

Legal 500

Country Comparative Guides 2025

India

Litigation

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in India.

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India: Litigation

1. What are the main methods of resolving disputes in your jurisdiction?

In India, dispute resolution primarily occurs through litigation, arbitration, and mediation.

Litigation is the predominant method of resolving commercial disputes in India, with a court hierarchy that includes District Courts, High Courts, and the Supreme Court. Specialized courts, quasi-judicial authorities and tribunals handle specific matters like company law disputes, telecom and aviation disputes, environmental law disputes, debt recovery disputes, insolvency law disputes, competition law approvals/disputes etc. such as Industrial Tribunal; Tax Tribunal; Securities Appellate Tribunal; Debt Recovery Tribunal; National Company Law Tribunal; Consumer Commission; Central Administrative Tribunal; Labour Tribunal; National Green Tribunal; and Motor Accidents Claims Tribunal, Competition Commission of India etc. These tribunals are creatures of statute and operate under their respective statutes. Appeals from tribunals may lie before an appellate authority under the statute or to a High Court and/or to the Supreme Court in terms of a statutory appeal provided under the statute or the Code of Civil Procedure, 1908 ("CPC"). Specifically, contract / tender disputes with 'State' authorities may be scrutinized by High Courts and the Supreme Court under their Constitutional 'writ' jurisdiction in limited circumstances.

Arbitration, governed by the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"), caters to both domestic and international disputes and adheres to international conventions like the New York and Geneva Conventions. Notable arbitration institutions include the Indian Council of Arbitration (ICA), International Centre for Alternative Dispute Resolution, Delhi International Arbitration Centre, Mumbai Centre for International Arbitration and India International Arbitration Centre. All civil disputes, subject to exceptions (such as, suits involving public interest, election to public offices, serious allegations under the criminal laws, special cases which require protection of minors or mentally challenged individuals by Courts or cases involving criminal offences or cases which are subject to the exclusive jurisdiction of certain courts such as allegations of oppression and mismanagement), can be submitted to arbitration in India. Even disputes which are predominantly civil in nature but involving elements of criminality, can be resolved through arbitration while the

criminal proceedings can be underway in parallel. Both domestic and international arbitral awards are recognized and enforced under Part I and II, respectively of the Arbitration Act. By way of the Arbitration and Conciliation (Amendment) Bill, 2024, conciliation has been proposed to be treated as a method of mediation and regulated under the Mediation Act, 2023. Accordingly, all references to conciliation in the Arbitration Act are proposed to be omitted. However, the bill is pending public consultation at present and has not yet to come into force.

The Mediation Act, 2023 regulates mediation, promoting it as a cost-effective method, especially in government-related disputes. It mandates an initial attempt at mediation before litigation, with exceptions for urgent interim relief. The mediation process should conclude within 120 days, and the period is extendable up to 60 days further with mutual consent. The Commercial Courts Act in particular, facilitates and mandates pre-litigation mediation before instituting adversarial proceedings. The Mediation Act also clarifies that a mediated settlement agreement would be enforceable in the same manner as the judgement or decree of a Court, and such an agreement can be challenged only on very limited grounds such as fraud or impersonation.

2. What are the main procedural rules governing litigation in your jurisdiction?

Civil Courts in India operate under the CPC, which outlines the unified procedural framework for civil disputes. The Commercial Courts Act, 2015 ("**CCA**"), supplements this with specific provisions for commercial litigation, while the Arbitration Act supplements with specific provisions for domestic and foreign arbitration. Insolvency driven commercial disputes proceed before specialized Tribunals under the Insolvency and Bankruptcy Code, 2016. Additionally, the Bharatiya Sakshya Adhiniyam, 2023 ("**BSA**"), and the Limitation Act, 1963, provide further procedural guidance on evidentiary rules and limitation periods for litigation. Equitable reliefs such as specific performance, injunctions or declarations are covered under the Specific Relief Act, 1963. Digital procedures such as e-filing, service and online case management are dealt with under procedural rules issued by the Courts/ Tribunals/ quasi-judicial authority.

Notably, Arbitration and Mediation proceedings in India

are not bound by rules of the CPC or the BSA, and parties are free to agree to their own rules of procedure. This also applies to Tribunals which are governed by the enabling statutes and procedural rules framed thereunder, unless these statutes expressly incorporate CPC provisions by reference. However, Courts generally expect all Tribunals to follow equitable principles of natural justice (*audi alteram partem and nemo judex in causa sua*) when framing any order.

Apart from the above, most Courts and Tribunals possess rule-making powers under their enabling statutes or the Constitution, that form an integral part of the procedural framework by providing granular, body-specific directives on formats and timelines, such as rules specific to Arbitral Institutions, Supreme Court Practice Directions, 2013, NCLAT Rules, 2013, Bar Council of India Rules etc.

3. What is the structure and organisation of local courts dealing with claims in your jurisdiction? What is the final court of appeal?

Supreme Court: The Supreme Court of India is the final court of appeal and possesses three distinct types of jurisdictions: original, appellate, and advisory. Its original jurisdiction is exclusive and encompasses disputes between the Central Government and one or more States, or inter-se conflicts between the States. Cases involving the enforcement of Fundamental Rights also lie within the original jurisdiction of the Supreme Court.

The appellate jurisdiction of the Supreme Court includes any final decision of the High Court in both civil and criminal matters that raise a significant constitutional or legal question; and can be invoked upon a certificate issued by such High Court in respect of any of its decision.

The Supreme Court's appellate jurisdiction also extends to any decision passed by a Court or Tribunal in India by way of a Special Leave Petition but is limited to instances where there is a substantial legal question at stake or where there has been a gross miscarriage of justice. Additionally, the Supreme Court may grant special leave to appeal on critical legal issues from any court in India, even without a statutory right of appeal.

