



**PARLIAMENT OF INDIA
RAJYA SABHA**

**REPORT OF THE SELECT COMMITTEE ON THE
COMMERCIAL DIVISION OF HIGH COURTS BILL, 2009
AS PASSED BY LOK SABHA**

PRESENTED TO THE RAJYA SABHA ON THE 29th July, 2010

**RAJYA SABHA SECRETARIAT
NEW DELHI**

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COMPOSITION OF THE COMMITTEE

1. Prof. P.J. Kurien - **Chairman**

MEMBERS

2. Shrimati Jayanthi Natarajan
3. Shri Shantaram Laxman Naik
4. Shri M. Rama Jois
5. Shri Balavant *alias* Bal Apte
6. Dr. V. Maitreyan
7. Shri P. Rajeeve
8. Shri Tiruchi Siva
9. Shri D. Raja
- *10. Vacant
- ** 11. Vacant
- ** 12. Vacant

SECRETARIAT

1. Shri S.K. Ganguli, Joint Secretary
2. Shri S.K. Tripathi, Joint Director
3. Shri Narmadeshwar Prasad, Deputy Director
4. Shri Sammer Kapoor, Committee Officer

REPRESENTATIVES OF MINISTRY OF LAW & JUSTICE

(i) LEGISLATIVE DEPARTMENT

1. Shri N.K. Nampoothiry, Additional Secretary & Legislative Counsel
2. Shri R.K. Pattanayak, Deputy Legislative Counsel

(II) DEPARTMENT OF LEGAL AFFAIRS

1. Shri R.L. Koli, Additional Secretary
2. Shri Dinesh Bhardwaj, Additional Legal Adviser

(III) DEPARTMENT OF JUSTICE

1. Shri S.C. Srivastava, Joint Secretary

Constituted on 22.12.2009

* **(i) Vacant due to the demise of Shri Virendra Bhatia on 24.05.2010**

** **(ii) Vacant due to the retirement of Shri Santosh Bagrodia and Shri Satish Chandra Mishra on 04.07.2010.**

INTRODUCTION

I, the Chairman of the Select Committee on the Commercial Division of High Courts Bill, 2009 having been authorised by the Committee to submit the Report on its behalf, present this Report on the Bill.

2. The Commercial Division of High Courts Bill, 2009 as passed by Lok Sabha, was referred to the Select Committee comprising of 12 members of Rajya Sabha on a motion adopted by the House on the 22nd December, 2009 for examination of the Bill and submission of Report thereon to the Rajya Sabha within 6 weeks i.e. by the 2nd February, 2010.

3. The Committee held 13 sittings in all.

4. The Committee at its first meeting held on the 13th January, 2010 while deciding upon the course of action and the procedure for examination of the Bill felt that the time given to examine such an important legislation having wide ramifications was too short particularly in the light of the fact that the Bill was passed by Lok Sabha without any debate/discussion. Accordingly, the Committee decided to seek extension of time for presenting the Report to the House. The Chairman, Rajya Sabha, granted an extension of time upto 15 June 2010 and later on a further extension up to 31 July 2010 for presentation of the Report. In the same meeting the Committee had a general discussion on the Bill and decided to issue a Press Release/advertisements in leading national and regional print and electronic media in order to give wide publicity to the Bill and invite memoranda containing views of the individuals/organisations etc. interested in the subject matter of the Bill. Accordingly a Press Release was published in leading national and regional newspapers and was also telecast on Doordarshan on the 20th January, 2010. In this meeting, in view of the importance and wide scope of the Bill, the Committee strongly felt the need for hearing various stakeholders including the Business Chambers, Financial Institutions, Bar Councils, Bar Associations etc., and accordingly decided to visit Mumbai, Chennai and Kolkata for the purpose. The Committee with a view to assess the impact of the proposed legislation also desired that the number of commercial disputes pending in various courts may also be furnished to it.

5. In its second sitting on the 27th January, 2010, the Committee heard the Secretary, Department of Legal Affairs, Ministry of Law and Justice and the Adviser to the Law Minister. During the interaction with the Committee, they explained the salient features of the Bill and the advantages of the proposed legislation in the present economic scenario.

6. At its third sitting held on the 4th February, 2010, the Secretary, Department of Justice, Ministry of Law and Justice gave oral evidence before the Committee and explained to the Committee the process of appointment of Judges in the High Courts and steps that would be taken if need be, regarding increasing the strength of judges and filling up of the vacancies in the High Courts after the enactment of the legislation.

