no point has been assigned on this front to Mumbai.

Further, this indicator looks at voluntary mediation/conciliation, i.e. in which the parties have an active role and voluntarily decide to initiate mediation and the parties are incentivised to voluntarily resort to mediation. It does not refer to court-annexed mediation as provided under Section 89 of the CPC. Currently, there is no standalone law on mediation and therefore, though parties can voluntarily refer cases to mediation, there is no legal basis to enforce the award/decreed passed by the mediators.

7. Pre-Trial Conference

The Enforcing Contracts indicator tests whether a pretrial conference is among the case management techniques used before the competent court and at least three of the following issues are discussed during the pretrial conference:(i) scheduling (including the time frame for filing motions and other documents with the court);(ii) case complexity and projected length of trial; (iii) possibility of settlement or alternative dispute resolution;(iv) exchange of witness lists;(v) evidence;(vi) jurisdiction and other procedural issues; and (vii) narrowing down of contentious issues. A score of 1 is assigned if a pretrial conference in which at least three of these events are discussed is held within the competent court; 0 if not.

The World Bank noted that Order X, Order XI, Order XII of the Code of Civil Procedure, 1908 provides for oral examination of parties and discovery and inspection of documents. However, as per the World Bank these provisions do not permit pre-trial conference as the orders/provisions come into the picture only after the first hearing- where the first hearing is not merely a meeting of the parties conducted prior to trial to streamline the procedure, but a substantive hearing where the case can be disposed off entirely.

Conclusion

Based on the observations and comments received from the World Bank and the discussions/deliberations held, the Department of Justice has prepared an Action Plan for improving India's ranking. The Action Plan is provided in **Annexure B**.

Annexure A

A. Case Management

	Case Management (0-6)	Answer (Mumbai)	Score (Mumbai)	Answer (Delhi)	Score (Delhi)
	Case Management (overall score)		1.5		1.5
1	Time Standards	Yes	0.5	Yes	0.5
1.a	Are there laws setting overall time standards for key court events in a civil case	Yes	-	Yes	-
1.b.	If yes, are the time standards set for at least 3 court events	Yes	-	Yes	-
1.c.	Are these time standards respected in more than 50% of cases	No	-	No	-
2	Adjournments		0		0
2.a.	Does the law regulate the maximum number that can be granted	Yes	-	Yes	-
2.b.	Are adjournments limited to unforeseen and exceptional circumstances	No	-	No	-
2.c.	Are the rules on adjournments respected in more than 50% of cases	No	-	No	-
3	Can 2 of the 4 reports be generated about the competent court: (i) time to disposition report; (ii) clearance rate report; (iii) age of pending cases report; and (iv) single case progress report)	No	1	No	1
4	Is a pretrial conference among the case management techniques used before the competent court	No	0	No	0
5	Are there any electronic case management tools in place within competent court for use by the judges	No	0	No	0
6	Are there any electronic case management tools in place within competent court for use by the Lawyer	No	0	No	0

B. Court Automation

	Court Automation (0-4)	Answer (Mumbai)	Score (Mumbai)	Answer (Delhi)	Score (Delhi)
	Court Automation (overall score)		2		2
1	Can the initial complaint be filed electronically through a dedicated platform within the competent court	No	0	No	0
2	Is it possible to carry out service of process electronically for claims filed before the competent court	No	0	No	0
3	Can court fees be paid electronically within the competent court	Yes	1	Yes	1

4	Publication of judgments	Yes	1	Yes	1
4.a.	Are judgments rendered in commercial cases at all levels made available to the general level	Yes	-	Yes	-
4.b.	Are judgments rendered in commercial cases at the appellate and supreme court level made available to the general public through publication in official gazettes, in newspapers or on the internet or court website	Yes	-	Yes	-

