THE SYSTEM OF APPEALS UNDER THE COMMERCIAL COURTS ACT: A CAUSE OF CONCERN?

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ABSTRACT

Before 2015, all civil disputes, including commercial disputes, were settled under the general civil procedure—CPC. However, resolving commercial disputes through CPC was time-consuming and costly. In 2015, the legislature introduced the Commercial Courts Act that amended certain provisions of CPC, with the objective of reducing time and costs. To further this objective, S.13 of the Act amended the system of appeals. However, due to the interpretational issues in S.13, and subsequent judicial construction, the position of the litigants with respect to appeals has been turned back to the general CPC. Since the intent of the legislature cannot be discerned due to the poor drafting, the objective of the provision has been rendered otiose.

With the objective of discovering the best standard for appeal for commercial disputes, this paper surveys the other laws—Arbitration Act, CPC and UK rules and evaluates them on two criteria—expediency and interest of justice—the two competing principled reasons governing the system of appeals. While the Arbitration Act satisfies the first criterion, it does not meet the second criterion as the

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grounds for appeal are limited. On the other hand, CPC meets the second criterion while failing to meet the first one. Thus, neither of them strikes an effective balance between the two criteria. The UK rules perform well on both criteria. This paper argues that incorporating these standards in India would improve the dispute resolution mechanism of commercial courts and potentially increase India's ranking in the Ease of Doing Business report.

I. INTRODUCTION

Ease of Doing Business Report is an annual and comparative assessment of the business atmosphere in countries around the world.[1] This assessment is meant to help both policymakers and researchers evaluate the business regulatory practices in the country.[2] The business regulatory practices include *inter alia* protecting minority investors, resolving insolvency.[3] India participates in this assessment each year and has interestingly progressed from

[1] *About: Ease of Doing Business*, WORLD BANK, (2020), https://www.doingbusiness.org/en/about-us.

[2] World Bank, *About Doing Business*, WORLD BANK, (2020) https://openknowledge.worldbank.org/bitstream/handle/10986/32436/9781464814402_Ch01.pdf. This report offers a detailed explanation of Ease of Doing Business. It analyzes the basis on which the indicators for the report are selected. Key aspects of these indicators include—getting credit, starting a business, enforcing contracts among others. This paper is concerned with the "Enforcing Contract" indicator of this report. Since it is immensely important for both researchers and policy-makers to assess the nature of business practices in various countries, this report also highlights the various uses that it serves.

[3] *Id.*

142nd rank in 2014 to 63rd rank in 2020.[4] Although many factors have seemingly contributed to such amelioration in India's rank, the introduction of specialized Commercial Courts, in 2015, is considered to be a key factor.[5] This is because the Commercial Courts facilitate enforcement of the contracts, which is an important regulatory practice envisaged in the Ease of Doing Business Report. Although in enforcing contracts, India has moved from 186th position to 163rd since the beginning of the specialized commercial courts,[6] it is one such parameter in which India ranked below 100 among 190 countries, thus evincing the need and scope for improvement. Although the Ease of

[4] Asit Mishra, *India's Rank Jumps 14 Places In World Bank's Ease Of Doing Business Ranking*, MINT (Oct., 24, 2019), https://www.livemint.com/news/india/india-jumps-14-notches-in-world-bank-s-ease-of-doing-business-rankings-11571882591868.html.

[5] S.R.Garimella & M.Z. Ashraful, *The Emergence of International Commercial Courts in India: A Narrative for Ease of Doing Business*, 12 Erasmus Law Review, 111(2019).This article is a detailed commentary on the Commercial Courts Act while drawing a connection with the Ease of Doing Business Report. The article begins by highlighting the backdrops of the Civil Justice System in India. It relies on empirical data to argue that the time and the costs of the civil proceedings are ever-increasing in India. The article, then, refers to the data released by the government of India to enunciate the nature of the aforementioned backdrop and how it is worse for Commercial disputes. While arguing for the need for Commercial Courts in India, the article established the context in which the Commercial Courts were introduced in India—giving a brief of the two relevant Law Commission Reports— the188th Report and the 253rd Report. It, further, demonstrates how the bills were received by the different legal luminaries and finally released. Then, the article points out several flaws in the current characterization of the Commercial Courts Act while suggesting various "Law Reforms". The larger theme of this article, and for what, this *paper* relies on it, is that one of the key factors in improving India's Ease of Doing Business rankings is the introduction of the "Commercial Courts" in India.

[6] WORLD BANK, Doing Business 2014 Understanding Regulations for Small and Medium-Size Enterprises 110, (2013).

Doing Business report has been made dysfunctional now, the paper refers to its indicators for guidance.

Commercial Courts *prima facie* provide the benefit of cutting through the traditional Civil Courts for high-value disputes[7] of specific nature[8] that require speedy disposal.[9]Although there is a dearth in the academic literature related to civil procedure in general,[10] the Commercial Courts Act, 2015 ("**the Act**") has received the attention of academicians who have analyzed the

[7] The Commercial Courts Act, §2(i) & § 3, No. 4, Acts of Parliament, 2015 (India), provides that the specified value must not be less than three lakhs, and similarly, S.3 provides that the Constitution of Commercial Courts was for cases of pecuniary value of more than three lakhs.

[8] The Commercial Courts Act, §2(c), No. 4, Acts of Parliament, 2015 (India). Commercial Disputes have been defined to include certain class of disputes such as "ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents"; "export or import of merchandise or services" among others.

[9] The Commercial Courts Act, long heading, No. 4, Acts of Parliament, 2015 (India). The long heading provides for the purpose of the Commercial Courts as, "adjudicating commercial disputes of specified value".