7. The Committee in all received 50 memoranda and in the process of examination of the Bill heard 32 witnesses (Annexure I &II). The Committee was also supplied with the statistics relating to number of commercial disputes pending in some of the High Courts (Annexure III). However, the Ministry of Law & Justice did not provide the statistics on the number of such cases pending in district courts as they were informed by the High Courts that such data was not being maintained by the subordinate courts.

8. Shri M. Rama Jois, Member of the Committee gave a detailed note about the need for uniform law regulating the constitution and organisation of all the High Courts in the Country (Annexure IV).

9. The Committee devoted two sittings in Delhi i.e. on 17th February, 2010 and 23rd March, 2010 for taking oral evidence of individuals/organisations who had submitted Memoranda to the Committee on the Bill in response to the Press Release. The Committee also visited Mumbai, Chennai and Kolkata to hear the various stakeholders viz. business chambers, Banks, Bar Associations, Bar Councils etc. and received important inputs on the Bill. While on one hand at the national level, the CII and PHD Chambers of Commerce gave their evidences before the Committee but FICCI, ASSOCHAM and Bar Council of India did not respond with any suggestion.

10. As decided earlier, the Committee in its meeting held on the 24 June 2010, heard Shri Goolam E. Vahanvati, Attorney-General of India on the provisions of the Bill particularly in relation to whether the Bill violates article 14 of the Constitution and received valuable insights on the Bill from him specially his considered opinion that the Bill does not violate article 14.

11. The Committee referred to the following documents for examination of the Bill:-

- (i) Minutes of the Joint Conference of the Chief Ministers of States and Chief Justices of High Courts held on the 16th August 2009 in New Delhi.
- (ii) The 188th Report of the Law Commission on Proposals for Constitution of Hi-tech Fast Track Commercial Divisions in High Courts.
- (iii) Justice Satish Chandra Committee Report of 1986.
- (iv) Justice V.S. Malimath Committee Report of 1990.
- (v) Provisions regarding Commercial Division of High Courts in the UK and Kuala Lumpur

12. On 12th July, 2010 Shri P. Rajeeve, Member of the Select Committee gave a notice for moving a Resolution in the meeting of the Committee requesting the mover of the Commercial Division of High Courts Bill, 2009 as passed by Lok Sabha to withdraw the Bill as it tends to discriminate and create two classes of litigants and thus violate article 14 of the Constitution and also there is no provision in the Bill to increase the strength of judges which means that the Commercial Division will eat away the resources available to other cases. On the 13th July, 2010 when the Committee was to take up the clause-by-clause consideration of the Bill, the Chairman permitted Shri P. Rajeeve to make a brief submission and the Chairman thereafter disallowed the Resolution stating that there is no provision in the Rules of Procedure and Conduct of Business in the Council of States for moving a Resolution.

13. At its sittings held on 13th and 14th July 2010 the Committee took up the clause by clause consideration of the Bill.

14. Shri P. Rajeeve and Shri D. Raja, members of the Committee gave notes of dissent which had been appended to the Report.

15. The Committee finalised its draft Report on the Bill at its sitting held on 21st July 2010.

16. The Committee adopted its draft Report on the Bill at its sitting held on 28th July, 2010.

17. The Committee wishes to express its gratitude to the representatives of the Ministry of Law & Justice, for furnishing necessary information/documents and rendering valuable assistance to the Committee in its deliberations. The Committee wishes to express its thanks to all the distinguished persons who appeared before the Committee and placed their considered views on the Bill and furnished written notes and information which the Committee had desired in connection with the examination of the Bill. The Committee is particularly thankful to the Attorney General of India who spared his valuable time and shared his views on the Bill with the Committee.

