

# COMMERCIAL COURTS- A THOUGHT SOON TO BE A REALITY

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Establishment of a commercial division, in the High Courts of India was conceptualized way back in the year 2003.

Law Commission of India having regard to the economic policies adopted post 1991, the inadvertent delays in the Indian judicial system and to assurance to the domestic and foreign investors proposed the constitution of Commercial divisions in the High Courts of India in its 188th report.

The recommendations of the Law Commission were taken into consideration and a bill was introduced in the Lok Sabha being Bill No 139 of 2009. The broad features of the bill relating to Commercial Divisions were as follows:

1. Power for establishment of Commercial Division was to be vested with the High Courts to set up a Commercial Divisions comprising of one or more benches.

2. The jurisdiction of Commercial divisions would be restricted only to "Commercial Disputes" and having a specified value of Rupees Five Crores and above. All such disputes would be filed in High Courts concerned and would be referred to Commercial Divisions.

3. All the existing commercial disputes whether pending in High Court or elsewhere were to be transferred to



commercial divisions of High Courts.

4. An appeal from the order and judgment of Commercial Division would be made directly to the Supreme Court.

The Rajya Sabha took up the bill for consideration after which it was referred to the Standing Committee. The Standing Committee examined the bill and made certain recommendation. Though the recommendations of the Standing Committee were incorporated but the Bill it did not see the light of the day due to certain concerns and practical difficulty in its implementations. Some of the major concerns and difficulties as expressed were as follows:

## 1. JURISDICTION

The Bill seemed to empower the High Courts to vest itself with original jurisdiction. At present there are only Five High Courts, which are vested with

original jurisdiction. Vesting of original jurisdiction would mean establishment of own set of rules and procedures and creation of additional infrastructure for handling commercial disputes. Moreover it was unprecedented for any High Court to given the statutory power to vest jurisdiction in itself.

## 2. DIFFERENCE IN PECUNIARY JURISDICTION-

A wide variance exist between the pecuniary jurisdiction of the High Courts. Without increasing and making a uniform pecuniary jurisdiction between the Courts would create an incongruous situation. A single Court would treat any two suits having the same facts, but which only differs in value differently. It will also, to some extent, be inconsistent with the provision of Article 14 of the Constitution.

### 3. PROCEDURAL DIFFICULTY

The Bill provided for a separate set of procedures, which would have an over-riding effect on the provision of Civil Procedure Code as far as Commercial Divisions are considered. It remains an area of ambiguity whether these procedures would also have an over riding effect on the original side rules of the High Court in case of any conflict. As the Hon'ble Supreme Court in "Vidyawati Gupta Vs Bhakti Hari Nayak", pointed out, in case of a conflict between the CPC and the High Court rules, the High Court rules would prevail. This proposition was not clarified in the Bill.

### 4. APPEAL

A direct appeal to the Hon'ble Supreme Court from the order or judgment of Commercial Courts is not feasible. It makes the Hon'ble Supreme Court a court of First Appeals, and hence increasing its burden. This would lead to delay in decision and would prove litigations to be costly and time-consuming affair defeating the basic purpose of establishment of Commercial Courts.

### PROPOSALS AND MODIFICATIONS

Taking into consideration the above concerns and difficulties, the Law Commission in its 253rd report proposed a modified bill being "The Commercial Divisions and the Commercial Appellate Division of High Courts and the Commercial Courts Bill, 2015" on 29th day of January 2015. The major propositions of the Bill are as follows:

1. Power to Vest with the Central Government with regard to setting up of:

a. Commercial Divisions in High Courts having ordinary original civil jurisdiction.

b. Commercial Courts in those regions where the original jurisdiction of High Court having ordinary original civil jurisdiction does not extend.

c. Commercial Courts in those States and Union Territories where the High Courts do not have original civil jurisdiction.


2. The pecuniary jurisdiction of Rupees One Crores to be set uniformly in all the Five High Courts having ordinary original civil jurisdiction.

3. Establishment of one or more benches of Commercial Appellate Divisions of the High Court where commercial divisions and the commercial courts are set up for hearing and deciding the appeals arising out of the order or judgment of such divisions or courts.

4. In addition to commercial disputes, all the commercial disputes appealable to the High Courts from Tribunals under statutes such as The Copyright Act 1957, Trademarks Act 1999 to be heard and decided by the Commercial Appellate jurisdiction.

5. The proceeding of the Commercial Courts to be digitized and systematic collection and publication of data for assessing the performance of the Commercial Courts.

6. The Court Fees as prevalent today will be replaced with the regime of charging court fees on the basis of the conduct of the litigants, thereby preventing the abuse of law and enormous time taken for reaching a conclusion. Moreover the cost to be awarded by the Courts would be dependent on various circumstances and a mandatory reasoning to be provided in case no costs are being awarded.

The establishment of commercial courts would be pervasive in light of the economic growth of the country and would complement with the policy of the Government, which aims at making India a favourable destination of doing business. It is expected that with this bill coming into force the commercial disputes would be disposed of in an expedite manner and repose the faith of innocent domestic and foreign entities in the Indian judicial system which is at the moment somehow lost. 



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