[10] Professor (Dr.) Nanda Kishore, *Indian Civil Procedure: Scholarship Urgently Wanted,* ACADEMIA, https://www.academia.edu/8662447/Indian_Civil_Procedure_Scholarship_Urgently_Wanted. Although this paper makes many seminal contributions, it is mostly concerned with the argument that there is a dearth of literature—regarding the civil procedure. The article provides *six* reasons for the under-nourishment of the civil procedure literature in India—*first*, the Supreme Court often employs its discretion, which makes academicians rely on the phrase "procedure is the handmaiden of justice"; *second*, the great line of academicians are difficult to match; *third*, the code uses archaic language, making it rather difficult to understand; *fourth*, the law commission is mostly occupied with the problem of delays and arrears, and is not much concerned with scholiastic contribution; *fifth*, procedures are tested at the trial courts, and not HCs/SCs, which might lack the technical training to improve scholarship; *finally*, the civil procedure seems to have been neglected in UK/US as well.

provisions substantively and recommended reforms. For example, Krishnaswamy and Aithala depict through both qualitative and quantitative methods, how the commercial courts have not been able to render speedy disposal.[11] They argue that the pecuniary jurisdiction—three lakhs—is too low and thus, includes a plethora of disputes; subject-matter jurisdiction—the subject matter is too broad, which renders such assessment redundant. Further, they argue that the provisions of Costs are not enough to deter insincere applications, and the infrastructure is inadequate to address the real issues.[12] Regarding the system of appeals under the Act, they observe that the Act has *"introduced a complicated system of appeals"*.[13] However, they have not detailed the reasons behind this observation. This Article attempts to unpack this observation.

Appeals are an important constituent of civil procedure. They consume both time and resources that affect the overall enforcement of the contracts. Therefore, for the ease of doing business, the system of appeals must provide

[11] Prof. (Dr.) Sudhir Krishnaswamy & Varsha Mahadeva Aithala, *Commercial Courts In India: Three Puzzles For Legal System Reform*, 11(2) JILS, 20 (2020). This article depicts through, both, qualitative and quantitative methods, how the commercial courts have not been able to render speedy disposal. Qualitatively, this article criticizes the jurisdictional provisions, the infrastructure, and other procedures such as the costs, and the appeals. Quantitatively, the article points out how, empirically, the courts of Delhi and Bangalore have not been able to realize this value. These arguments pertaining to the infrastructural issues and jurisdictional questions are accurate and need to be addressed.

[12] *Id.*

[13] *Id.* at 35.

for expediency and follow the interest of justice. This paper argues that the right balance can be struck by retaining the current levels of appeal while reducing the scope of appeals as present in the English Civil Procedure. This paper is divided into *three* parts—*first*, the interpretive issues with respect to *Appeals* in the Commercial Courts Act are brought forth to understand the legislative policy and judicial interpretation of the system of appeals in India; *second*, this paper explores different legal regimes, such as Arbitration, and the UK Rules governing civil procedure and compares them with the Commercial Courts Act; *third*, introduces the two-competing interests—"expediency" and "interest of justice" while positing a system of appeals, and argues that a right balance must be struck.

II. SYSTEM OF APPEALS AND INTERPRETATIONAL ISSUES

Before the advent of the Act, all disputes including the Commercial Disputes,[14] were subject to *at least first* appeal

[14] Other than the narrow set of exceptions provided under S.96(3) of the Code of Civil Procedure, 1908, another exception is—when a decree is passed with the consent of the parties. In such a case, an appeal may lie only if the very factum of compromise or consent is questioned [Banwari Lal v. Chando Devi (1993) 1 SCC 581] In Banwari Lal v. Chando Devi, the parties had filed an appeal for setting aside an order passed by the HC in re revision of the application. The property in question was in Chando Devi's possession and it had been delivered to the defendant as per their settlement/compromise deed. To this effect, the order had been obtained from the lower court. The plaintiff had filed another suit asking for an appeal against the settlement order. The HC had held that the lower courts cannot entertain an appeal that seeks to invalidate a compromise

from the original decree.[15] However, the position with respect to "commercial disputes"[16] has been obfuscated due to the interpretive issues that arise out of the Act. The purpose behind this technical inquiry is two-fold — *first*, to understand where the current legislative policy in providing the right to appeal in Commercial Disputes stands, and *second*, to understand the judicial evaluation of the policy around appeals in the Commercial Disputes. Two interpretive issues arise out of S.13 of the Act — *first*, the 'heading'[17] of the provision is not synchronous with the 'wording' of the provision; *second*, non-existence of "Order XLIII of the [CPC] as amended by [the] Act" as referred to in the proviso and the effect of the proviso.

filed by the parties. The SC allowed the appeal, and the order of the Trial Court was upheld. This paper relies on this case for the principle laid down regarding when an appeal may lie against a settlement deed.

[15] The Code Of Civil Procedure, § 96(1), No. 5, Acts of Parliament, 1908 (India).

[16] An inclusive definition of "commercial disputes" has been provided under S.2(1)(c) of the Act. This includes ordinary transactions of merchants, bankers et cetera, export important merchandise or services, transactions relating to carriage of goods, including transactions relating to aircrafts, their engines, distribution and licensing agreements, management and consultancy agreements, joint venture agreements, shareholders agreements.

[17] The heading is alternatively considered to be the marginal notes or title of the provision. Therefore, this paper, when mentioning "headings", considers it to be the same as marginal notes or title of the provision.

1. Non-Synchronization of the Heading and the Wording

The heading of S.13 provides for "*[a]ppeals* from *decrees* of Commercial Courts and Commercial Divisions". However, the wording of S.13 provides, "[a]ny person aggrieved by the *judgment* or *order* of a Commercial Court". Although the heading of S.13 provides for appeals from "decrees", the wording provides for appeals from "judgment" or "order".

To understand the consequences of such wording, it is essential to understand the difference between "decree", "order" and "judgment". The words 'order', 'judgment' and 'decrees' have not been defined under the Act. In the absence of such definitions of particular terms, S.2(2) of the Act directs to the definitions provided under the Code of Civil Procedure 1908 ("**CPC**").[18]

"Decree" has been defined under S.2(2) of the CPC to mean formal expression of adjudication, conclusively determining the rights of the parties.[19] A decree essentially forms the outcome of the suit. On the other hand,

[18] In addition to S.2(2), the scheme of the Act also suggests that the provisions are in the form of an addendum to the Civil Procedure Code, 1908. This is clear from multiple aspects such as the provision in question—S.13 itself refers to CPC, and otherwise, S.16 and the Schedule 1 therein provides for specific amendments to the CPC that would be directly applicable.

[19] The Code Of Civil Procedure, § 2(2), No. 5, Acts of Parliament, 1908 (India).

Judgment, as defined under S.2(9) the CPC, provides for the grounds on which a decree or an order is rendered.[20]It comprises a statement of facts, points of determination, the decision, and reasons for such decisions.[21]Similar to decree and judgment, "order" has also been defined under S.2(14) and includes decisions excluding "decree".[22] It has previously been suggested, *"An appeal lies against a decree and not against a judgment"*.[23] If an appeal cannot lie against a judgment and the wording of the provision mentions that there is an appeal against the judgment, it becomes contradictory. It would mean that there lies no appeal against the decree as the provision does not provide for it. Therefore, there is a discrepancy in the phrasing of the heading and the wording of the provision.