Date : July 29, 2010
Place : New Delhi

Prof. P.J. Kurien
Chairman
Select Committee on the
Commercial Division of
High Courts Bill, 2009

REPORT

Background of the Bill

The Statement of Objects and Reasons appended to the Bill spells out the reasons behind initiating the Commercial Division of High Courts Bill 2009 mentions that phenomenal changes that have taken place in India in the last two decades have resulted in enormous growth in the commercial and industrial sectors. The policies of the Government have changed radically since 1991, the year in which Indian economy was opened up for foreign investment in a big way. Privatisation, liberalisation and globalisation have provided an impetus to the opening up of Indian economy. With such surge in business opportunities, commercial disputes involving high stakes are on the rise. This has necessitated a new and effective mechanism for resolving these disputes speedily and effectively, for uninterrupted progress. Against the aforementioned background, the Law Commission of India in its 188th Report on “Proposals for Constitution of Hi-Tech fast track Commercial Division in High Courts” has recommended for the constitution of Commercial Division in each High Court to handle commercial cases of high threshold value after examining the feasibility of ‘Commercial Division’ in the High Courts in certain developed countries. The Report of the Law Commission was considered during the Joint Conference of Chief Ministers of the States and Chief Justices of the High Courts held on the 16th August, 2009 in New Delhi and a decision was taken that Commercial Division be constituted in the High Courts as and when legislation in this regard is enacted by the Parliament. Further as per the Statement of Objects and Reasons, the constitution of Commercial Division with a High Court may have many advantages. At present pecuniary jurisdiction of Civil Courts for trying commercial disputes differs from State to State as in some states District Courts are having unlimited pecuniary jurisdiction and in some other states original jurisdiction of higher pecuniary value is vested in the High Court. On setting up of the Commercial Division in High Courts, all the commercial disputes of high threshold (Rupees five crore or higher value as may be specified) value will be filed in the High Court and would be dealt with by the Commercial Division with no jurisdiction of District Court on these cases. Further the Commercial Division is to follow Fast Track Procedure for the disposal of cases which is described in the Bill itself and shall pronounce judgment within thirty days of conclusion of arguments. An appeal against the order and decree passed by the Commercial Division shall lie before the Supreme Court. The decision to constitute Commercial Division is entirely at the discretion of the High Courts and

the concerned State Governments and the provisions of the proposed Act can be made applicable to a High Court only in consultation with the concerned Chief Justice and the State Government.

2. The Statement of Objects and Reasons also says that the Commercial Division will also entertain applications under sections 34, 36 and appeals under section 37 of the Arbitration and Conciliation Act, 1996 where the arbitration relates to or falls within the scope of commercial disputes of the specified value. For this purpose, the consequential amendments are also proposed in the Arbitration and Conciliation Act of 1996.

3. The Bill was introduced in the Lok Sabha on the 16th December, 2009 and was passed by the Lok Sabha on the 18th December, 2009 without any discussion. The Bill was also not examined by the Department related Parliamentary Standing Committee.

Committee's Observation

The Committee deliberated at length on the provisions of the Bill and also heard the views of a cross section of people and organisations including the Attorney General of India. The Committee observes that the intention behind the enactment of the law is to meet the requirement of opening up of the economy but feels that there are certain issues which need to be addressed which cropped up during the deliberations of the Committee.

2. The first and foremost issue which came up before the Committee was whether the Bill violates article 14 of the Constitution as *prima facie* it appears to create two classes of litigants one above the threshold value i.e. Rupees 5 crore and above who can straight away move the High Court and the other below specified value who as usual go to the Civil Court. The Committee after going through the comments of the Ministry of Law and Justice, the Attorney General of India and many eminent lawyers who appeared before the Committee during the course of its visit feels that the Bill does not violate article 14 of the Constitution as already there are enactments such as Recovery of Debts Due to Banks and other Financial Institutions Act 1993 under which Debt Recovery Tribunal were created to deal with cases of loan recovery above Rupees 10 lakhs. Be that as it may, the Committee understands that the ultimate power to determine whether any enactment is unconstitutional or not ultimately rests with the courts. Therefore, the Committee feels that this issue be allowed to rest here.

3. The issue of providing original jurisdiction to High Courts through the proposed Bill also received much attention as at present only six High Courts have original jurisdiction. The issue of giving original jurisdiction to the High Courts was considered in depth by Justice Satish Chandra Committee and Justice Malimath Committee and both the Committees favoured against providing original jurisdiction to High Courts. However, it appears that there is a shift in the approach on the issue of providing original jurisdiction to the High Courts. The Committee, however, feels that issue of giving original jurisdiction to High Court should be dealt separately with a view to have uniformity in the judicial system. Considering all this, the Committee was of the view that Government should come up with a comprehensive legislation on judicial reforms encompassing various issues.

