



Select Committee Report Summary

The Commercial Division of High Courts Bill, 2009

- The Report of the Select Committee on the ‘Commercial Division of High Courts Bill, 2009’ was presented before the Rajya Sabha on July 29, 2010. The Chairperson of the Committee was Prof. P.J. Kurien. The Bill seeks to allow each High Courts (HC) to constitute a commercial division for adjudicating ‘commercial disputes’ of Rs 5 crore and above.
- The Bill defines ‘commercial disputes’ as any dispute between merchants, bankers and traders over a transaction such as, interpretation of documents, export or import of merchandise, carriage of goods, distribution and licensing agreements, intellectual property, and any dispute notified by the central government. The Committee has recommended that ‘commercial disputes’ should include disputes related to agreements on joint ventures, shareholding, share subscription, investment, outsourcing, banking and financial services.
- According to the Committee, the Bill gave the impression that a Commercial Division of the HC shall comprise a minimum of two judges. The Committee recommended that each Commercial Division should have only one Judge as a trial could be conducted by a single Judge.
- The Bill provides that commercial disputes involving a monetary value of Rs 5 crore and above shall be adjudicated by the Commercial Division. The Committee has recommended that this value should be reduced to Rs 1 crore for providing access to a greater number of people. It has further recommended that the HCs should be consulted for determining this value.
- The Bill provides that all commercial disputes of Rs 5 crore pending before courts lower than the HCs should be transferred to the Commercial Division of the HC. It is recommended that only matters where arguments have been completed should be retained by the lower courts. All other cases should be transferred.
- The Bill also empowers the Commercial Division to appoint an advocate with minimum 20 years experience for conducting cross-examination. The Committee has recommended that the minimum requirement of experience should be reduced to 10 years, which is the minimum requirement for appointing an advocate as an HC judge.
- The Committee has observed that the Bill will overburden the HCs if the number of HC judges is not increased. It was also noted that since a decision of the Commercial Division of the HC can only be appealed before the Supreme Court (SC) it may increase the burden of the SC.
- There were two dissent notes. Mr. P. Rajeev has dissented against the Report stating that the Bill violates the principles of equality before the law and equal protection of the law under Article 14 of the Constitution. It is also against the Directive Principles of State Policy which provide that the State shall secure equal access to material resources and provide a legal system that promotes justice, on the basis of equal opportunity. The Bill would reduce the common man’s access to timely justice. It would increase the burden of the HCs and simultaneously reduce the availability of judges for hearing ordinary litigation. The Bill does not increase the number of judges at the HC. There is no statistical data on pendency of commercial disputes or a studied reason for fixing the monetary value at Rs 5 crore.
- Mr. D. Raja has dissented saying that the Bill violates the principle of equality enshrined in Article 14. The concept of a Commercial Division within the HC is being copied from the United Kingdom, United States and other countries without any reason. Further, in the United Kingdom no financial cut-off limit was imposed upon the Commercial Division for hearing cases. When the Commercial Division was created in the UK there was a pilot phase of one year. Similarly, the Commercial Division may first be created in four HCs where original jurisdiction exists.

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