High Courts: High Courts in India are vested with jurisdiction over States and Union Territories within their respective regions. Currently, there are 25 High Courts in the country. Some High Courts have jurisdiction that extends beyond a single State or Union Territory.

Generally, the High Courts exercise writ and appellate

jurisdiction. However, certain High Courts possess original jurisdiction and are empowered to hear cases directly at the first instance.

District Courts: Under the administration and judicial supervision of each High Court, are the District Courts. Each State is divided into judicial districts presided over by a District and Sessions Judge, which is the principal civil court of original jurisdiction and the highest judicial authority in a district. District Courts have courts of civil jurisdiction, presided over by judges known in different States as Munsifs, Sub-Judges, Civil Judges. Civil cases from District Courts can be appealed to the State's High Court. In addition, there are various subordinate courts operating under the District Courts' jurisdiction.

Subordinate Courts: In certain states, there exist subordinate Courts below the district level, known as Munsif Courts and Small Causes Courts. These courts possess original jurisdiction and are authorized to adjudicate cases involving claims up to a specified limit. Presidency Small Causes Courts are not empowered to hear cases where the claim amount surpasses Rs. 2,000/-. In contrast, some States have civil courts with no upper limit on the monetary value of cases they can hear.

Commercial Courts: Under the CCA, specialized courts have been established within District and High Courts across India known as Commercial Courts, Commercial Appellate Divisions and Commercial Divisions. These courts are dedicated to resolving "commercial disputes" involving monetary claims exceeding Rs. 3,00,000/-. The nature of these disputes includes inter alia a variety of commercial activities such as export/import, maritime operations, franchising, distribution and licensing agreements, consultancy services, joint ventures, intellectual property rights, insurance matters, and investment contracts as outlined under the Act. The procedural framework governing Commercial Courts is notably distinct and more stringent compared to the general civil litigation process.

Tribunals: In India, Tribunals serve as specialized courts designed to deliver swift and efficient justice and to provide expert adjudication for specific types of disputes. For instance, Rent Controllers adjudicate tenancy disputes, Consumer Tribunals address consumer complaints, Industrial Tribunals and Courts resolve labour conflicts, and Tax Tribunals deal with taxation issues. The National Company Law Tribunal ("NCLT") is specifically established to oversee company matters under the Companies Act, 2013 and insolvency proceedings under the IBC. Appeals from the Tribunals generally lie to an appellate tribunal under the statute, or to the High Court or Supreme Court directly.

4. How long does it typically take from commencing proceedings to get to trial in your jurisdiction?

The timeline for a civil trial depends on various factors, including the jurisdiction and the number of judges in such jurisdiction. In India, property disputes may go on for decades. As per the National Judicial Data Grid, out of the total pending civil cases, 65.08% have been pending for more than 1 (one) year.

The CPC allows for "Summary Suits" to ensure expedited hearings if an application for such a process is approved. This mechanism is designed to circumvent a full trial in certain cases, such as recovery of liquidated demands. During summary proceedings, the defendant has the right to request for a "leave to defend," which if granted, transforms the case to a standard trial.

The CCA prescribes stringent deadlines for proceedings and swift resolution of its disputes. The duration to reach trial in these disputes is significantly reduced, typically ranging from one to three years. The CCA also includes a provision for "Summary Judgment" in commercial disputes at the request of a one party – without recording of oral evidence, if the Court is satisfied that the opposing party has no real prospect of successfully defending the claim, and there is no other compelling reason to not dispose the claim without recording oral evidence. The Act aims to streamline case management, limit appeals and revisions, and speed up procedures for evidence gathering and document production.

Notwithstanding, the parties always have the liberty to approach the High Court or the Supreme Court, seeking an expeditious trial.

5. Are hearings held in public and are documents filed at court available to the public in your jurisdiction? Are there any exceptions?

Civil hearings in India are typically open to public and Civil Courts are deemed to be "open courts" under the CPC. The principle of open courts has also led to the introduction of virtual courts to address the concerns regarding infeasibility of physical access to Courts for all. Further, hybrid hearings have been mandated in all High Courts in India.

In matters taken up by the Constitutional Bench (i.e. a bench of 5 Judges or more) involving substantial questions of law, the Supreme Court provides for live streaming of the proceedings.

However, in instances where a case involves sensitive or confidential matters (e.g. cases relating to adoption or custody of a minor), the involved party can request a private 'in camera' hearing.

Normally, the documents filed by the parties (including Court records) are not available to third parties. In fact, if a case requires confidentiality, the concerned party may ask the court to keep certain documents sealed. Further, certain Courts also allow the creation of 'confidentiality clubs' through which access to commercially sensitive/confidential documents can be limited to few authorized individuals. However, the Court may grant this request at its discretion. Access to the Court records may be granted to a third party upon presentation of an application, provided they justify the need for such access and demonstrate an interest in the case. However, Arbitration and Mediation proceedings in India are entirely private, with no obligation for disclosure of the proceedings, award or evidence involved in the process.

6. What, if any, are the relevant limitation periods in your jurisdiction?

The limitation period for different classes of claims for bringing proceedings before civil courts is prescribed in the Limitation Act, 1963 unless a special statute governing a particular class of claims or subject matter provides otherwise.

The limitation period is calculated from the date that the cause of action first accrues. Ordinarily, in cases dealing with breaches of contract, the limitation period is three years, while for actions relating to possession of immovable property, the limitation period is twelve years. Suits for which no limitation period is prescribed have a limitation period of three years. If a defendant is absent from India during the pendency of the Suit, then the period of absence is excluded from the computation of limitation period.

Under Indian law, limitation is generally regarded as procedural as its object is not to create or extinguish any right, but to bar remedy beyond the time prescribed. Notably, a time-barred suit is liable to be dismissed in India, even if a plea of limitation had not been raised as a defense.