4. The Committee notes with concern that there is no specific provision in the Bill regarding increasing the strength of judges in High Court to be appointed in the Commercial Divisions for commercial disputes. The High Courts are already over burdened marred with large number of vacancies in various High Courts. The Committee apprehends that bulk transfer of cases from

District Courts to Commercial Division may result in further clogging as there is already a huge backlog of cases in the High Courts. In such an eventuality, delay will be caused and the very objective behind constitution of Commercial Divisions will be defeated. The Committee is of the opinion that the process of filling up of existing vacancies in the High courts may be expedited and if need is felt in any High Court for additional judges, it should be expeditiously done.

5. Further, as per the provisions of the Bill an appeal shall lie to the Supreme Court against any decree passed by the Commercial Division. Already there are a large number of cases pending in the Supreme Court and influx of commercial cases in appeal would further increase the burden on the Supreme Court. The Committee feels that the need for creation of a Commercial Division in the Supreme Court may be explored at the appropriate stage in future.

6. With these observations in the preceding paragraphs, the Committee recommends enactment of the legislation with certain modifications as detailed below:-

Clause 2 – Definition of Commercial Disputes

The Committee received many suggestions from various stakeholders from across the country to modify the definition of commercial dispute. It was also proposed to make the definition of commercial dispute inclusive which is at present exhaustive. The Committee while agreeing to retain the exhaustive definition notes that it does not cover the commercial disputes arising out of the joint venture agreements, shareholders agreements, subscription and investment agreements and agreements pertaining to the services industry including outsourcing services, business process outsourcing, banking and finance and financial services. Though, there is a provision which provides that the Government may notify the Commercial Disputes that can be added to the list, the Committee feels that as far as possible clarity should be made in the Act itself. **Therefore, in order to make it more exhaustive and not to leave any room for ambiguity, the Committee recommends that sub-clause (a) of Clause 2 (1) should be modified so as to include the commercial disputes related to joint-venture agreements, shareholders agreements, subscription and investment agreements and pertaining to the service industry, including outsourcing of services, business process outsourcing, banking and finance, financial services and the like".**

Clause 3 – Constitution of Commercial Division of High Courts

The Committee notes that a plain reading of sub-clause (2) of clause 3 gives an impression that each Commercial Division a High Court shall comprise a minimum of two judges. The Committee feels that each Commercial Division should have only one Judge as trial can be appropriately conducted only by a single Judge who can record evidence, cross-examine the witnesses, observe the demeanour of witnesses and record opinion, arrange Case Management Conferences and fix up the time schedule for finalisation of case, deliver judgement within the prescribed time limit and avoiding problems arising out of differences. **The Committee, therefore, recommends that sub-clause (2) of clause 3 should be modified accordingly.**

Clause 7 – Definition of specified value

The Committee notes that the clause 7 defines ‘specified value’ of a commercial dispute in relation to a matter before a High Court in a suit, an appeal or application which is not less than five crore rupees or such higher value as the Central Government may, in consultation with the Government of the State or States to which the jurisdiction of the High Court extends, notify. A lot of suggestions were received by the Committee for reducing the threshold limit of Rs. 5 crore. The representative of Ministry of Law and Justice also informed the Committee that originally the Law Commission in its 188th Report in 2003 had fixed the threshold value at Rs. 1 crore. Though there was also a suggestion in the Committee to remove the threshold limit altogether, **the Committee however with a view to give benefit to some more people, recommends that the threshold limit of Rs. 5 crore should be reduced to Rs. 1 crore.** The Committee further feels that the concerned High Court should also be consulted in matters relating to fixing of threshold limit for commercial disputes before a Commercial Division. **Since any change in the specified value would affect the functioning of the High Courts, it is reasonable that High Courts are also consulted along with the State Governments in the matter of determining the specified value of a commercial dispute. The Committee recommends that sub-clause (1) of clause 7 should be amended on suggested lines.**

Clause 8 –Determination of Specified Value of subject matter of commercial dispute in a suit.

The Committee notes some patent errors in paragraphs (a) and (b) of the clause 8(3). **The Committee accordingly recommends that the paragraphs (a) and (b) of the sub-clause (3) of Clause 8 should be accordingly corrected.**

Clause 9 – Fast Track Procedure to be followed by Commercial Division of High Court

Clause 9(2)(a)(iv)&(v)

