

ENFORCEABILITY OF LAW AS AN ESSENTIAL TO BOOST THE ECONOMY: A COMPARATIVE ANALYSIS OF ITS INDICATORS AND STATUS WITH REFERENCE TO SELECT COUNTRIES

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ABSTRACT

India's target of boosting the economy by magnifying the foreign direct investments through the investors in public and private corporates, requires a strong and effective enforcement of contracts. An efficient contract enforcement regime is crucially significant for any economy as it boosts the confidence of the investors and corporates resulting in economic growth and development. Courts turn out to be an important instrument for the enforcement of contracts. The present paper is an attempt to analyze the indicators of enforcing the contracts in the selected countries along with the actions taken to strengthen the regime of contract enforcement.

Keywords: *Judiciary, courts, management of cases, arbitration*

INTRODUCTION

Efficient judicial system can enhance the willingness of foreign investors to make investment in an economy as it is one of the base pillars of a sound business environment. A good enforcement system reduces the uncertainty, as it assures the investor that their contracts will be upheld in the courts. If the enforcement of contracts is not in time and cost effective, a vicious circle is created where banks will lend less as they will doubt the ability to get back their money, leading to less expansion of the business, resulting in slowdown of investments, economic growth and development. Courts are the essential instrument for an effective business environment. Efficiency of courts determines how effectively and timely, the contracts will be imposed. If the cases are not disposed of in a reasonable time, then it affects the justice given as described in the maxim 'justice delayed is justice denied' and it further shakes the confidence in the judicial process. Transparency of courts and their efficiency stabilizes business relationships as the corporates know that in case of disputes they can rely on the courts. Poor contract enforcement increases the risk and reduces return due to large legal cost and adversely impacts risk return ratio. India lags in enforceability of contracts and has been shown a very low rank in the World Bank's 'Doing Business' report, with 164 out of 190 countries in 2018. The main reason is the sluggish judicial process in India. In spite of the increase in the population, the number of judges and the

courts have not increased in the same proportion. In developed countries, there are 50 judges per million population. In the USA, there are 100 judges and in India there are 15 judges per million population. After spending a lot of money on the court fees, lawyers and then waiting for years and years to get the judgement does not make the business environment viable and attractive. The other option is to go for mediation or arbitration, which is also inflicted with high costs and delays. Countries such as Singapore and US are preferred by the multinationals, where the contracts can be enforced within a period of a week or few months. Long arbitrations are completed in a day in the Jurisdiction of Singapore, Dubai and Hong Kong. The threat of enforcement stops from breaching the contracts, resulting in a trustworthy, efficient and reliable business ecosystem. The cost involved in enforcing the contracts should be less than the profit which is expected from the execution of the contracts. If the costs are high than enforcement, it will not have any meaning and will result in breach of contracts. Breaking of deals results in large business losses spreading over the whole economy. Uncertain cash flows due to non-enforceability of the contracts may lead to the shutdown of the companies.

LITERATURE REVIEW

Lin et al. (2010) investigated the impact of enforcement of contracts on the corporates research and development of 2400 companies of 18 cities of China. The study clearly demonstrated that enforcement of contracts plays a significant role in the investment decisions in research and development and the funds which are invested. It also has a positive correlation with the size of the firm. Levine (1998) studied the relationship in the legal system and the development of the banks. The empirical analysis suggested that the countries equipped with a strong legal system where the rights of the creditors were taken care of and the contracts were enforced, had better growth and development of the banks as compared to the countries where there were loose enforcement laws and less priority was given to the creditors interest. Lanau et al. (2014) investigated the effects of the judicial system in Italy on the growth, investment and overall business environment. They concluded that enforcement claim delays are due to long pending cases. Although many measures have been taken such as reduction in the fees of the court and improving the overall management of the court, more reformative steps are required to be taken for the overall conducive business environment. Bae et al. (2009) examined the effects of contract enforcement on the loans by the banks, in 48 nations. They found that poor contract enforceability results in less loans and increases the spread of the loans also. On the other hand, strong creditors rights decrease the spread. They suggested that the enforcement contracts have effects on the price and the structure of the loans. Ahlquist et al. (2009) examined the effects of the contracting institutions and the rule of law of the host nations, on the foreign direct investment. They empirically studied 98 developing economies and concluded that low cost of enforceability of contracts have a positive relationship with the foreign direct investment.

