

Legislative Brief

The Commercial Division of High Courts Bill, 2009

The Bill was passed in the Lok Sabha on December 18, 2009. It was referred to a Select Committee of the Rajya Sabha on December 22, 2009. The Committee will present its report on the first day of the second half of the budget session, 2010.

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Highlights of the Bill

- ◆ The Commercial Division of High Courts Bill, 2009 seeks to establish specialised divisions in High Courts to handle commercial disputes. All commercial disputes above a 'specified value' will be heard by the commercial division.
- ◆ The Bill provides for a fast-track procedure for the commercial division, and sets time-limits for filing documents, and delivering judgements.

Key Issues and Analysis

- ◆ The commercial division is being carved out of the existing strength of judges in High Courts. While this may speed up commercial disputes, it could lead to further delays in other categories of cases.

PART A: HIGHLIGHTS OF THE BILL¹

Context

The Commercial Division of High Courts Bill, 2009 introduced by the Ministry of Law and Justice seeks to create specialised divisions of judges in High Courts for settling high-value commercial disputes. According to the Statement of Objects and Reasons, the Bill has been introduced following the Joint Conference of Chief Ministers of the States and Chief Justices of the High Courts held in August, 2009. In this conference, the 188th Report of the Law Commission titled "Proposals for Constitution of Hi-Tech Fast Track Commercial Division in High Courts" was also considered. It was decided that commercial divisions in High Courts should be created following the passing of a law on the subject.

This Bill if enacted, would give original jurisdiction to High Courts in commercial disputes above the value of Rs. 5 crores. Presently, only the High Courts of Delhi², Mumbai³, Kolkata and Madras⁴ have original jurisdiction.

Key Features

The Bill has two main features:

- It seeks to establish commercial divisions in High Courts with defined jurisdiction.
- It introduces fast-track procedures applicable to commercial divisions.

The features of the commercial divisions proposed by the Bill are explained in detail in Table 1:

Table 1. Features of the Commercial Division of High Courts Bill, 2009.

| Features | Explanation |
|--|---|
| Commercial divisions in High Courts | |
| Definition of "commercial dispute" | Disputes between merchants, bankers and traders over transactions such as export or import of merchandise, carriage of goods, intellectual property, or over interpretation of commercial documents, and any dispute notified by the central government. |
| Minimum value of commercial disputes | 'Specified value' of a commercial dispute to be notified by the central government in consultation with the state government. This notified amount must be at least Rs. 5 crores. |
| Establishment of commercial divisions | <ul style="list-style-type: none"> ▪ The central government will first consult with the respective state government and the High Court. ▪ A notification enforcing this Act will then be issued with respect to that state. ▪ A High Court can then pass an order to constitute a commercial division. |

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| Judges | The Chief Justice of the High Court shall nominate judges from among the judges of the High Court. |
| Cases the commercial division will handle | <ul style="list-style-type: none"> ▪ Initial complaints (original jurisdiction) in commercial disputes above specified value. ▪ Appeals against orders of lower courts in commercial disputes above specified value. ▪ Writ cases under Article 226, and applications under Article 227 of the Constitution for setting aside temporary orders passed by lower courts in commercial disputes. ▪ The commercial division will also hear some appeals which currently lie in the High Court under the Arbitration and Conciliation Act, 1996. |
| Appeals | Any appeal from the judgement/ order of the commercial division will lie in the Supreme Court. |
| Applicable Procedures | |
| Fast-Track procedure | <ul style="list-style-type: none"> ▪ The Bill provides specific timelines to be followed during the proceedings before the Division. ▪ The judges can hold case management conferences to fix time-frames for submission of documents, recording evidence, examining witnesses, etc. ▪ Written arguments have to be filed before oral arguments commence. Time limits for arguments can be fixed in the case management conference. |
| Time-limits fixed in the Bill | <ul style="list-style-type: none"> ▪ The defendant has to file a reply to the complainant's plaint within one month of receiving the plaint. ▪ Within 15 days of receiving the defendant's reply the complainant can request the commercial division for permission to file a rejoinder. ▪ The rejoinder has to be filed within one month of getting such permission. ▪ Time limits for making written and oral submissions shall be fixed in advance at the case management conference. ▪ The commercial division has to deliver its judgement within 30 days of the conclusion of arguments between parties. |
| How "specified value" will be determined | <ul style="list-style-type: none"> ▪ For recovery of money: The amount to be recovered, plus interest as on the date of filing the suit. ▪ For property: Market value of the property up to the date of filing the suit or appeal. ▪ For intangible rights: Estimated market value of the right as calculated by the complainant. |

Sources: The Commercial Division of High Court Bill, 2009; PRS.

PART B: KEY ISSUES AND ANALYSIS

Capacity of existing High Courts

The Bill states that the judges of the commercial divisions will be nominated by the Chief Justice of the High Court from among the judges of the High Court. However, there were 254 vacancies out of 886 sanctioned posts for judges of High Courts as of September 2009.⁵ The total number of cases pending in High Courts as of September 2009 was more than 40 lakh. High Courts may not be able to allocate adequate numbers of judges for commercial divisions because of the vacancies and high pendency of cases. On the other hand, allocating judges for commercial divisions may lead to further delays in other categories of cases.

The Law Commission had made two suggestions to address this issue: (1) The Chief Justice of the High Court can use his constitutional powers to appoint retired judges of High Courts, and (2) The High Courts should "make recommendations for fresh appointments to the High Court from the Bar and subordinate judiciary, six months in advance before any vacancy occurs".

Notes

1. This Brief has been written on the basis of the Commercial Division of High Courts Bill, 2009, which was introduced in the Lok Sabha on December 16, 2009, and was passed by that House on December 18, 2009. The Bill was referred to a Select Committee of the Rajya Sabha (Chairman Prof. P.J. Kurien) on December 22, 2009.
2. Section 5 of Delhi High Court Act, 1966.
3. The Bombay High Court, <http://bombayhighcourt.nic.in/site/history/bhchist.html>.
4. Madras High Court, <http://www.hcmadras.tn.nic.in/hhist.htm>.
5. Court News, Supreme Court of India, July-September 2009, at: <http://www.supremecourtindia.nic.in/courtnews/court%20news%20jul-sept-09.pdf>

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