A lot of suggestions were received for amending clause 9. The first one was in relation to clause 9(2)(a)(iv)(v) – how can the plaintiff file affidavit containing statement of other witness right in the beginning to examination-in-chief and file affidavit on brief issues that are likely to arise, without seeing the reply, in the beginning along with the plaint. The Committee also objected to the word ‘examination-in-chief’ as it was not necessary. The representative of Ministry of Law and Justice clarified that unless something is said about examination-in-chief, then the question about what statement it denotes will arise. So, a small change in wording – ‘in lieu of’ can reflect the correct position. **The Committee agrees to retain clauses 9(2)(a)(iv) with slight modification and 9(2)(a)(v) without modification.**

Clause 9(2)(d) and (e)

The Committee further observes that as per clause 9, only the plaintiff is required to file an affidavit but there is no such requirement for the defendant. The Committee is of the view that the requirement of filing of affidavit should be for both the plaintiff and the defendant as well otherwise how defendant can be cross examined. **The Committee accordingly recommends that requirement of affidavit for defendant may be included in clause 9(2)(d) and (e).**

The Committee notes that clause 9(2)(f) is almost repetition of clause 9(2)(e) and therefore recommends that clause 9(2)(f) should be deleted.

Clause 9(2)(g)

The Committee further recommends that in Clause 9(2)(g) after the words ‘written statement’ the words ‘and copies of counter claim if any’ may be added.

Clause 9(2)(i) and (j)

Clause 9(2)(i) provides that the ‘plaintiff may, within fifteen days of service of the written statement, apply to Commercial Division for granting leave for filing of rejoinder’.

Further, Clause 9(2)(j) provides that the plaintiff shall file rejoinder within one month from the date of the order of the Commercial Division granting leave to file such rejoinder.

The Committee feels that there is no need for seeking leave for filing rejoinder as it will create avoidable one or two hearing in the otherwise fast track procedure. The Committee is of the opinion that the plaintiff 'may' file a rejoinder, if any, within one month unless the time is extended by the Commercial Division. **The Committee desired that the clauses 9(2)(i) and 9(2)(j) should be combined on the suggested lines.**

Clause 9(3)

Clause 9(3) provides that "for the purposes of recording of statement in cross-examination and re-examination of parties and witnesses, the Commercial Division may appoint an advocate of not less than twenty years standing at Bar or a Judicial Officer not below the rank of Senior Civil Judge as Commissioner". **The Committee observes that a period of twenty years should be reduced to ten years as 10 years' practice is sufficient for an advocate to become a High Court Judge. The Committee accordingly recommends that sub-clause (3) of clause 9 should be amended accordingly.**

Clause 9(5)

Clause 9(5) provides that "The Commercial Division shall, within thirty days of the conclusion of argument, pronounce judgment and copies thereof shall be issued to all the parties to the dispute through electronic mail or otherwise". The Committee is aware of the practical difficulties in pronouncing the judgment in such cases within 30 days and realizes that some delay is likely to take place in pronouncing judgment.

The Committee is of the opinion that if there is delay in pronouncing the judgment by Commercial Division, the reasons for such delay may be recorded in writing and in any case the delay should not exceed by 30 days.

The Committee further notes that supplying of copies to all the parties in the disputes after the judgment is a procedural matter and should not form part of the enactment. **The Committee recommends that the provision relating to the supplying of the copies to all parties to the dispute in electronic mail or otherwise may be deleted as it should better be dealt with while framing the rules under the Act. The Committee accordingly recommends that the clause 9(5) should be amended as suggested above.**

Clause 10 – Case Management Conference and examination of witnesses

In the light of the recommendation of the Committee that there should be a single Judge in the Commercial Division as mentioned in clause 3, the sub-clause (2) of the clause 10 becomes redundant. **Hence, the Committee recommends that sub-clause (2) may be deleted and rest of clause 10 should be re-drafted with consequential changes at appropriate places.**

Clause 11- Transfer of suits, applications or other proceedings from courts subordinate to a High Court to such High Court

A lot of suggestions were received by the Committee regarding transfer of cases to Commercial Division. There were views that only fresh cases should be transferred and the old cases which are in civil courts at some stages or the other should not be transferred as transferring them will take a long time and entail expenditure of the parties besides immediately putting the burden on Commercial Division. Equally there were views that once the Commercial Divisions have been created all cases should be transferred.

The Committee feels that transferring cases which are at quite advanced stage or near the pronouncement of judgment in civil courts may not be appropriate.

The Committee after deliberating on all the suggestions came to a conclusion that except the cases where arguments/trial have been completed, all other commercial disputes shall be transferred to Commercial Division. The Committee recommends that the Clause 11 should, therefore, be amended accordingly.

clause 1, the Enacting Formula and the Title.