OBJECTIVES

The objective of the study is to assess and analyse the indicators and status of enforcing contracts in India and other selected countries for facilitating the smooth running of the business.

RESEARCH METHODOLOGY

The various angles which are enumerated by the World Bank for enforcing contracts in the 'Doing Business' report are taken for the purpose of research for a sample of 5 countries which are India, China, Pakistan, Bangladesh and Singapore. For the purpose of research, China's Shanghai and Pakistan's Karachi data are analyzed. Research has been conducted by studying the various indicators which determine the strength of enforcing contracts in a country. They are time, which is expressed in the number of days and is assessed at the stages of filing and service, trial and judgement and the time taken for enforcing the judgement. Cost is expressed as the percentage of the claim, where the fees of attorney, fees of court and fees of enforcement are compared. The quality of judicial process is based on the index and various indicators such as the strength of the proceedings of the court, case management, court automation and alternatives regarding management of disputes is analyzed. Data has been taken from the World bank database of 'Doing Business', and is analyzed for the year 2018.

ANALYSIS

Enforcing contracts

Table 1

Analysis Of Ranks, Time, Cost and Judicial Process Quality of Selected Countries

Serial number	Countries	Rank (out of 190)	Time (days)	Cost (%)	Judicial process quality index (0-18)
1	India	164	1445	31.0	10.5
2	China	5	485	15.1	15.0
3	Pakistan	156	1096	18.1	6.0
4	Bangladesh	189	1442	66.8	7.5
5	Singapore	2	164	25.8	15.0

Source: The World Bank Database, Doing Business Report, (2018 and previous issues)

Enforcing contracts parameter ranks, out of 190 countries for our sample of selected countries are India (164), China (5), Pakistan (156), Bangladesh (189) and Singapore (2). This indicates that India, Pakistan and Bangladesh are having very low rank in this parameter.

Time

Table 2

Comparative Analysis of Time and Its Components

(In days)

Serial number	Country	Total	Filing/ Service	Judgement/ Trial	Judgement Enforcement
1	India	1445	45	1095	305
2	China	485	35	210	240
3	Pakistan	1096	96	700	300
4	Bangladesh	1442	30	1045	365
5	Singapore	164	6	118	40

Source: The World Bank Database, Doing Business Report, (2018 and previous issues)

Efficiency of litigation is reflected by the time factor. Therefore, it is an important evaluation indicator of 'enforcing contracts. Amongst the sample countries, Singapore's performance is the best as it takes 64 days, while India has the longest span as it requires 1445 days. Pakistan with 1096 days and Bangladesh with 1442 days are almost on the same footing as India. Clearly, at the stage of 'filing and the service', the difference amongst these countries is not substantial, except for Singapore, which takes only 6 days. India is almost at the same level with other countries regarding 'enforcement of judgement'. India takes 305 days, China 240 days, Pakistan 300 days and Bangladesh 365 days, except for Singapore where only 40 days are required, but when it comes to 'trials and the judgement', India stands far behind other countries. India takes maximum days, that is 1095 in trial and judgement, which is even more than what Bangladesh takes (1047). In Singapore and China, the trials and judgement are very quick and efficient as they take 118 days and 210 days respectively. China takes one fifth time and Singapore takes one tenth of what India takes in trials and judgement. India has been fully aware of this problem and has been putting significant efforts in resolving it.

Cost**Table 3****Comparative Analysis of Cost and Its Components****(In percentage)**

Serial number	Country	Total (%)	Fees of Attorney (%)	Fees of Court (%)	Fees of Enforcement (%)
1	India	31.0	22.0	8.5	0.5
2	China	15.1	7.6	5.0	2.5
3	Pakistan	18.1	11.0	5.9	1.2
4	Bangladesh	66.8	40.0	8.3	18.5
5	Singapore	25.8	20.9	2.8	2.1

Source: The World Bank Database, Doing Business Report, (2018 and previous issues)

The cost indicator is also very significant as it depicts the ability of parties to afford litigation. The World Bank Group has used the 'cost' (percentage of claim value), for the assessment. Bangladesh has the highest cost of litigation (66.8%) followed by India (31.0%), Singapore (25.8%) and Pakistan (18.1%). China has the lowest cost of litigation (15.1%). It is interesting to note that the total cost of litigation in India is almost double than that of China and Pakistan. Fees of attorney is very high in India at 22% which is double of that in Pakistan (11%). China has the lowest fees of attorneys at 7.6%. In Singapore also, the fees of attorneys are quite high at 20.9 %. Regarding the fees of the court, all the countries that are India, China, Pakistan and Bangladesh are in the range of 5 to 8.5% where Singapore has the lowest fees of court at 2.8%. The fees of enforcement are lowest in India at 0.5% and highest in Bangladesh at 18.5%. In the rest of the countries, the fees of enforcement are not very high. In fact, the low fees of enforcement are there in India but due to high attorney fees, the cost of enforcing contracts becomes very high.