The period of limitation for filing an appeal is generally between thirty (30) to ninety (90) days. If any special law prescribes a period of limitation for any suit, appeal or application which is different from the period prescribed under the Limitation Act, then such special statute will override the time period prescribed under the Limitation

Act.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

Before filing a commercial suit under the CCA, there are specific pre-action steps and statutory requirements to consider, such as mandatory mediation and settlement, unless urgent reliefs are being sought. The Mediation Act also provides for a voluntary option to parties to mediate any civil and commercial disputes before instituting any legal proceedings in court. Additionally, if the contract specifies that disputes must first be attempted to be resolved amicably, this step must be undertaken prior to initiating legal proceedings. Certain statutes also mandate compliance with specific notices and forms. Failure to adhere to these requirements can adversely affect the interests of the non-compliant party, potentially leading to the dismissal of the claim by the court, and imposition of costs. The CPC does not prescribe any pre-action conduct requirements pertaining to ordinary Civil Suits.

However, in cases involving suit against the Government of India or a Public officer acting in official capacity, no Suit can be filed without providing a two-month notice to the appropriate person. In case no notice is given, the Court shall not grant any relief, whether interim or otherwise, before providing the Government or Public officer a reasonable opportunity to show cause.

Separately, a suit against a foreign State before a competent Court must be filed with consent from the Central Government in writing. No decree can be executed against the property of a foreign State, without obtaining the consent to sue by the Central Government.

8. How are proceedings commenced in your jurisdiction? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

Civil proceedings commence from the date of institution of the suit before a competent court. Once commenced, the Court is required to issue summons to the defendant at the address provided by the plaintiff. Generally, a summons contains the following:

- details of the suit in which the summons have been issued.
- seal of the Court and the judge's signature.
- the date of appearance.

- copy of the plaint.
- any other directions, as is considered appropriate.

The Court's serving officer effects service of summons by any of the following means:

- registered post with acknowledgment due;
- speed post;
- approved courier; or
- electronic means (email or fax).

Once the court receives proof of receipt of summons or an endorsement that the defendant refused accepting the summons, it declares the service to be complete on the defendant(s) concerned. The other mode of service is through the plaintiff itself. In this regard, the plaintiff is allowed to serve the summons on the defendant personally. Such summons must be in a sealed envelope, containing the original summons collected from the court, the copy of the order and the complete plaint along with the documents.

In the instances where a defendant either avoids service or for any other reason the summons cannot be served in the ordinary way, the court is empowered to direct "substituted service" by other means such as publication in a newspaper or by affixing a copy of the summons in the Court or at the last-known residence of the defendant. The costs for service of summons are borne by the plaintiff.

Recently, the Supreme Court has allowed service of summons through email along with other modes. In certain instances, courts have also recognized service through instant messaging applications and permitted service of summons through instant messaging applications, such as WhatsApp, Telegram and Signal. In addition, some Courts and Tribunals require parties to serve a copy of any petition/application or other action to the Defendants/Respondents in advance, before it is taken up by such Court or Tribunal.

The CPC also provides the scope for service of summons outside India. The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 1965, to which India is a party, provides the procedure of service of summons to a defendant residing in a foreign jurisdiction (which is party to the Hague Convention), or when summons is being issued in such a foreign jurisdiction against a party in India.

9. How does the court determine whether it has

jurisdiction over a claim in your jurisdiction?

To determine if a Court has jurisdiction over a claim in India, several factors are considered. These include the nature of the case, the pecuniary value of the suit, and the territorial limits of the Court. Jurisdiction can be classified into three main types: subject-matter jurisdiction, territorial jurisdiction and pecuniary jurisdiction. Additionally, contracts may contain jurisdictional clauses specifying the Court to hear disputes, but such clauses cannot confer jurisdiction where it does not legally exist.

As per Section 16 of the CPC, a suit relating to an immovable property can be filed in the Court within whose territorial jurisdiction the property is located or where the defendant resides, conducts business, or works. If the property spans multiple jurisdictions, the suit can be filed in any Court within the jurisdiction of any part of the property. However, the Court must be competent to handle the entire value of the claim.

Separately, a Court is said to have pecuniary jurisdiction over a dispute, if the claim falls within the prescribed pecuniary threshold. Such a pecuniary threshold varies for different States; for instance, the pecuniary jurisdiction for civil suits before the Delhi High Court is INR 2 Crores and the Calcutta High Court is INR 10 Lakhs. In respect of the Bombay High Court, the pecuniary jurisdiction has been recently enhanced to INR 10 Crores. In arbitration, the jurisdictional court is determined by the seat of arbitration, as specified in the contract between the parties. Further, some statutes confer exclusive jurisdiction on Tribunals, and Civil Courts decline claims where such forum exists.

10. How does the court determine which law governs the claims in your jurisdiction?

To determine which law governs the claims, Courts consider several factors such as: – (a) jurisdiction and governing law clauses in contracts; (b) cause of action arising out of the Suit; and (c) nature of contract (for instance, if it is an arbitrable dispute).

Domestic disputes are governed by the law “in force” at the time of institution of the suit and decided by reference to Indian statutes, subordinate legislation and binding precedents.

In cases involving foreign elements, principles of private international law may be applied to determine the applicable law. In arbitration matters, the identification of the applicable law similarly depends on the express and

implied choice of the parties. Similarly, in matters of litigation, Courts rely on the common law doctrine of the ‘proper law of the contract’ to discern the applicable law while adjudicating disputes.

