# Courting the rankings

The euphoria over reports of India moving into the top 100 in the World Bank's Ease of Doing Business global rankings, which is credible, is bound to be dampened if there is acknowledgement of our dismal performance in one key component in the indices that make up these rankings; if there is a component that still has a dismal ranking it is the one about "enforcing contracts". A nation's ranking in the "ease of doing business" index is based on the average of 10 sub-indices which are: starting a business; dealing with construction permits; getting electricity connections; registering property; getting credit; protecting minority investors; paying taxes; trading across borders; enforcing contracts; and resolving insolvency.

Of these, the one about "enforcing contracts" is directly dependent on a country's ability to provide an effective dispute resolution system. In the World Bank report which covers 190 economies, evaluating them on 10 specific parameters required for doing business, India's ranking in the 'enforcement of contract' component is 164 (in addition to an overall ranking, each component also has a separate ranking). The report says that it takes an average of 1,445 days (or nearly four years) to enforce a contract in India. In this, the distance to frontier (DTF) ranking score is 40.76. The all-told cost to a litigant to recover amounts legitimately due to him is 31% of the value of the claim. This is a shocking state of affairs.

The DTF score must be explained. It measures the distance of a particular country's economy from the "frontier" which represents the best performance. Simply put, the "frontier", measuring 100, is the ideal situation and a DTF ranking indicates how far a country is from that ideal. Though India's DTF score was 56.05 in 2017 and is projected to improve to 60.76 in 2018 in the overall ease of business rankings, unfortunately, in 'enforcing contracts' our score was a dismal 38.90 in 2017, projected to improve feebly to 40.76 in 2018.

Aware of this threat posed to India's business environment, Parliament even passed the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act. When the implementation of an Act is left to State governments, there is generally a hiatus in enforcement. Going by indications, this "Act" too appears to be no exception, possibly explaining why India's ranking in "enforcement of contracts" has not appreciated much.

The purpose behind the Act is to provide a forum with upgraded infrastructure to resolve a certain class of disputes, classified as "commercial disputes" in the Act, in a time-bound and effective manner. The legislation also requires establishment of appropriate infrastructure and manpower training on a constant basis. In identifying disputes above a specified value to qualify as commercial disputes, it has ensured that these courts are not cluttered up with small claims. The Act essentially paves the way for the setting up of commercial courts at the district level and a commercial division in High Courts that have original jurisdiction along with a commercial appellate division in the High Courts to hear appeals arising under the Act. By mandating that High Courts must show levels of disposal of such claims on their website, the Act also ensures transparency. However, for this statutory scheme to work, many players must play their respective parts.

Five aspects that relate to the working of the Act require immediate consideration. First, while the Act contemplates the "appointment" of commercial court judges in districts, in most States the government there has merely vested the presiding district judge with powers to act as a commercial court. Given that the workload of principal district judges is already quite staggering, vesting them with the powers of commercial courts in districts strikes the first blow against the intent and purpose of the Act. Second, and this flows from the first aspect, whenever presiding officers are appointed to commercial courts, it must be ensured that they have experience in dealing with commercial disputes, as Section 3 of the Act ordains. Merely the fact that an

incumbent is a district judge supplies no such experience. Third, in terms of Section 19 of the Act, the respective State governments must, in consultation with the High Courts, establish necessary infrastructural facilities to run these courts. Fourth, in terms of Section 20 , the State government is to establish facilities providing for the training of judges who may be appointed to these courts. Finally, and possibly most importantly, in terms of Section 17, statistical data regarding the functioning of these courts are to be displayed on the website of the respective High Courts.

Without institutionalising these improvements, we cannot hope to make our commercial courts businesslike and our ranking in “enforcing contracts” any better.

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Marriage is a civil contract — adultery or divorce should have only civil consequences

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