Quality of judicial index**Table 4****Comparative Analysis of Quality of Judicial Process Index**

Serial Number	Country	Total (0-18)	Strength of the court and its proceeding (1-5)	Management of cases (0-6)	Automation of court (0-4)	Alternatives of dispute management (0-3)
1	India	10.5	4.5	1.5	2.0	2.5
2	China	15.0	5.0	4.0	3.0	3.0
3	Pakistan	6.0	2.0	1.5	0.5	2.0
4	Bangladesh	7.5	3.0	1.0	0.5	3.0
5	Singapore	15.0	4.5	4.5	4.0	2.0

Source: *The World Bank Database, Doing Business Report, (2018 and previous issues)*

The quality of judicial process index has a score of 18 points, with questions that are divided in 4 indicators. A high score is a representative of a good judicial process which in turn strengthens the contract enforcement. India shows a mediocre performance with 10.5 score, which is around 50%, whereas China and Singapore show a high performance with 15.0 score. Bangladesh and Pakistan are below average with 7.5 and 6 scores respectively.

The quality of the judicial process is judged at 4 stages.**1. Strength of the court and its proceedings**

- If the court has a division which is specially dedicated for the commercial cases or not. It was found that in Singapore, India and China such division is available but not in Pakistan and Bangladesh.
- Whether small claim courts are available. It was found that all the countries that are China, Singapore, Pakistan, Bangladesh and India, have the small claim courts.
- Whether the pretrial attachments are available.

It was found that all countries viz. China, Singapore, Pakistan, Bangladesh and India have such availability.

- Whether the cases are assigned randomly to the judges.

It was found that in all countries that are China, Singapore, Pakistan, Bangladesh and India, the cases are randomly assigned to the judges.

- Whether testimony of women has the same evidence weightage as that of men.

It was found that except for Pakistan, all other countries like Singapore, Bangladesh, India and China gave equal weightage to the evidence by both men and women.

On the scale of 1 to 5 India has a very good score with 4.5, China has the maximum score of 5 and Singapore is equal to India at 4.5. The performance of Pakistan and Bangladesh is mediocre.

2. Case management

A. Time standards

- Are the laws for the overall setting time standard available?

It was found that in all the countries that are India, China, Singapore, Pakistan and Bangladesh, such laws are available.

- If such laws are there then are they at least for three events of courts?

It was found that except for Singapore, all other countries that are India, China, Pakistan and Bangladesh fulfill this limit.

- Are these time standards respected in more than 50% of the cases?

It was found that in Singapore and China, they are respected in 50% of the cases but not in Pakistan, India and Bangladesh.

B. Adjournment

- Whether there is a law for maximum number of adjournments or not.

It was found that in Singapore, China and Pakistan there are no such laws but in Bangladesh and India, laws are available.

- Whether these adjournments are limited to the exceptional circumstances.

It was found that in Pakistan, China and India, they are not. But in Singapore and, Bangladesh, they are limited to exceptional circumstances.

- If the adjournment rules are respected in 50% or more cases or not.

It was found that except for Singapore no other country, that is Pakistan, Bangladesh India and China, followed the adjournment rules.

- Out of the four reports that is (1) Time to deposition report (2) clearance rate report (3) age of pending cases report and (4) single case program report, are at least two reports generated or not?
It was found that in Pakistan, China and Bangladesh they are not generated but in Singapore and India, at least two reports are generated.
- Whether pretrial conference mechanisms are available.
It was found that it is available in Singapore and China but not in Pakistan, India and Bangladesh.
- Whether the electronic case management methods are available for judges or not.
It was found that in Pakistan, Singapore and China, these electronic case management methods are available but not in Bangladesh and India.
- Whether electronic case management techniques are available for lawyers.
It was found that in Singapore and China they are available for lawyers but not in Pakistan, Bangladesh and India.