Since there is a discrepancy in the phrasing of the heading and the wording of the provision, it would be useful to advent to the Rules of Statutory Interpretations. Rules of statutory interpretation dictate that the heading of a provision does not form a part of the Act.[24] The heading

[20] The Code Of Civil Procedure, § 2(9), No. 5, Acts of Parliament, 1908 (India).
[21] The Code Of Civil Procedure, § o XX r 4-5, No. 5, Acts of Parliament, 1908 (India).
[22] The Code Of Civil Procedure, § 2(14), No. 5, Acts of Parliament, 1908 (India).
[23] C.K. TAKWANI, CIVIL PROCEDURE WITH LIMITATION ACT, 1963 AND CHAPTER ON COMMERCIAL COURTS 409, (Eastern Book Company, 9 ed. 2018).
[24] A similar view was expressed in Board of Muslim Wakfs, Rajasthan v. Radha Kishan (1978 Indlaw SC 99) [In this case, the question revolved around whether a disputed property could be included in the list of

is merely meant for assistive purposes.[25] Even if the headings are considered a part of the statutes, it is established that the headings cannot color the understanding of the provisions.[26] These rules of statutory

Waqfs. The appellant had challenged the decision of the HC that had held that the disputed property, in this case, could be included in the list of the Waqfs. The question of law revolved around the interpretation of S.6(1) of Wakf Act, 1954; and the counsel had called in aid the marginal heading of the provision to interpret it. However, the court held that the marginal headings cannot be called in aid for interpretation as they do not form a part of the statute. The limited purpose that they serve is with respect to ease of reference.] and Kalawatibai v. Soiryabai (1991 Indlaw SC 449) [In this case, the appellant had acquired the right by adverse possession against the revisionary during the lifetime of her mother. The case involved three important questions of law. However, the relevant issue for the purpose of the argument made in this paper was whether the marginal notes in S.14 could be interpreted in the way to read the words "female Hindu" as "limited owner". While looking at the question, the court excluded any interpretation of the marginal notes altogether. It was held that the marginal notes are not a part of the statute. Consequently, the right of the plaintiff in the property was negatived.]

[25] Id.

[26] Nandini Satpathy v. P.L. Dani, (1978) 2 SCC 424. [this case is relevant only in a limited context to show that in the realm of procedural laws the marginal heading of a statute cannot contradict the wording of the provisions of the statute. Preliminarily, it must be addressed that this question is inherent of a criminal nature and involved several criminal procedural issues which are not relevant to this discussion. The facts are that Ms. Satpathy, who was the then CM of Odisha, was expected to appear at a police station under the charges of corruption. The procedure carried out by the police during the investigation was questionable in many ways. An attempt was made to use the marginal heading to S.161 of the Criminal Procedure Code to interpret the statute. The court held that the marginal heading cannot be used to suggest an interpretation that is not supported by the words of the provision. Therefore, the argument with respect to understanding the provision in an entirely different manner was rejected.] Union of India v. National Federation of Blind, 2013 Indlaw SC 674 [This case is also being relied upon for a limited argument set. This case involved the question of interpreting S.33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The appellant had argued that the organization in question was not complying with the provisions of the Act, and thus, filed a suit seeking an injunction order. According to the Act, 3% of the seats were to be reserved for persons with disabilities. Although to interpret this provision, marginal headings were taken into

interpretation directly apply to the Act.[27] Applying the rules of statutory interpretation, the heading of S.13—mention of "decree"—should not be given any weight. This would mean that as per S.13 an appeal lies not against the decree, but the judgment. As it has already been established that an appeal is not possible against the judgment, the direct consequence of there being no appeal against the decree is that there is no appeal possible.

Apart from this discrepancy in the heading and the wording of the provision, S.13(2) employs the term "decree" while excluding any other appeal apart from S.13(1). This should be considered a clear indication of the drafters' knowledge of the difference between the meaning

consideration, the court held that the marginal headings cannot control the meaning of the Act.]

[27] *In Re:* Leitz Tooling Systems India Private Limited, Bangalore, (2019) SCC OnLine Bom 890. [this ruling of the Bombay High Court does not provide for the facts that led up to the dispute. However, the dispute sought the following question to be answered by the court—"Whether in view of the amendment to the Code of Civil Procedure, 1908 by a Commercial Court, Commercial Division and Commercial Appellate Division of High Court's Act, 2015 (4 of 2016), the Defendant can be allowed to file the Written Statement after 120 days from the date of service of Writ of Summons in a Commercial Suit". The counsel argued that since the Act was improperly framed, aid must be taken from tools of statutory interpretation that help discern legislative intent in order to interpret the existing inconsistencies. The Counsel argued that the threshold of 120 days applied only to the disputes involving a specified commercial value and not to all the commercial disputes. The Court was in consonance with this argument. This case can also be seen as a prime example of how the courts consider the procedure to be handmaiden of justice. It is to be noted that this case is being relied on for a very limited proposition advanced by the counsel while arguing for a limited interpretation. The counsel had furthered his argument by giving an example of how reading S.13 by its literal phrases would render the provision otiose.]

of "judgment" and "decree". However, the Delhi High Court, to avoid rendering S.13 otiose, held that "judgment" must be read broadly to include "decrees" and thus, opened all the cases to appeal.[28] To understand the consequence of this holding, it's important to understand