The Committee recommends that formal amendments in the title, enacting formula and clause 1 of the Bill regarding change in the calendar year from 2009 to 2010 and Republic year may also be carried out.

The Committee agrees with the provisions contained in the rest of the clauses of the Bill.

Date : July 29, 2010

**Prof. P.J. Kurien
Chairman
Select Committee on the**

Place : New Delhi

**Commercial Division of
High Courts Bill, 2009**

NOTE OF DISSENT

SHRI P. RAJEEVE, M.P.

1. This bill which is initiated by the union government is unconstitutional and against public interest hence objectionable. This bill on any count cannot be treated as a sane attempt on the part of the government in reforming the Indian legal system as it would aggravate the existing maladies which have plagued the justice delivery system of the country. The preamble of the Indian Constitution proclaims that “We the people of India, having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic and to secure to all its citizens: justice, social, economic and political, liberty of thought ,expression, belief, faith and equality of status and opportunity and to promote among them all”. Ghastly discrimination and inequality in every dimension of justice is alas writ large in the new Bill. This bill perpetuates inequality in the dispensation of Justice since the law steals away the equality principle which constitutes the edifice of the Indian Constitution, since the principle of equality is the true test for validity of any law made. This law attempts to make a * * * distinction between the poor man and the rich corporate who come equally before the court s pleading for justice.

2. As per the Statement of objects and reasons of the Bill the enactment is for unshackled progress in commerce and trade by providing mechanism for resolving commercial disputes involving high stakes speedily and effectively. It is in furtherance of the govt. policy of the globalization, liberalization and privatization. Nobody is against the development of commerce and trade. But it cannot be at the cost of common man by delaying and denying justice to them.

3. One of the maladies of Indian Judiciary is delay in dispensation of justice and mounting arrears of cases. The pendency of cases hits the common man seeking justice, the hardest. Quality legal assistance/ legal service are highly expensive and not affordable to common man. As efficient legal service is available to commercial class they could get priority in hearing and disposal of the cases. The common man’s cause involving fundamental rights and bread and butter statues is not attended timely and is compelled to wait in the unending queue only to see that at the end of the day he is denied justice. Passing of the present bill would only aggravate the situation as it would transform the high courts more and more highly loaded in favour of commercial class in the matter of early disposal of cases at the cost of common man. The entire thrust would be in disposal of the commercial disputes. As a matter of fact the High Courts having original jurisdiction are suffering from

*** Expunged under the orders of the Chairman

this problem even without commercial division. There has been proposal to take out original jurisdiction of the High Court regarding suits and other applications. Many of the High Courts including High court of Kerala have no original civil jurisdiction. Now the introduction of original civil jurisdiction by way of commercial disputes is highly retrogressive. Anyhow there is no proposal for increasing the number of High Court judges for the purpose of organizing Commercial Division in the High Courts. This compounds the situation. This reduces the number of judges available for hearing the ordinary litigation touching the fundamental rights of labourers, peasants and other under privileged groups. The cases for workmen compensation, dalit rights, dowry cases are pending for decades in our courts.

4. It has been stated that the bill was introduced as per the recommendation of the law commission of India in its 188th report. But it is quite unclear as to whether any study has been made or on what statistical data is available with the government which had prompted the government to promulgate the bill. One cannot ignore the fact that when such a law was passed by the British Parliament they had made a statistical analysis and then had promulgated the law. And in their law there is no threshold value limit. But the government here has no studied reason behind fixing the limit of 5 crores rupees. Thus it is found that this bill is being brought in haste, without making a proper study hence this piece of law is totally unnecessary.

5. Art. 14 of the Indian Constitution prohibit all sorts of discrimination and it is intended to remove social and economic inequality to make equal opportunities available to all citizens. The right to social and economic justice envisaged in the preamble and elongated in the Fundamental rights and Directive Principles of State policy of the Constitution of India, in particular articles 14, 15, 16, 21, 38, 39 and 46 are to make the life of the poor, disadvantaged and desirable citizen of the society, meaningful. The equality clause enshrined in Art. 14 is of wide import. It guarantees equality before law and equal protection of the laws within the territory of India. It prohibits not only ****, irrational and unreasonable classification but also prohibits any ****, irrational and unreasonable action by the legislature and executive. Art. 14 is part of basic structure of the Constitution. The Parliament and legislatures of the country cannot transgress the basic structure/basic features of the Constitution, namely the principal of equality enshrined in Art. 14 of the Constitution as declared by the Apex court in *Indrasawhney Vs. Union of India* 2000 (1) SCC 168. It is no more res-integra that Article 14

**** Expunged under the orders of the Chairman

forbid discrimination in matters of procedure also. Even in the matter of policy decision of the govt. in respect of economic matter court can interfere if such policy is contrary to any act or constitution.