11. In what circumstances, if any, can claims be disposed of without a full trial in your jurisdiction?

In India, claims can be disposed of without a full trial under specific circumstances as outlined in the CPC. It also provides for expedited trial procedures, also known as “summary procedures”, if an application for such a process is approved. This mechanism is designed to circumvent a full trial in certain cases, such as recovery of liquidated demands. In summary proceedings, the defendant can seek “leave to defend” and, if permitted, the summary proceeding is converted into an ordinary Suit. Here are some key provisions that allow for such disposals:

- **Order XII Rule 6 (Judgment on admissions):** Under this rule, a court may pass a judgment based on admissions made by the parties either in the pleadings or otherwise. This is used when the admissions are clear and unequivocal, rendering a trial unnecessary.
- **Order XIII-A (Summary Judgement):** This order allows for parties in a Commercial Suit to apply to the Court to deliver a summary judgement in the suit without considering oral evidence. This can be done by the Court if it finds that (i) the Plaintiff has no reasonable prospect of contesting the suit, or if the Defendant has no reasonable grounds to defend the suit; and (ii) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.
- **Order XV (Disposal of Suit at first hearing):** This order allows for the disposal of a suit at the first hearing if the parties do not raise any question of law or fact. It is typically used in straightforward cases where there is no substantive defense.
- **Order XXXVII (Summary Procedure):** Parties can file summary suits in cases involving recovery of debt or liquidated demands arising out of a written contract or bills of exchange or hundies or promissory notes. During summary proceedings, the defendant has the right to apply for a “leave to defend,” which if granted, transforms the case to a standard trial. Courts allow such applications only if they are satisfied that the defendant has no bona fide defense, or if the defendant’s intended defense is frivolous or vexatious.

The Arbitration & Conciliation Act, 1996, provides for a "Fast Track Procedure" which allows parties in an arbitration to choose to have the dispute decided only with written pleadings and documents submitted by the parties without leading oral evidence. This provision also allows the arbitrator to dispense with technical formalities in the interest of an expeditious disposal of the dispute. Such an award must be rendered within 6 months from the date of appointment of the arbitrator.

The CCA also provides for a "summary judgment" upon application by a party and contains provisions for expedited trial procedure with stricter timelines for various stages of the litigation. It makes provisions for efficient case management, the restriction of appellate and revisional remedies, expedited procedures for discovery, production of documents, etc.

12. What, if any, are the main types of interim remedies available in your jurisdiction?

The main types of interim remedies available in India include status quo orders, attachment orders, interim injunctions, orders securing payment, interim directions, appointment of receivers etc. In commercial matters, seeking interim remedies such as restraining a party from invoking/encashing Bank are typical within the jurisdiction. There has also been a growth of civil cases (e.g. defamation suits) involving intermediaries, where courts regularly pass interim orders requiring intermediaries to takedown specific identified unlawful posts pending the final disposal of the case.

However, the Court while passing an order granting interim relief, must be satisfied with the following conditions: (i) a prima facie case in favor of the party seeking the order; (ii) irreparable damage to the party seeking the order, which might defeat the very purpose of the suit and that may be caused to the party if the relief is not granted; and (iii) balance of convenience lying with the party seeking the order. Further, Courts are reluctant to grant interim relief, if it is tantamount to granting final relief at the interim stage.

Interim relief may also be sought in arbitration proceedings, either from a Court or directly from the arbitral tribunal. The arbitral tribunals have the same power to issue interim relief, as would a civil court and therefore to enable expedition, parties can approach a Court for seeking interim relief only if they can demonstrate that approaching the arbitral tribunal for the same would be inefficacious. Recently, the Supreme Court of India has also recognized the enforceability of emergency arbitral awards in India seated domestic and

international arbitrations, which can be enforced as if they were interim orders of an India seated arbitral tribunal.

13. After a claim has been commenced, what written documents must (or can) the parties submit in your jurisdiction? What is the usual timetable?

Under the CPC, upon commencement of a suit by way of a plaint, the defendant is required to file a written statement within 30 days from the date of receipt of summons, which is extendable up to 90 days. In commercial disputes of a specified value under the CCA, this timeline is extendable up to 120 days. Written statements filed beyond the 30 day period typically need to be filed along with an application for 'condonation of delay'

While the Supreme Court has recognized these timelines as directory and not mandatory, courts will typically close the right of defendants to file their written statement, if they go beyond the prescribed 90 / 120 day period (as applicable). Further, any subsequent pleadings may be filed with the permission of the Court

Both parties must file a list of all documents (including those adverse to their case) at the time of filing their respective pleadings. Inspection of documents must be completed within 30 days of filing the written statement or written statement to the counterclaim, whichever is later. The Court may extend this by a further 30 days. Parties must submit a statement of admission or denials of all documents within 15 days of completion of inspection.

For commercial disputes of a specified value under the CCA, the Court is required to hold the first Case Management Hearing not later than four weeks from the date of filing of affidavit of admission or denial of documents by all parties. At this hearing, the Court will set timelines for the remaining stages, including production of further documents, filing of affidavits of evidence, and other interlocutory applications.

All examination-in-chief is to be submitted by way of affidavit. For commercial disputes of a specified value under the CCA, the affidavits of all witnesses must be filed simultaneously by each party at the time directed in the first Case Management Hearing.

A defendant may file an Application under Order VII Rule 11 for preliminary rejection of a plaint, if it does not disclose a cause of action, or is undervalued and the

plaintiff fails to correct it, or is insufficiently stamped, or is barred by any law. For commercial disputes of a specified value under the CCA, a party may apply for summary judgment at any time after service of summons but before issues are framed.

In respect of Summary Procedures, the following timelines are applicable:

- i. Summary Suits: The defendant must file an application for "leave to defend" within 10 days from the receipt of the summons, supported by a bona fide defense.
- ii. Summary Judgment in Commercial Suits: The respondent must, within 30 days of receiving notice of application for summary judgment, file a reply – addressing amongst other things – that there is a real prospect of succeeding on / defending the claim.