[28] HPL (India) Limited v. QRG Enterprises, (2017) 238 DLT 123. [in this case, although the Delhi High Court did not provide the facts that led to the dispute, it considered the same issue in question—interpretation of S.13 and discussed both 13(1) and 13(2) in detail. On the basis of facts, the only question before the court was whether the appeal in the present case was maintainable, and in order to answer that question provisions of S.13 were to be interpreted. To do so, firstly, the court analysed the intention behind the legislature and then laid down rules of statutory interpretation of statutes. After hearing both the sides and considering that the marginal notes must not be given any credence, the court was of the opinion that the term "judgment" must be read broadly to include a decree as well. The court based its decision on consequentialist reasoning. It was held, "we are of the view that if the interpretation of the appellants were to be accepted then we would have to read Section 13 sans the proviso to Section 13(1) and sans Section 13(2). That, surely, could not have been the intention of the legislature!". Accordingly, it was held that the appeal was not maintainable] Swaraj Industrial and Domestic Appliances Private Limited v. Societe Des Produits Nestle S. A., 2017 Indlaw DEL 3760 [in this case, the appellants were neither well-educated nor were they well versed with the legal issues. They had filed an application and blamed the counsels for their incompetence which had led to the delay in filing the application. It was held that this case was an attempt to just delay the proceedings and not bona fide in nature. However, this case endorsed the holding of the HPL (India) Limited and others v QRG Enterprises which considered the question related to appeal in much more detail.]D&H Ltd. v Superon Schweisstechnik India [in this case, the commercial appellate division of the Delhi High Court adjudged that Section 13(1A) is inclusive of the appeals that lie against an order, allowing amendment of the plaint, passed by the single judge under Rule 5 of Chapter II of the Delhi High Court Rules (Original Side), 2018 ("**Rules**"). It was held that since Rules have a different identity as compared to CPC, it is inappropriate to restrict the scope of the proviso by interpreting it to include those appeals that lie only against orders specifically encapsulated under Order XLIII of the CPC and Section 37 of the 1996 Act. The court created an arbitrary distinction between two applicants on the basis of the authority that adjudicates the appeal. It rendered an extra right of appeal to the petitioners whose appeal is adjudged by the joint registrar. Thus, the judgment contravenes the purpose of the Act by broadening the scope of the proviso.]

what essentially constitutes an "appeal". The appeal includes the right of re-hearing, both on the questions of law and the questions of fact.[29] Consequently, every decree of a commercial court may be set-aside upon hearing from a higher court.

If all decrees of the Commercial Courts are subject to an appeal, it essentially turns the clock back to the position under the CPC.[30] Therefore, the purpose—time and cost

[29] Krishan Bhardwaj v. Manohar Lal Gupta, AIR 1977 Delhi 226 [in this case, the plaintiff had filed a suit against the defendant under Order 37 of the CPC. The Trial Court had declined leave to the defendant to appear and defend the suit under Order 37 of the CPC. The plaintiff had argued that the revision was entertained by HC in its appellate jurisdiction and appeal was the procedural remedy. The two judges had differed on the question of maintainability of revision petition against the order of the Trial Court. So the question was "Whether the HC had the power to set aside an order when decree or final order was passed in the proceedings". It was held that the *appeals and revisions could not be equated*. In revision, HC was only required to satisfy itself that the particular case had been decided according to the law and did not suffer from infirmity of having been passed without jurisdiction, in excess of jurisdiction, in denial of jurisdiction or is otherwise not illegal or suffering from material irregularity]; Hari Shankar v. Rao Girdhari Lal Chowdhury, 1961 Indlaw SC 157 [in this case, the question was whether the HC had the power to re-assess the evidence in revision proceedings. The appellants were the owners of a Bungalow which was given on rent to Gauri Shankar. The tenant argued that a tenant was not required to obtain consent from the owners before subletting. The procedural issue that appeared as a question before the SC was decided as, ""The power given to the High Court by this proviso is very wide. In the exercise of this power the High Court may set aside any order if it is not according to law"".]"Appeal" has been defined neither in the Act nor in the CPC. Since S.2(2) of the Act defers to the CPC, and for CPC there are judgments interpreting "appeal", it would be prudent to defer to such judgments to supply the meaning of appeal.

[30] Under CPC there is a right of first and second appeal. While the position under The Act is similar to CPC with respect to the right of the first appeal in terms of the scope—that is it lies for both the questions of facts and the questions of law. However, there exists no right of the second appeal under The Act.

efficiency—of amending the system of appeals under the Act seems to have been rendered otiose.[31]

2. The non-existence of "Order XLIII of the [CPC] as amended by [the] Act" as referred to in the proviso and the effect of the proviso

The proviso to S.13(1) provides for an appeal from "such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the [CPC] as *amended* by [the] Act". This means that the proviso is trying to limit the circumstances of appeal from the orders. There are two possible interpretations of this proviso — *first*, the amendment is specific to Order XLIII, or *second*, the amendment is a general reference to the CPC. Both these interpretations lead us to the same consequence– even after the advent of the Act, the position of litigants with respect to appeals is the same as it was under Order XLIII of the CPC.

If the *first* interpretation is adopted, it must be noted then that the Act fails to provide for a separate amendment to Order XLIII.[32] In that case, the proviso refers to a provision that does not exist in the first place. Consequently, it renders the proviso useless and turns the

[31] This idea is further developed in Part-3 of this paper.

[32] Combined reading of S.16 of the Act—which provides for Amendments to the CPC for its application to the Commercial Disputes, and schedule 1, that S.16 refers to must make this position clear.

clock back to the Order XLIII of the CPC regarding the position of litigants with respect to appeals. In fact, some authors argue that such an interpretation must be adopted to provide the litigants' benefit of appeal from the orders, which would otherwise be left on very limited grounds.[33] To bolster this argument, they argue that the drafters had intended to amend Order XLIII, and perhaps, increase the grounds under which an appeal may lie from the orders.[34] However, due to legislative amnesia, such an amendment was not executed.[35] Hence, they argued that the litigants must not suffer because of legislative amnesia. However, such interpretation needlessly widens the grounds for

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[33] Ajit Warrier and Aditya Nayar, *Appeals Under The Commercial Courts, Commercial Division And Commercial Appellate Division Of High Courts Act, 2015 – A Legal Quagmire*, MONDAQ (Apr., 24, 2018), https://www.mondaq.com/india/contracts-and-commercial-law/694944/appeals-under-the-commercial-courts-commercial-division-and-commercial-appellate-division-of-high-courts-act-2015-a-legal-quagmire. This paper considered the question of interpreting S.13 in a more restricted sense analyzing the scope of the proviso. The authors argued that a timely amendment to S.13 could prevent the plaintiffs from losing out on an opportunity to appeal. They looked at two important decisions to draw their conclusion. The first, being *Kandla Export* (discussed in much more detail in this paper) and *second,* being *Hubtown Limited*. The authors have argued that the drafters had completely forgotten about amending Order XLIII of the Code, by the time they had reached the schedule. The authors evinced that their knowledge of procedural law and commercial prudence suggests that the drafters would have wanted to increase the scope of the provision. However, it appears that the authors did not take into consideration the shifting jurisprudence around the appeals in commercial jurisprudence as argued in the third part of the paper.