C. Alternative Dispute Resolution

	Alternative Dispute Resolution (0-3)	Answer (Mumbai)	Score (Mumbai)	Answer (Delhi)	Score (Delhi)
	Alternative Dispute Resolution (overall score)		2		2
1	Arbitration		1		1
1.a.	Is domestic commercial arbitration governed by a consolidated law or consolidated chapter	Yes	-	Yes	-
1.b.	Are there any commercial disputes-aside from those that deal with public order or public policy that cannot be submitted to arbitration?	Yes	-	Yes	
1.c.	Are valid arbitration clauses or agreements usually enforced by the courts	Yes	-	Yes	-
2	Mediation/Conciliation		1		1.5
2.a.	Is voluntary mediation or conciliation available?	Yes	-	Yes	-
2.b.	Are mediation, conciliation or both governed by a consolidated law or consolidated chapter	Yes	-	Yes	-
2.c.	Are there financial incentives for parties to attempt mediation or conciliation	No	-	Yes	-

AGENDA 4:

Action Plan for improving the ranking of India in “Enforcing Contracts” indicator under the World Bank’s Ease of Doing Business in 2019 Report

S.No	Issues	Score in 2017	Expected Score in 2018	Actual Score in 2018	Status	Steps To Be Taken before 2019 Report	Department Concerned/ Time line	Nodal Officer in DoJ
1.	Operationalize dedicated commercial courts in Delhi District Court and Mumbai City Civil Court by amending the Commercial Courts Act, 2015.	1.0	1.0	1.0	In view of proviso to Section 3 and section 2(1)(i) of the Commercial Courts, Commercial Divisions and Commercial Appellate Division of High Courts Act, 2015 which provides that no commercial courts shall be established at District level in case of High Courts having original jurisdiction. Therefore, no commercial courts have been established in Delhi & Mumbai at the district level. However, commercial divisions and commercial appellate divisions have been established in Delhi & Mumbai High Court. Since the above provisions of the Act allow Delhi & Mumbai High Court to deal with only commercial cases above Rs one crore and there is no commercial courts to deal with the cases lower than this specified value in Delhi and Mumbai.	a) Remove proviso to Section 3 of the Commercial Courts Act. (b) Delete section 2(1)(i) of the act which defines ‘specified value’ (c) DoLA to put up a Cabinet Note along with a draft bill for amendments to the Commercial Courts Act, 2015.	Department of Legal Affairs Time line: Dec’17 -do- -do-	JS(GRR)
2.	Assigning New Cases to Judges randomly through an automated system within the Delhi District Court & Mumbai (Score- 0.5)	0.5	0.0	0.0	At present all the New Cases to Judges are assigned randomly in manual manner within the Delhi District Court & Mumbai City Civil Courts.	(a) The eCommittee of the Supreme Court of India has to ensure that new cases are assigned randomly and electronically to judges in all the Delhi District Court & Mumbai City Civil Courts. (b) Member (Project Management) of eCommittee of the Supreme Court who is nodal officer in this regard to test software which has been made available recently and	• Department Concerned: Supreme Court e-Committee of Department of Justice (eCourts) • Achievable Score:0.5 Time line: Dec’17	JS(AKL)

						implement the same in all the Delhi District Court & Mumbai City Civil Courts.		
3.	As per the Report, it takes 1,445 days to dispose of a commercial case in Mumbai and Delhi (this has increased from 1420 from the 2017 report). Out of the 1,445 days, 1095 days are spent on the trial and judgment phase. Further, the enforcement of judgment takes 305 days.	-	-	-	There is an urgent need to do process re-engineering in case management system to reduce the time taken for institution disposal of cases.	(a) Supreme Court Arrears Committee and High Court Arrears Committee should focus on process re-engineering in case management system to reduce the time taken for institution disposal of cases. These Committees should conduct meetings/workshops with lawyers to chalk out a plan for reducing time taken for the trial and judgment phase. (b) Recommendations of various action research projects in reduction of pendency may be implemented by the High Courts/Sub-ordinate courts	<ul style="list-style-type: none"> Supreme Court arrears Committee and High Court Arrears Committee Time line: Dec'17	JS(GRR)
4.	Introduce Pre-Trial Conference as a part of case management technique. (Score- 1.0)	1.0	1.0	0.0	<p>There are express provisions in both Code of Civil Procedure and the Criminal Procedure Code which do relate to and are relevant in context of the pre-trial hearing/pre-trial conference. The procedures as stated under Chapters V to XVII of the Criminal Procedure Code and Order X, Order XI, Order XII of the Code of Civil Procedure relate to pre-trial conferences.</p> <p>Section 18 of the Commercial Courts Act provides for issue of practice direction by the High Court to district courts and it is interpreted that implementing Pre-Trial</p>	<p>(a) To introduce a standalone (express) provision on Pre-Trial Conference in the Commercial Courts Act, 2015</p> <p>(b) Code of Civil Procedure may be amended to introduce case management techniques as provided in the Commercial Courts Act for all civil cases.</p> <p>(c) DoLA has to put up a Cabinet Note along with a draft bill for amendments</p>	<p>(a) Department of Legal Affairs</p> <p>(b) Department of Legal Affairs</p> <ul style="list-style-type: none"> Achievable Score:1.0 Time line: Dec'17	JS(GRR)