14. What, if any, are the rules for disclosure of documents in your jurisdiction? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

Once a proceeding has been initiated, the process of disclosure is known as "discovery". The rules governing discovery are codified under the CPC and CCA. Discovery is a pre-trial procedure which gives both parties an opportunity to obtain documents which may be used as evidence by opposite parties. In India, the entire set of documentary evidence relied upon by the parties, must be filed before the court as original sets. There are various types of discoveries, namely:

- a. interrogatories;
- b. requests for production of documents and inspection;
- c. requests for admissions; and
- d. by way of either affidavit of viva voce examination, when answers to interrogatories are incomplete or inadequate.

Discovery cannot be sought as a matter of right and may be denied if, in the Court's opinion, it is not necessary for a fair disposal of the case or for saving time and costs. The Court may limit discovery to certain classes of documents deemed necessary and expedient. Discovery of documents pertaining to evidence of the opposite party cannot be ordered to be produced by the court. Discovery is typically not allowed in respect of documents protected by attorney-client privilege; in respect of documents concerning the affairs of the State which may be confidential; in respect of matters relating to conduct of judges; and in respect of communications made to a spouse etc. These serve as exceptions. However,

exceptions pertaining to attorney-client privilege do not apply to in-house lawyers who are full time salaried employees of an organization.

The courts may also on an application by a party or *suo motu*, issue summons to non-parties to produce documents that are in their possession or power and are relevant to any question in controversy in the proceedings. Government agencies as third parties are also bound to respond to queries of citizens under the Right to Information Act, 2005, so long as they relate to public interest and do not involve official secrets or privileged information.

15. How is witness evidence dealt with in your jurisdiction (and in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

Witness Evidence:

Under the BSA, evidence can be given in any suit/proceeding only of the existence or non-existence of facts in issue and relevant facts. The law governing witness evidence is postulated as under:

- a. All facts, except the contents of documents can be proved by oral evidence. Oral evidence has to be direct. For e.g., for facts which can be seen or heard, the evidence must be of a witness who says they have seen or heard it. .
- b. Document is any fact expressed or represented using letters, words, figures, or marks for the purpose of documentation, including floppy disks, CDs and memory sticks, which are admissible for inspection by the Court. Documentary evidence must be proven through primary evidence, except in certain specified cases where the original is unavailable for reasons beyond the control of the parties. Courts in India treat electronic or digital records produced from proper custody as primary evidence, unless it is disputed.
- c. Indian Courts do not recognize hearsay evidence.

Information contained in an electronic record which has been stored, recorded or copied in a computer output can be admitted into evidence without proof or production of the originals if the criteria laid down in the BSA are complied with, and an affidavit is filed with the court certifying such compliance. The BSA also provides for certain exclusions where oral evidence is not required and is excluded by documentary evidence; for example, no oral evidence is required to prove the contents or terms of a contract, and production of the document itself

is sufficient.

The BSA specifically provides for courts to appoint experts with specialized knowledge/skills to assist it in forming an opinion. However, the opinion of experts is not binding on Courts, and their primary purpose is to assist the Court in arriving at a final conclusion.

The procedure for recording witness testimony begins with an "examination in chief" by which the witness swears to the statements made in his/her written affidavit of evidence, followed by cross-examination by the other side. If the opposite party desires, the witness can be cross-examined, and then re-examined by the party who introduced the witness. The examination-in-chief is mandatorily on affidavit and copies of the same are required to be supplied to the opposite party. The Courts may allow oral examination-in-chief in limited circumstances. The cross-examination may be done orally (instead of on affidavit) if the Court is satisfied that the party bona fide desires such oral examination and it is necessary in the interest of justice. This can be before the Court, or commissioner appointed by the Court.

Re-examination of the witness is permissible under limited circumstances which relate to the questions arising directly out of the cross examination. Witnesses must testify under oath before the court and may be liable for any false information / testimony, under the provisions of the Bharatiya Nyaya Sanhita, 2023.

Depositions:

India is a party to the Hague Convention, thereby taking a U.S. Deposition of a voluntary witness can occur without prior approval from the Indian Central Authority. The CPC does not explicitly provide for gathering information using witness testimony during the stage of discovery. However, discoveries may be allowed by way of viva voce examination, when answers to interrogatories are incomplete or inadequate.

16. Is expert evidence permitted in your jurisdiction? If so, how is it dealt with (and in particular, are experts appointed by the court or the parties, and what duties do they owe)?

Expert witness is permitted in India. Courts have the power to call and nominate an expert on their own motion or on the application of a party. Arbitral tribunals are also authorized to appoint one or more experts to report to it on specific issues. The duty of the expert witness is towards the Court or the Tribunal, and such witnesses are required to provide its unbiased opinion to

assist the Court or Tribunal in forming an independent judgment before arriving at a conclusion. The unbiased opinion is in relation to special knowledge regarding any foreign laws, science, art, handwriting or finger impressions where such knowledge has been gained by practice, observation or proper studies for testing the accuracy of a report or observation to enable the Court or Tribunal to form an independent judgment about such scientific observations. To curb inherent bias, evidence of two opposing experts may be taken concurrently in a technique called "hot-tubbing" or experts may be chosen from a panel of pre-vetted experts.

The opinion of an expert only becomes admissible when he is examined and upon giving reasons for forming the opinion, and is verified by cross-examination, although in some cases scientific experts may be exempted from the process of examination.

17. Can final and interim decisions be appealed in your jurisdiction? If so, to which court(s) and within what timescale?