[34] *Id.*

[35] Although the author fails to back this argument up with more statutory understanding, the scheme of the Act in fact bolsters the plausibility of such legislative amnesia. S.16 of the Act repeatedly refers to a concomitant phrase "as amended by the Act" which strengthens the possibility of legislative amnesia.

appeal and therefore, becomes contrary to the objective of the Act —speedy and cost effective disposal of cases.

If the *second* interpretation is adopted, it would simply refer to Order XLIII of the CPC. The consequence of it would again be that the scope of appeals from the orders would be same (and as wide) as the general CPC. Such an interpretation would again defeat the intention of the Act i.e., rendering speedy dispute resolution.[36]In *Kandla Export* v. *O. C. I. Corporation*,[37]it was observed that the Order XLIII in this provision refers to the Order XLIII of the CPC. The Bombay High Court in *Hubtown Limited* v. *IDBI*

[36] The purpose of this legislation is not questionable. It was to reduce the time of dispute resolution for commercial cases considering the concentration of cases at the routine courts. It is visible from multiple provisions of the Act including in S.5, S.15(4), which refer to "speedy" dispute resolution. Further, the strict timelines suggested in the Act, including in S.13(1), S.14, S.11, S.12, clearly imply that the Act intended to reduce the time of dispute resolution.

[37] Kandla Export Corporation v. O. C. I. Corporation, (2018) 14 SCC 715. In this case, the arbitrator had passed an award as per the Arbitration Rule no. 135 of the GAFTA (Grain and Free Trade Association). The decree was that the sellers had to pay a sum of $846,750 compounded at the rate of 4% per annum. The appellate tribunal had agreed to the decree while it slightly reduced the damages. The appeal was filed in the UK, however, the court in the UK felt that there was no need to access the award because according to the court the award was "obviously correct". The appellant wanted to file an appeal in the commercial court under S.13(1) specifically– the proviso which stated that an appeal is allowed from S.50 of the Arbitration Act. This appeal was rejected by the Gujarat HC. So even though an appeal is not provided for under S.50 of the Arbitration Act, the question was whether an appeal would be maintainable under the Act. It was held that S.13(1) of the Act did not provide for an avenue of appeal outside S.50 of the 1996 Act. The 1996 Act was standalone and exhaustive. It didn't need to be supplemented by the Act. Even though it was not a question of law, the court observed that the Order XLIII in S.13 of the Commercial Courts Act refers to the Order XLIII of the CPC.

Trusteeship[38], broadened the ambit of S.13(1) to include "appeals arising out of orders other than the category of orders falling under order XLIII of the CPC." Although the *Hubtown* judgment is contravening the *Kandla Export* judgment, the latter being delivered by the Supreme Court will be considered the correct position of law.[39] Therefore, the courts have restricted the scope of the appeals from the orders to only those circumstances as enumerated in Order XLIII of the CPC.

Therefore, the position of law under the Act is that there lies an appeal against all decrees, and orders that are enumerated only under XLIII of the CPC. Even if the *Hubtown* judgment is considered to expound the correct

[38] Hubtown Limited v. IDBI Trusteeship, (2016) SCC OnLine Bom 9019 [21]-[23]. [In this case, IDBI had filed a suit claiming a sum of over Rs. 33 Crores. More interestingly, the suit was filed before the coming in of the Commercial Courts Act in 2014. However, the court does not provide any other facts in detail. The case was shifted to the commercial courts by the Chief Justice of the High Court, after the incoming of the Act. There were two main questions. First–whether S.13 of the Act can be understood to include decrees. Second–whether it was an anomalous situation where due to the usage of the term "judgment", there could not lie any decree from the provision. It was held that the term decree must be within the term "judgment" to avoid an anomalous situation. Further, the court said that the use of the word "decision" in this provision was wide and thus, indicative of the legislative intent to do the same]. It is important to note that Warrier and Nayar (n 36) believe that this judgment has widened the scope of S.13(1) taking the effect similar to that in the *first* interpretation. However, this judgment merely reiterates the judgment of the SC in Shah Babulal Khimji v. Jayaben D. Kania, 1981 Indlaw SC 379 where it was held that order having a tinge of judgment makes it appealable. The consequence still remains as described in the *second* interpretation.

[39] INDIA CONST. art. 141. Law declared by Supreme Court to be binding on all courts. The law declared by the Supreme Court shall be binding on all courts within the territory of India.

position of law, broadening the scope of the provision would contravene the purpose of the Act –speedy disposal of appeals.

As stated at the beginning of the section, the purpose behind this inquiry was to check the legislative policy and judicial interpretation of the system of appeals. It can be concluded that although the legislature had left the position of law obfuscated, the judiciary has understood the scope of appeal only in restricted cases. However, even the judiciary did not go so far as to exclude appeals against the decrees altogether.

III. COMPARING THE STANDARD OF APPEAL

This section attempts to evaluate this legislative policy as understood by the judiciary by comparing it with other procedural laws. The background behind this comparison is that the Commercial Disputes have different procedural laws, and that the commercial world prefers restricted appeals. In that background, three procedural laws will be considered — *first*, the CPC, which governs the civil procedure in general; *second*, the Arbitration and Conciliation Act, 1996 ("**1996 Act**") because it provides for a peculiar study of appeals for the commercial disputes; *third*, the civil procedure governing commercial disputes in the United Kingdom ("**UK**"). UK has been taken as an example since it has consistently done well in the Ease of

Doing Business evaluation of the World Bank.[40] It must be noted that the scope of this paper has been restricted to the laws of UK, and no other common law jurisdiction has been referred. This is because the paper recommends limiting the scope of appeals on grounds similar as UK. The paper considers the laws of UK to be more reliable, as compared to any other common law jurisdiction, because of India's colonial history and the existing similarity in procedural laws.

1. Appeals under the CPC

Under the CPC, there is a right of first appeal from the decree of the court exercising original jurisdiction.[41] The court may re-evaluate the evidence and thereby, re-examine the questions of facts, as well as the questions of law.[42] This first appeal may not be dismissed without

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[40] *Rankings: Ease of Doing Business*, WORLD BANK, (2020), https://www.doingbusiness.org/en/rankings. UK is ranked 8 overall and 34 in the Enforcement of contracts.