					<p>Conference is one of such directions</p> <p>The Law Commission of India have also in its 14th, 27th, 77th observed that proper implementation of the civil procedural laws would assist in curtailing delays in the justice delivery system. Further in its 244th Report the commission had suggested that the High Courts may update their rules to develop best practices.</p>	<p>to the Commercial Courts Act, 2015.</p> <p>(d) The Delhi and Mumbai High Courts in their respective jurisdictions are empowered to frame rules and regulate the procedures by issuing notifications, circulars, etc and the High Courts may be requested by DoJ to issue appropriate directions regarding practice of pre-trial conference as per Section 18 of the Commercial Courts Act and Chapters V to XVII of the Criminal Procedure Code and Order X, Order XI, Order XII of the Code of Civil Procedure</p>	<p>(c) Delhi High Court & Mumbai High Court</p>	
5.	<p>Introduction of Voluntary Mediation to give statutory backing to pre-litigation mediation in India. (Score- 0.5)</p>	0.5	0.5	0.0	<p>Presently mediation is referred to in the post-litigation stage under Section 89 of the Code of Civil Procedure, 1908 according to which the court may refer disputing parties to mediation to affect a compromise between the parties and shall follow the procedure specified in the Mediation Rules.</p>	<p>(a) A Standalone law or amendments to the Arbitration and Conciliation Act, 1996 to be introduced to regulate voluntary Mediation at the pre-litigation stage including financial incentives to the parties resorting to such ADR methods.</p> <p>(b) The Delhi and Mumbai High Courts in their respective jurisdictions may be requested by DoJ to take measures to implement pre-litigation voluntary Mediation as per the existing provisions of the Arbitration and Conciliation Act and Section 89 of the Code of Civil Procedure, 1908.</p> <p>(c) A workshop in this regard may be organised by DoJ in the first week of December, 2017 in coordination with DoLA.</p>	<p>(a) Department of Legal Affairs</p> <p>(b) Delhi High Court & Mumbai High Court</p> <p>• Achievable Score:0.5</p> <p>Time line: Dec'17</p>	JS(GRR)