Under the CPC, appeals can be preferred against a final decree or other specified orders unless precluded by a statute. As a rule, the CPC permits two rounds of appeal as under:

- i. A first appeal lies from a decree (including *an ex parte* decree) passed by any court exercising original jurisdiction to the authorized appellate court, except where expressly prohibited (for example, against a consent decree). All questions of facts and/or law can be raised in the first appeal, within the prescribed statutory periods.
- ii. A second appeal usually lies to the High Court having territorial jurisdiction, from a decree passed in the first appeal by a subordinate court. The second appeal may be preferred only to substantial questions of law that may arise in a case.

Further, any judgement, decree, or final order of the High Court is appealable before the Supreme Court if the High Court certifies that (i) the case involves a substantial question of law of general importance, and (ii) the said questions need to be decided by the Supreme Court. Additionally, appeal may also lie before the Supreme Court by seeking special leave to appeal. The Supreme Court exercises extraordinary jurisdiction in entertaining such appeal. The special leave to appeal can only be preferred in cases involving a substantial question of law of general importance. Some specialized statutes also provide that an appeal of the decision of an appellate body constituted under such statute lies directly to the

Supreme Court.

Under the CCA regime, the first appeal lies from the decision of a Commercial Court or the Commercial Division of the High Court to the Commercial Appellate Division of the High Court within a period of 60 days from the date of judgment or order. No further appeals lie, except by way of seeking special leave to appeal before the Supreme Court.

Unlike the final judgments/decrees, the interim orders are usually not appealable unless provided in the statute. There are other remedies such as revision or recall of the order before the same Court. Further, where there is no appeal provision against interim orders, the litigants can seek exercise of the extra-ordinary jurisdiction of the High Courts under Article 227 of the Constitution of India or the jurisdiction of the Supreme Court of India under Article 136 of the Constitution of India.

18. What are the rules governing enforcement of foreign judgments in your jurisdiction?

The Government of India has notified certain countries as reciprocal territories and as such the judgments of the reciprocal countries are recognized and enforceable in India in the same manner as domestic judgments. However, the process of enforcing a judgment passed by non-reciprocal territory is different. The Court, having territorial and pecuniary jurisdiction, proceeds with the enforcement of the foreign judgment subject to the exceptions of Section 13 of the CPC.

To be recognized in India, a foreign judgment from "reciprocating territories" must be conclusive and final. Further, the foreign judgment must be: (i) rendered by a court of competent jurisdiction of the concerned territory; (ii) decides on the merits of the case; (iii) not prima facie appear to be founded on an incorrect view of international law or a refusal to recognize Indian law; (iv) not be violative of principles of natural justice; (v) not be obtained by fraud; and (vi) not sustain a claim founded on breach of Indian law.

A judgment by a reciprocal territory is executable in India without the requirement of instituting a suit, whereas a judgment rendered by a court of a non-reciprocal territory, requires institution of a suit in India. Pertinently, there is no provision for enforcement of interim orders passed by foreign courts as they do not conclusively determine the rights of the parties.

The enforcement of a foreign seated arbitral award is in terms of the provisions of the New York Convention or

Geneva Convention, read with the Arbitration & Conciliation Act, 1996. Similar to "reciprocating territories" under the CPC, the Government needs to issue a notification declaring a jurisdiction as a reciprocating jurisdiction for enforcement of foreign awards under the New York Convention. At present, 54 countries have been recognized as reciprocating jurisdictions. An arbitral award is enforced in the same manner as if it were a judgement or decree of a Court, and enforcement can be refused on very limited grounds. However, despite recognizing the enforceability of emergency arbitral awards, there is no procedure for enforcing foreign seated emergency arbitral awards as of yet, and enforcement of the same may require initiating a separate proceeding before the appropriate Court.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side in your jurisdiction?

Initially, the parties bear their own costs. However, courts may, at their discretion, award "reasonable" costs with the judgment. The general rule is that costs "follow the event"; i.e., the loser bears the costs. These may include expenses incurred on pre-litigation notices, lawyer's fees, Court fees, expenses incurred in securing attendance of witnesses, etc.

The CPC indicates the categories of expenditure incurred by a litigant that may be awarded as costs, but the quantum is generally fixed at the discretion of the court. Occasionally, courts levy exemplary costs for filing false and/or vexatious claims. Nominal costs may also be imposed during the interim stages for causing inordinate delay, etc.

20. What, if any, are the collective redress (e.g. class action) mechanisms in your jurisdiction?

Under Order I Rule 8 of the CPC, a group of plaintiffs can collectively bring a claim to Court in a representative capacity for the benefit of a group or class of persons, with the permission of the Court. The concept of class action suits has permeated into other legislative frameworks such as the Companies Act, 2013, the Consumer Protection Act, 2019 and the Competition Act 2002 in India.

Section 35 of the Consumer Protection Act, 2019 acknowledges consumer class actions, empowering registered consumer organizations and individual

consumers to initiate class actions on behalf of the collective. Under this provision, one or more consumers, sharing a common interest or grievance, can initiate a class action on behalf of the affected group.

Under the Companies Act, 2013, both individual members and depositors of a company have the right to come together, either on their own or as a group, to seek justice and remedies from the National Company Law Tribunal. Section 245 of the Companies Act, 2013 also allows a member(s)/ depositor(s) to proceed against auditors, the audit firm, experts, advisors or consultants, for any fraudulent conduct on their part.

Section 37 of the Companies Act, in conjunction with Section(s) 34-36, permits class action lawsuits concerning securities in cases involving misleading statements or the inclusion or omission of any information in the prospectus. Additionally, under Section 53N (4) of the Competition Act 2002, class action suits are permitted with the approval of the National Company Law Appellate Tribunal.

Similarly, the Insolvency and Bankruptcy Code, 2016 ("IBC") allows for a class of creditors, i.e., homebuyers, to initiate action against the Corporate Debtor (pertaining to real estate builders/developers) as a collective redressal mechanism, in the capacity of "financial creditors".