[41] The Code Of Civil Procedure, § 96, No. 5, Acts of Parliament, 1908 (India).

[42] Baldev Singh v. Surinder Mohan Sharma, 2002 Indlaw SC 1376 [in this case, a property dispute arose out of a matrimonial dispute. The first respondent had entered into an agreement to sell the property to one Ajay Kumar. The matrimonial dispute was settled when the marriage dissolved. However, the property in question was still existing despite the dissolution of the marriage. There were other allegations made as to whether the appellant had forged the stamp marks etc. However, the only question relevant for the purpose of this paper was whether the court has the power to determine both the questions of facts and law in an appeal. The court held that it has the power to determine, both, the questions of facts and law under the term "appeal".].

assigning proper reasons.[43] This first appeal lies in a superior court which may or may not be the HC.

Apart from the right of the first appeal, CPC provides for a second appeal from the appellate court's decree, unlike the original decree.[44] Such an appeal lies to the High Court only.[45] It may be interesting to note that the second appeal does not lie in the case of questions of facts, but only lies in cases of substantial questions of law.[46] Therefore, as compared to the first appeal, the second appeal provides for only a limited right of appeal.

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[43] Delhi UP Madhya Pradesh Transport Co. v. New India Assurance Co., (2006) 9 SCC 213. [in this short judgment without detailing any facts related to the discussion of law, the court held, "Having heard counsel for the parties, we are of the view that the regular first appeal should not have been dismissed by such a cryptic order. If a first appeal deserves to be dismissed at the admission stage itself, some reasons however brief must be recorded so that this Court may be able to appreciate the considerations which weighed with the High Court in dismissing the appeal summarily."].

[44] The Code Of Civil Procedure, § 100-103, No. 5, Acts of Parliament, 1908 (India).

[45] *Id.*

[46] *Id.;* State Bank of India & Ors. v. S.N. Goyal, 2008, Indlaw SC 798 [In this case, the appellant had misappropriated some funds which were supposed to be deposited in the bank accounts of the customers, for about 5 and 2 months. Disciplinary proceedings were conducted according to the State bank Rules, and he was found guilty. The plaintiff filed for a revision proceeding before the HC after the Trial Court's order. The Court considered the question of interpreting S.100 of the CPC. It held that "The word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the list between the parties. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial questions of law arising in a case as between the parties. In the context of s. 100 CPC, any question of law which affects the final decision in a case is a substantial question of law as between the parties."

The Act provides for at least a slight deviation from the CPC to the extent that there is no right to a second appeal. It must be noted that CPC provides for *general* civil procedure and not *specifically* for commercial disputes. Therefore, as compared to the Act, the purpose and goal behind the civil procedure must be understood differently.

2. Appeals under the 1996 Act

Under the 1996 Act, S.37 provides for the possible instances of appeal,[47] and S.34 provides for possible instances of setting aside the arbitral award.[48] For setting aside the award, the possible grounds are that a party was under some incapacity, the arbitration agreement is not valid, procedural impropriety in the appointment of the arbitrator, dispute beyond the scope of arbitration, non-arbitrability of the dispute, or if it goes against the public policy of India.[49] S.37 of the 1996 Act provides for the instances of appeal—an appeal may lie from a refusal to refer the parties to arbitration,[50] refusal to grant interim

[47] The Arbitration and Conciliation Act, § 37, No. 26, Acts of Parliament, 1996 (India).
[48] The Arbitration and Conciliation Act, § 34, No. 26, Acts of Parliament, 1996 (India).
[49] *Id.* This provision has seen myriad litigations. In fact, very recently, the SC ruled on one of the most contentious issues—arbitrability of disputes—in Vidya Drolia v. Durga Trading Corporation, (2020) SCC OnLine SC 1018.
[50] The Arbitration and Conciliation Act, § 8, No. 26, Acts of Parliament, 1996 (India).. It provides for referral of the parties to Arbitration when there is a valid arbitration agreement if it is brought before a judicial authority. An appeal is allowed in the cases where the court fails to

relief,[51] setting aside of arbitral award under S.34, grant or refusal to provide an interim measure,[52] acceptance of plea under S.16.[53]

It must be noted that there are *two* important differences—*first*, arbitration is a private form of dispute resolution which gives the parties the right to decide their arbitrator (judge) and thereby, appoint an expert in the field to adjudicate the dispute,[54] as opposed to the civil courts,

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recognize the presence of arbitration agreement, and thereby, fails to refer the parties to arbitration. This must be understood as being applicable to very limited circumstances.

[51] The Arbitration and Conciliation Act, § 9, No. 26, Acts of Parliament, 1996 (India). It provides for interim measures by the Court. This provision is premised on the need for urgency, when the time-period for dispute resolution is longer. It includes situations of appointment of guardian for a minor or a person of unsound mind, preservation of any goods that form the subject-matter of arbitration et cetera.

[52] The Arbitration and Conciliation Act, § 17, No. 26, Acts of Parliament, 1996 (India). It provides for the interim measures by the arbitral tribunal which are again similar to S.9 described above. It includes situations of appointment of guardian for a minor or a person of unsound mind, preservation of any goods that form the subject-matter of arbitration et cetera.

[53] The Arbitration and Conciliation Act, § 16, No. 26, Acts of Parliament, 1996 (India). It provides for the competence of the tribunal to decide on its jurisdiction. This rule is important to avoid parties from approaching the court in every case and delaying the process of dispute resolution when the status quo is in their favour.

[54] Vasu Aggarwal, *A-Z of ADR: Qualification Requirements of Mediators, Arbitrators, and Conciliators*, BIMACC (Sept., 14, 2020), https://www.bimacc.org/a-z-of-adr-qualification-requirements-of-mediators-arbitrators-and-conciliators/. In this article, the author summarises the qualification requirements of, mediators, arbitrators and conciliators, the three forms of alternative dispute resolution. The author analyses the 2019 Amendment and argues that the 2019 Amendment introduced several meticulous requirements for appointing someone as an arbitrator. The arbitrator must belong to the limited nine-categories of experts such as accountants, lawyers among others. Further, the arbitrators should be capable of suggesting, recommending or writing a reasoned and enforceable arbitral award in any dispute which comes before them for adjudication.

which provides for a public resolution of private disputes and thereby, not giving the parties the right to decide their judges; *second*, arbitration is a product of consent which means that the parties *consent* to such form of dispute resolution as against the civil procedure,[55] where once a suit is instituted the parties submit their discretion to the courts. Therefore, the position of law in case of arbitration must be with the aforementioned considerations. It is to be noted that the grounds for appeals under this Act are more limited as compared to the grounds under CPC.