It has been observed that on the scale of 0 to 6, Singapore has the best performance with 4.5 score, followed by China with score 4. India and Pakistan show a low score of 1.5 each and Bangladesh has the lowest score, which is one. Clearly India, Pakistan and Bangladesh have to strongly work on management of cases.

3. Court automation

- Whether the initial complaint can be filed electronically with the designated platform available in the court or not.
It was found that except for Singapore, no other country that is Pakistan, India Bangladesh and China, has such a facility.
- Can the process of claims be filed electronically or not?
It was found that in Singapore and China this can be done electronically but not in Pakistan, Bangladesh and India.
- Can the court fees be paid electronically or not?
It was found that in Singapore, India and China, this can be done but not in Pakistan and Bangladesh.
- Regarding the publicity of the judgement, whether the judgement in the commercial cases at all levels is made available to the general public or not.
It was found that in Singapore, India and China, they are made available but not in Pakistan and Bangladesh.
- Whether the judgement at the appellate and Supreme Court level were made available to the general public.

It was found that all the countries that are India, China, Pakistan, Singapore and Bangladesh, provide this facility.

On the scale of 0 to 4, Singapore performs the best with score 4 followed by China with score 3. India shows the middle performance at the score 2. Both Pakistan and Bangladesh are below average with 0.5 scores each. This shows that there is a scope for India to make improvements in this particular area, where the use of digital technology can help in increasing the score.

4. Alternative dispute Resolution

A. Arbitration

- Whether the domestic arbitration is governed by law.

It was found that in all the countries that are India, China, Singapore, Pakistan and Bangladesh, there are laws available.

- Are there any commercial disputes which cannot be submitted to arbitration?

It was found that in India there are certain disputes which cannot be submitted but in Singapore, Pakistan, Bangladesh, and China, all commercial disputes can be submitted to arbitration.

- Whether the valued arbitration agreements were enforced by the courts.

It was found that all the countries, that are Singapore, Pakistan, Bangladesh, India and China, valid agreements can be enforced in the courts.

B. Mediation and conciliation

- Whether voluntary mediation and conciliation is available.

It was found that in all the countries that are India, Singapore Bangladesh, Pakistan and China, voluntarily mediation and conciliation procedures are available.

- Whether there are laws for mediation and conciliation.

It was found that except for Pakistan and Singapore, all other countries that are India, Bangladesh and China have laws for mediation and conciliation.

- Whether some financial incentives are available to the parties who you agree for mediation and conciliation, which may be in the form of refund of court fees, tax incentive etc.

It was found that Bangladesh, India and China give such financial incentives to the parties but not Singapore and Pakistan.

On the scale of 0 to 3 of alternative dispute resolution, it was found that all the countries performed nearly perfect, especially China and Bangladesh who have the score of 3. India also has a very

strong position with 2.5. Pakistan and Singapore need a little improvement as their scores are 2 each.

REFORMATIVE ACTIONS BY THE COUNTRIES

China has made strong rules to make debtors responsible for enforcing contracts. They made amendments in civil procedures to speed up the proceedings of the court. They also introduced a system where lawyers used an electronic platform for case management. Singapore introduced an electronic litigation for streamlining the proceedings of litigation and tried to make the enforcement of contracts easier. India introduced the National Judicial Data Grid (NJDG) as a monitoring tool to identify, manage and reduce pendency of cases. India needs to work extensively on this parameter to have a comfortable rank. Pakistan and Bangladesh have not introduced any reforms in this parameter in the recent years and they also need to work hard by making rules and adopting a digital mechanism.

CONCLUSION

Compared with the sample countries, India is not in a favorable position in terms of time and cost indicators. Though in terms of the quality of judicial process, it shows a medium performance. The comparison reveals that India has to take strong and effective steps especially regarding the time taken with respect to trials and the judgement stage, required in the process of litigation. The automation of courts, bringing the digital technology in practice and a fully digitalized system in courts can help increase and expand the productivity of judges. Reforming the judicial process is going to be resource intensive and time consuming. Measures need to be taken in the areas of dispute management, arbitration process, reducing the time span and increasing the number of judges. The problem of enforceability of contract has to be addressed at war footing in order to achieve India's target to move upwards in the World Banks ranking index and to give a fillip to economy.

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