Further, under the TRAI Act, the TRAI is empowered to adjudicate any dispute between a service provider and a group of consumers.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings in your jurisdiction?

In India, the plaintiff is the *dominus litis* of the suit i.e., the plaintiff decides whom to make a party to the proceedings. In the event plaintiff fails to include a necessary or relevant party to the dispute, the said party can be added to the proceedings either upon their own request or upon the intervening application of any other party already arrayed in the suit, subject to Court approval. If the Court is satisfied that the presence of a particular person is necessary to effectively and completely adjudicate upon the disputes, it may, on application or *suo motu*, order any person to be added as a plaintiff or defendant. A third party may also apply to the court to be impleaded as a party, where it will have to satisfy the court as to how it is either a necessary or a proper party to the proceedings.

Additionally, when parties or the subject matter of multiple cases are identical or similar, these cases may be consolidated or tagged together. This consolidation allows for streamlined proceedings where all related cases are heard jointly, leading to the issuance of a common order encompassing all relevant issues and determining the rights of all the parties involved.

22. Are third parties allowed to fund litigation in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

India does not currently have any law regulating third-party funding or restricting third parties (non-lawyers) from funding the litigation. In 2018, Supreme Court, observed that there appears to be no restriction on third parties (non-lawyers) funding the litigation and getting repaid after the outcome of the litigation. However, the Supreme Court categorically held that lawyers are prohibited from funding the litigation. India is yet to test the legality of arrangements entered by the third party funding the litigation, before a court of law.

Recently, the Delhi High Court held that a third-party funder who is not signatory to the arbitration agreement or award, cannot be held liable for adverse costs, reasoning that liability must lie on express agreement. Furthermore, amendments to the CPC in states such as Maharashtra, Gujarat, Madhya Pradesh, and Uttar Pradesh grant Courts the authority to involve a third-party financier as a plaintiff in a lawsuit under certain conditions. However, such financiers may be required to furnish security for the payment of all costs incurred and anticipated by any defendant.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction?

Covid-19 led to a sharp decline in filings and disposal by Courts due to Court closures and restricted registry staffing. In 2020–21, District Courts saw a 32 % drop in new case filings (31.56 million) compared to 2018–19 (46.45 million), and a 42 % fall in disposals. However, parties continued to opt for arbitration as a viable dispute resolution mechanism. Uncertainty over in-person access, combined with rising pandemic-related costs, led parties to defer non-urgent suits or shift to arbitration. The Singapore International Arbitration Centre (SIAC) logged 690 filings by Indian parties in 2020 (up from 485 in 2019), and SIAC's total new-case tally (1,646) topped global institutions despite the pandemic.

Covid-19 also thrust India towards a digital shift. With physical courts closed, e-filing was rolled out nationwide and virtual hearings became routine “to prevent the backlog from becoming insurmountable”. Limitation clocks were suspended from 15 March 2020 to 28 February 2022 by Supreme Court order, preventing time-bar crises. Even as courts re-opened, an over-burdened case docket compounded delay, forcing practitioners to push for urgent matters and seek interim relief.

Most significantly, the pandemic catalyzed e-courts and national e-filing reforms—once viewed as “optional conveniences”—into indispensable infrastructure, likely permanently altering India’s procedural landscape. Legal technology, a broad spectrum of tools and platforms designed to improve efficiency, accessibility, and cost-effectiveness within the legal system, became a lifeline for the justice system during this unprecedented time. Justice delivery through virtual courts is likely to increase access to justice and result in an affordable and citizen friendly legal system. Lastly, due to the infusion of technology, alternative dispute resolution mechanisms such e-negotiation, e-mediation, e-arbitration, Medola, Med-Arb, etc. are also being experimented in India.

24. What is the main advantage and the main disadvantage of litigating international commercial disputes in your jurisdiction?

The principal advantage of litigating international commercial disputes in India is the cost-effectiveness of the process compared to other common law jurisdictions. Indian litigation is generally more affordable, both in terms of court fees and legal representation, making it an attractive forum for parties seeking to manage dispute resolution expenses. Additionally, the Indian legal system is grounded in principles that favor the workability and enforceability of commercial bargains, providing a robust framework for upholding contractual rights. The courts are also increasingly open to multi-party proceedings and the joinder of third parties, which can be particularly beneficial in complex, cross-border disputes involving multiple stakeholders.

Recent reforms—such as the establishment of Commercial Courts, the adoption of stringent case management procedures, and the push for pre-litigation mediation—have further streamlined the process for commercial disputes, aiming to reduce delays and improve efficiency. The judiciary’s embrace of technology, including e-filing and virtual hearings, has also enhanced accessibility and procedural convenience, especially post-pandemic.

The most significant disadvantage remains the length and unpredictability of proceedings. Despite procedural reforms, Indian courts are still burdened with a substantial backlog, and it is not uncommon for complex commercial disputes—especially those involving property or intricate factual issues—to drag on for years, if not decades. Even with the expedited procedures under the Commercial Courts Act, the time to reach trial and final adjudication can be considerable, particularly if interim orders or appeals are involved.

For international parties, this delay is compounded by the uncertainty in enforcement of Indian judgments abroad, as reciprocal arrangements are not universal and enforcement in foreign jurisdictions can be complex and fraught with procedural hurdles. While arbitration offers a faster alternative, court intervention at the enforcement or challenge stage can still introduce delays.

International clients should carefully weigh the cost savings and procedural flexibility against the potential for protracted litigation. Where speed and finality are paramount, arbitration seated in India or another jurisdiction may be preferable. However, for parties seeking a cost-effective forum with the ability to involve multiple parties and benefit from a maturing legal infrastructure, Indian courts remain a viable—if sometimes slow—option.