3. Appeals from Civil Procedure Governing the Commercial Disputes in the UK

Civil Procedure Rules 1998 ("**UK Rules**") govern the civil procedure of commercial disputes in the UK.[56] In the absence of any special rules provided for commercial disputes, general rules of appeal apply to commercial disputes. Unlike the Indian civil procedure generally, the

[55] The Arbitration and Conciliation Act, § 7, No. 26, Acts of Parliament, 1996 (India).. It provides for the arbitration agreement, employing which the parties may consent to submit a dispute to Arbitration. This is similar to a contractual agreement – in a written form, signed by both the parties. Therefore, the increased threshold of *consent* is also visible through the requirement of the contract being in writing.

[56] The UK Rules are supplemented by the practice directions. The practice directions, pt. 58.1. Part 58.1 defines the commercial disputes and provides that the part enumerated therein would apply to the commercial disputes. However, Part 58 does not provide for any provision related to appeals. Therefore, for the provision related to appeals, one must refer to Part 58.3, which provides that the UK Rules are applicable to the commercial disputes in the absence of any contradiction from Part 58.

permission to appeal is given only in the cases where the court considers that there is either a real prospect of success or when the court considers there to be a compelling reason to hear it.[57] At the same time, the court has the power to hear only limited issues.[58]

Under the same rules, a second appeal is also possible. However, the second appeal is also limited only on limited grounds such as when there's a real prospect of success, the appeal raises an important point of principle or practice, or when the court considers there to be a compelling reason to hear it.[59] It must be observed that the standard for review for both the first appeal and the second appeal is left open for interpretation by the judiciary as the terms "real prospect" and "compelling reasons" are not defined.[60]

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[57] The UK Rules, Rules and Practice Directions, pt. 52.6.
[58] *Id.*
[59] The UK Rules, Rules and Practice Directions, pt. 52.7.
[60] Louis Kaplow, *Rules Versus Standards: An Economic Analysis,* 42 DUKE LAW JOURNAL, 557 (1991).This kind of rulemaking is known as enacting "standards" as against "rules". In his seminal paper, Kaplow explains the difference between these two approaches to law-making. Laws are enacted as 'rules' or 'standards. "While rules entail ex-ante determination of the law's content, standards entail an ex-post-facto determination of the law's content. The costs of determining the law's content may arise at three stages—first, at the time of promulgation; second, at the time when individuals decide to engage in some conduct; third, at the time of adjudication to determine how the law applies to the said conduct. Intuitively, since rules ought to be given content at the stage of promulgation, rules are more costly to promulgate as compared with standards. Similarly, standards have to be determined by individuals, and adjudicators, and therefore, standards cost more at these stages. Therefore, ceteris paribus, if the costs of promulgating the law are greater than the costs of determination by individuals and subsequently, by

Moreover, the determination of which appeals will be heard is made by the Court of Appeal.[61] The Court of Appeal grants permission for applications for appeal without an oral hearing unless the judge opines that an oral hearing is necessary in the interest of fairness.[62]Allowing for only limited applications to be heard orally, also furthers the interest of expediency without compromising the interest of justice.[63]

IV. THE INTEREST OF JUSTICE *VIS-À-VIS* EXPEDIENCY

This section delves into the principled reasons behind the appeal, and attempts to balance two competing interests—the interest of justice and expediency. In the context of appeals, the interest of justice is to avoid any errors in the final decision-making process. This is premised on the principle that all humans are fallible, and the judges, who

adjudicators, the law must be laid down in the form of standard and not rules. In India, where the adjudication of standards is enforceable in subsequent judgments, the law's content becomes clearer with the increasing precedents, in case of standards. Such rule-making is inherently effective when it may not be possible to enumerate all possible instances. This is especially true in case of appeals where the grounds of appeal may be innumerable."

[61] The UK Rules, Rules and Practice Directions, pt. 52.5.

[62] *Id.*

[63] In the consultation exercise conducted by the Civil Procedure Rule Committee, it had been proposed that the litigant's right to an oral renewal of an application for permission for appeal should be removed and replaced with the discretion of the Court of Appeal to determine an application for appeal either on the basis of an oral appeal or by reviewing the documents.

are humans, may end up committing errors.[64] Such a premise is true for judges of superior courts and inferior courts alike.[65] Therefore, to avoid any mistake, having an appeal provides for a thorough examination of the issue.[66] However, having a wide scope of appeal delays the process of dispute resolution. This is especially true when the appeal allows for a re-examination of both questions of law and facts, which allows for re-appreciation of evidence. The question that arises is—how to balance the interest of justice and the interest of expediency in cases of commercial disputes.

In the case of commercial disputes, it is well posited that expediency is an important consideration. Such a need for expediency can be understood from the aforementioned comparison with the 1996 Act and the UK Rules. Additionally, the purpose behind the Act is also to reduce the time of civil litigation for a particular class of disputes. Further, the World Bank's Ease of doing business evaluates both time and costs in civil proceedings.

The 188th Law Commission Report suggested that the appeals from the Commercial Division must lie in the

[64] C.K. TAKWANI, CIVIL PROCEDURE WITH LIMITATION ACT, 1963 AND CHAPTER ON COMMERCIAL COURTS 472, (Eastern Book Company, 9ed. 2018).
[65] *Id.*
[66] It appears to be for the same reason that the appointment of judges to the Commercial Courts requires them to have experience in settling commercial disputes.