6.	Ensure implementation of e-Filing in Delhi District Courts as well as Mumbai City Civil Courts. (Score- 1.0)	1.0	-	-	<p>(a) Delhi District Court does not have the e-Filing facility at present in the District Court.</p> <p>(b) Mumbai City Civil Courts do not have the e-Filing facility at present in the District Court.</p>	<p>Steps shall have to be taken to ensure implementation of e-filing in the Delhi District Courts and Mumbai City Civil Courts.</p> <p>i) Member (Project Management) of eCommittee of the Supreme Court who is the nodal officer in this regard will get the security audit of the software which has been made available.</p> <p>ii) DoJ will provide necessary approval/funds for installing infrastructure for storing/transmitting legal documents.</p>	<p>Supreme Court eCommittee/ Delhi & Mumbai High Courts</p> <p>and</p> <p>e-courts mission mode project</p> <p>• Achievable Score:1.0</p> <p>Time line: Dec'17</p>	JS(AKL)
7.	Ensure implementation of e-Summons in Delhi District Courts as well as Mumbai City Civil Courts. (Score- 1.0)	1.0	-	-	<p>(a) Delhi District Court does not have the e-Summons facility at present in the District Court.</p> <p>(b) Mumbai City Civil Courts do not have the e-Summons facility at present in the District Court</p>	<p>(a) Delhi High Court to implement its Rules for Electronic Delivery of Services issued in 2010 in all 11 districts courts of Delhi.</p> <p>(b) Member (Project Management) of eCommittee of the Supreme Court who is the nodal officer in this regard will get the software made available to Delhi District Courts as well as Mumbai City Civil Courts for sending summons by email.</p> <p>(c) Mumbai High Court have to introduce e-Summons in 60 Mumbai City Civil Courts.</p>	<p>Supreme Court eCommittee/ Delhi & Mumbai High Courts</p> <p>and</p> <p>e-courts mission mode project</p> <p>• Achievable Score:1.0</p> <p>Time line: Dec'17</p>	JS(AKL)/JS(GRR)
8.	Create a dedicated section on District Court website containing information on the availability of	1.0	-	-	Six out of eight electronic case management tools for judges have been made available and screen-shots of the same from eCourts website were provided to the World bank team including web linkages. However, the	(a) Disseminate the information to all stakeholders. The concerned High Courts shall publicise the information on the availability of performance management reports	Supreme Court eCommittee and Mumbai & Delhi High Courts	JS(AKL)

	performance measurement reports and availability of electronic case management tools for judges. (Score; 1.0)				participant legal firms and layers claimed that only two out of eight electronic case management tools for lawyers are available. Therefore, no score was awarded.	and electronic case management tools on their websites. (b) Publish booklets on available electronic case management tools and circulate to judges and lawyers. (c) (c). To hold workshops in Delhi and Mumbai to educate judges and lawyers with the help of Bar Councils of Delhi and Maharashtra in Delhi and Mumbai on available case management tools and circulate to judges and lawyers. (d) To involve NJA and State Judicial Academies to educate judges and lawyers on available case management tools and circulate to judges and lawyers.	<ul style="list-style-type: none"> • Achievable Score:2.0 Time line: Dec'17	
9.	Create a dedicated section on District Court website containing information on the availability of performance measurement reports and availability of electronic case management tools for lawyers. (Score: 1)	1.0	-	-	Five out of seven electronic case management tools for judges have been made available and screen-shots of the same from eCourts website were provided to the World bank team including web linkages. However, the participant legal firms and layers claimed that only two out of eight electronic case management tools for lawyers are available. Therefore, no score was awarded.	a) Disseminate the information to all stakeholders. The concerned High Courts shall publicise the information on the availability of performance management reports and electronic case management tools on their websites. b) Publish booklets on available electronic case management tools as prepared by eCommittee and circulate to judges and lawyers.		JS(AKL)/ JS(GRR)

						<p>c) To hold workshops to educate judges and lawyers with the help of Bar Councils of Delhi and Maharashtra in Delhi and Mumbai on available case management tools and circulate to judges and lawyers.</p> <p>d) To involve NJA and State Judicial Academies to educate judges and lawyers on available case management tools and circulate to judges and lawyers.</p>		
10.	Adjournments (Score: 1.0)	1.0	-	-	Even though Order XVII, Rule 1 of the CPC regulate the maximum number to three can only be granted and adjournments limited to unforeseen and exceptional circumstances, the same respected in more than 50% of cases. Therefore, score of 1 could not be obtained.	<p>(a) Supreme Court as well as the High Courts may lay down directions to subordinate courts to regulate and reduce entertaining request for adjournments except as mentioned in Order XVII Rule 1.</p> <p>(b) Amendments to the CPC may be considered to lay down a rule that no adjournments may be entertained except as mentioned in Order XVII Rule 1.</p>	CJI, Supreme Court/ CJ's of all High Courts, DOLA and Leg. Dept.	JS(GRR)/RGs of all HCs/ Concerned JS of DoLA/Leg Dept.