25. What is the most likely growth area for commercial disputes in your jurisdiction for the next 5 years?

India’s commercial dispute landscape is set for significant transformation, driven by rapid economic, technological, and regulatory changes. The following areas are poised to see the most substantial growth in commercial disputes, reflecting both the evolving business environment and the legal system’s response to new challenges.

1. International Commercial Arbitration and Cross-Border Disputes

India has made concerted efforts to position itself as a global hub for international commercial arbitration. Legislative reforms to the Arbitration and Conciliation Act, 1996, and a judiciary that increasingly supports minimal intervention in arbitral proceedings, have made arbitration the preferred mode of dispute resolution for cross-border and high-value commercial contracts. As foreign direct investment (FDI) continues to rise and India’s integration with global markets deepens, disputes involving international parties—particularly in sectors

such as infrastructure, technology, and manufacturing—are expected to increase. The enforceability of foreign arbitral awards and the pro-arbitration stance of Indian courts further encourage parties to choose arbitration, leading to a likely surge in related disputes.

2. Technology, Data Privacy, and Cybersecurity Disputes

The digital transformation of the Indian economy is accelerating, with the proliferation of e-commerce, fintech, SaaS, and platform-based business models. The enactment of the Digital Personal Data Protection Act, 2023 ("DPDP Act"), alongside stricter enforcement of cybersecurity obligations under the Information Technology Act, 2000 and CERT-In rules, is expected to generate a significant volume of disputes. Once the Data Protection Board is established under the DPDP Act, we can expect a greater focus on issues such as data breaches, validity of consent, handling of personal data and, cross-border data transfer compliance. With the increasing importance of data processing and sharing in business operations, the DPDP Act's compliances and adjudicatory framework will be relevant for businesses of all sizes and across sectors, for e.g. media platforms, intermediaries, SaaS providers.

3. Platform Economy and Intermediary Liability

India's burgeoning platform economy—encompassing e-commerce, gig work, and digital intermediaries—faces an evolving regulatory landscape. Amendments to the Consumer Protection (E-commerce) Rules and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules have heightened compliance requirements for platforms. The Government has also been contemplating introducing a new "Digital India Act" which may modify the framework for regulating intermediaries. There has been growing litigation on issues such as content takedown and moderation.

Further under the framework of the Consumer Protection Act, 2019 disputes regarding unfair trade practices, misleading advertisements, dark patterns etc. may also become increasingly common flash points between companies and end-users. As the government continues to refine its approach to digital markets, these disputes may become more complex and frequent.

4. Artificial Intelligence

There is currently no dedicated regulatory framework for artificial intelligence ("AI") and the Government has been contemplating introducing a dedicated framework for this. There are already pending litigations on AI related

issues such as deep fakes, misinformation, and usage of copyrighted information. As the regulatory framework for AI crystallizes and develops, AI related disputes may emerge as a growing area even in commercial disputes particularly with respect to issues of intellectual property.

5. Infrastructure, Renewable Energy, and ESG-Linked Contract Disputes

Government initiatives such as Gati Shakti and the National Infrastructure Pipeline are driving massive investments in infrastructure, energy, and green transition projects. As these projects become more complex and are increasingly tied to sustainability-linked KPIs, there might be a rise in contractual disputes over force majeure, time overruns, and cost escalations, claims relating to non-compliance with environmental, social, and governance (ESG) standards, disputes between public and private sector participants, including joint ventures and consortiums. The push for renewable energy and sustainable infrastructure will also generate disputes over regulatory compliance, project execution, and performance guarantees.

6. Collective Redress and Class Actions

With the expansion of class action mechanisms under the Companies Act, Consumer Protection Act, and Competition Act, collective redress is becoming more prominent. This is particularly relevant in sectors such as consumer goods, financial services, and securities, where large groups of stakeholders may be affected by corporate misconduct, product failures, or regulatory breaches.

26. What, if any, will be the impact of technology on commercial litigation in your jurisdiction in the next 5 years?

1. **End-to-End Digitization:** Courts will become increasingly paperless, with more Courts adopting automated e-filing, online case management systems, and digital storage of all pleadings, evidence, and orders, drastically reducing delays and human error.
2. **Virtual Hearings as the Norm:** Most hearings—including interim applications and substantive arguments—being conducted via secure video platforms will be the increasing norm. This will improve efficiency, reduce travel, and enable seamless cross-border participation.
3. **AI-Driven Legal Practice:** Predictive analytics may become an integral part of litigation strategy, while AI tools will help automated research, draft routine applications, and streamline contract review, allowing

lawyers to focus on complex advocacy.

4. **Blockchain and Smart Contract Disputes:** Courts will increasingly handle disputes involving on-chain agreements, requiring new expertise in code-based contracts, digital asset tracing, and equitable remedies for smart contract execution.
5. **Advanced Digital Evidence Handling:** Real-time data preservation, forensic data labs, and AI-assisted document review may become a crucial tool in trials, enabling rapid, reliable handling of large-scale digital disclosures and evidence.
6. **Enhanced Cybersecurity and Confidentiality:** Secure digital portals and confidential e-rooms may be incorporated to protect sensitive information, balancing open court principles with privacy needs in high-stakes commercial cases.

7. **Specialized Technology Benches:** Dedicated judicial panels with a background of technology and policy may emerge in High Courts and Commercial Courts, ensuring faster, more informed adjudication of complex technology, fintech, and data privacy disputes.
8. **Regulatory Compliance Litigation Surge:** Enforcement of new data protection and cybersecurity laws will add to the increasing trend of litigation on issues such as platform liability, data handling and security, and cross-border data transfers.

In other words, technology will make Indian commercial litigation faster, more transparent, and more sophisticated, while also introducing new types of disputes that will require greater technical expertise from both lawyers and judges.

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