Supreme Court alone.[67] It was suggested that an appeal solely to the Supreme Court should have an effect of avoiding multiplicity of appeals; thus, saving both time and costs of dispute resolution.[68] On the other hand, the 253rd Law Commission Report suggested (followed in the current Act) that instead of cluttering the Supreme Court, the commercial appellate division be formed for resolution of such disputes.[69] However, the 253rd Report failed to recognize that there are two reasons for increasing time and costs — *first*, that the parties could potentially invoke Special Leave jurisdiction of the SC;[70] and *second*, that opening both questions of law and questions of facts for determination by the Appellate Court had the potential of causing an inordinate delay. However, it must be noted that it may be impractical to allow all commercial appeals to be heard by the SC.[71]

However, it may be practical to limit the scope of appeal similar to that of the UK Rules. The UK Rules through

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[67] Law Commission of India, *Proposals For Constitution Of Hi-Tech Fast – Track Commercial Divisions In High Courts*, (Law Com No. 188) 155-159.
[68] *Id.*
[69] Law Commission of India, *Report on Commercial Division and Commercial Appellate Division of High Courts Bill 2015,* (Law Com No. 253).
[70] It must be noted that although S.13(2) of the Act provides that there cannot be any appeals other than those provided by S.13(1), the SC is granted with the constitutional power of Special Leave jurisdiction as provided under Article 136. This constitutional power cannot be taken away through later legislation—as the Constitution is the Supreme source it cannot be subjected to implied repeal.
[71] This is because of the limited strength of the SC—it has just 31 judges—who sit in division benches. Therefore, the cases would take very long to be adjudicated.

their use of "standards" provides for the right balance between the 1996 Act (which has too narrow grounds of appeal) and the CPC (which has too wide grounds of appeal). It is suggested that the grounds of appeal can be described as—"*there is either a real prospect of success or when the court considers there to be a compelling reason to hear it*".[72] Such understanding of procedural law has been backed up by Dan-Cohen.[73] Dan-Cohen provides a framework to understand procedural laws that relies on the difference between decision rules and conduct rules — decision rules are meant for the officials who are implementing and further adjudicating the disputes, whereas conduct rules are meant to decide the conduct of the individuals in the

[72] This is similar to Article 142 which states that "The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner. This article confers the SC with the power to do complete justice.

[73] Meir Dan-Cohen, *Decision Rules And Conduct Rules: On Acoustic Separation In Criminal Law*, 97(3) HARVARD LAW REVIEW, 625 (1984). In this paper, Dan-Cohen provides a brilliant framework for understanding procedural laws. Although he takes the example of Criminal Law to evince the framework, he provides that the framework is capable of being extrapolated to Civil Procedure as well. The framework provides that there is an acoustic separation—the decision rules and conduct rules are separated—to the extent that the decision rules are understood only by the officials and not by the individuals. This separation plays a very important role in avoiding misuse of procedural law, and at the same time, providing for exceptions for the procedural laws.

society.

	CPC	Arbitration	UK	188th Report
Expediency	X	✓	✓	✓
Justice	✓	X	✓	✓
Practical	✓	✓	✓	X

In Dan-Cohen's paradigm, the ground of appeals such as real prospects or compelling reason is meant to be read as a decision rule to mean that whenever there is a legitimate case of an appeal, the court can allow for the appeal; and at the same, it provides for the conduct rule that in the absence of a very compelling case, the parties are discouraged to file for an appeal.[74] This strikes the right balance between expediency and interest of justice by catering to both needs at the same time.[75] The suggested

[74] This can be bolstered by providing a strict mechanism of levying costs on the appellants.

[75] Although the Civil Procedure Rule Committee, in May 2016, had proposed to narrow the grounds of appeal by changing the term "real prospect of success" to "substantial prospect of success", the legislature has still not incorporated the said changes in the statute. The committee draws a distinction between the two terms and proposes to increase the threshold for granting the permission for appeal, however the authors feel that in practicality these semantic differences would not make a significant change. This is because, the proposed amendments are

reform advocates only the inclusion of first appeal and excludes the right to a second appeal to maintain the right balance. This is because allowing for a second appeal would subvert the interest of expediency. Moreover, restricting the second appeal would not contravene the interest of justice since the parties can approach the Supreme Court by invoking the special leave petition.[76]

It is important to address that the suggested reform is valid in the already posited law. Although some believe that the right to first appeal is universal, it is well settled in law that the right to appeal is only a statutory right and that a statute cannot be held to be invalid/unconstitutional just because it does not provide for a provision to appeal.[77]

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theoretical in nature and even if they get approved, these terms will be left open to the interpretation of the judges.

[76] The SC, in multiple decisions, such as Pritam Singh v. State, AIR 1950 SC 169 and (most recently upheld in) Samaja Parivarthana Samudhaya Asha Deep v. Central Bureau of Investigation CRL.P 9421/2017, has held that although the power under Article 136 of the Constitution of India is discretionary, these powers are exercised in special circumstances only. In Pritam Singh v. State, this Court observed,

"On a careful examination of Article 136 along with the preceding article, it seems clear that the wide discretionary power with which this Court is invested under it is to be exercised sparingly and in exceptional cases only, and as far as possible a more or less uniform standard should be adopted in granting special leave in the wide range of matters which can come up before it under this article".

[77] Babubbai & Ca. v State of Gujarat, (1985) 2 SCC 732. [In this case, the provision in question was R.27 of the Bombay Town Planning Rules, 1955. The provision provided that the government may reserve lands for the construction of roads and other public purposes. So, the only remedy for the occupant was a summary eviction. The question before the court was whether R.27 violates Article 14 of the Constitution or is in general unconstitutional. The Court held that the right to appeal was a statutory right and neither a fundamental nor a universal right. Therefore, a statute or rule is not ultra vires the constitution on the basis that it does not

V. CONCLUSION

This paper considered the question of appeals in the Commercial Courts Act, 2015. The Act was brought into force to improve the procedure for commercial disputes, especially in terms of reducing the time and costs of the dispute resolution process. While there were some improvements made such as the exclusion of interlocutory orders, there was a little change in position of appeal from the CPC. This little change was the exclusion of the second appeal. This paper argued that this little change is not enough to achieve the objective of the Act and increase India's ranking in the Ease of Doing Business Report.

This paper first brought forth the interpretive issues related to appeals under the Act. It was concluded that the judicial interpretation of the legislative policy has rendered the provision related to appeal very similarly to the CPC. Second, it compared the system of appeals under the Act with the CPC, the 1996 Act, and the UK Rules. This comparative evinced a shift in the jurisprudence from having a broad right to appeal to a narrower right to improve the dispute resolution process. Finally, this paper explicated the debate between the interest of justice and

provide for an appeal.]; Prakash Amichand Shab v. State of Gujarat, (1986) 1 SCC 581 [the factual matrix of this case is same as *Babubhai*. An important observation, in this case, was, "Unless the Court finds that the absence of an appeal is likely to make the whole procedure oppressive and arbitrary, the Court does not condemn it as unconstitutional."].

the need for expediency. It argued that following the model similar to the UK Rules that is the adoption of standards may strike the right balance between both these competing interests.