6. Part IV of the Constitution of India is the directive principles of state policy. The directive principles are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. The directive Principles and fundamental rights are to be harmoniously construed. The object of directive principles is to embody the concept of welfare state. Art. 38 of the Constitution mandates that the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institution of the national life. The state shall, in particular, strive to minimize the inequalities in income and endeavor to eliminate inequalities in status, facilities, and opportunities not only amongst individuals but also amongst groups of people engaged in different vocations. Under Art. 39 of the Constitution of India it is the duty of the state to direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Under Art. 39A the state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

7. The Bill tends to create a scenario wherein rich will straightway move the proposed Commercial Division of High Court with high tech and special provisions and the poor will languish in district courts as submitted by many witnesses before the Committee.

8. The Attorney General in his submission before the Committee had submitted that “if the intention was to create a special high tech area of dealing only with the commercial disputes at the expenses of others then there could have been some justification in thinking that there is a violation of article 14 and unconstitutional”. In the proposed Commercial Divisions of High Courts Bill statutory provisions are there for fast and high tech facilities whereas there is no such provision for other divisions of High courts which are dealing with ordinary litigations and other civil courts this means that facility which are provided to commercial divisions are being provided at the expense of other. As per the provisions of the Bill the commercial bench shall decide a matter coming before it within one year and shall deliver judgment within 30 days after

the conclusion of argument. There is no such provision with regard to other litigations. This is a clear case of discrimination in the justice dispensation process.

9. There is no provision in the Bill to increase the strength of High Court which thereby implies that the creation of the Commercial Division will eat away the resources available to the other cases and will eventually delay them;

10. The Bill tends to create original jurisdiction in all High Courts which is against the recommendations and findings of earlier Committees i.e. Justice Satish Chandra Committee and Malimath Committee which recommended against original jurisdiction of High Court. The need of the hour is to have a comprehensive uniform law regulating the Constitution and organisation of all High Courts instead of piecemeal legislation which will complicate the object of reforming the judiciary;

11. The provisions of the Bill referred to above unreasonably favour the rich commercial class enabling them to steal a march over the poor people of the country in the matter of early disposal of cases. This would cause severe miscarriage of justice in as much as the prevailing judicial system in India is highly loaded against the poor and state could not discharge its duty as per the constitution. The provisions of the Bill take away whatever little opportunity available to the poor to seek justice. The aforesaid provisions are highly discriminatory and they are violative of Art. 14 of the Constitution its irrationality grotesquely arbitrariness and unreasonableness. The whole bill is vitiated for the reasons stated above and unconstitutional. The bill is **** in a socialist democratic state and is a classic instance of ****, ****, **** and unreasonable classification under art. 14.

12. There is no specific reason for introducing this bill other than general reasons such as to support globalisation. The government has no statistical data regarding the pendency of commercial cases.

13. There are other serious ethical and moral objections to giving the benefit of speedy justice to those claiming higher Amount/ damages. It will give the impression that people who can afford to pay a higher court fee will get speedy justice. This is also against the equality principles.

14. All these show that there is no genuine reason for introducing this bill, it is not necessary at all. And in all aspects this bill is unreasonable. **** **** **** **** **** **** . Hence this bill to be withdrawn since it is not only unconstitutional but for the fact that the heart of this law beats in favour of the well to do and discriminates against the ill to do.

**** Expunged under the orders of the Chairman

A new judicial reforms bill to ensure speedy disposal of all types of cases is the need of the day.

21st July, 2010

Sd/-
P. RAJEEVE, M.P.

NOTE OF DISSENT

SHRI D. RAJA, M.P.

Reasons to object the Commercial Division of High Courts Bill, 2009

Any Law enacted by the Parliament should reflect the basic Philosophy of the country and the Constitution. The basic philosophy is equality. The Bill is likely to violate Article 14 of the Constitution. Justice Krishna Iyer, one of the eminent Jurists of the country has raised this issue strongly and pointed out that the Bill would create two classes of litigants, one the rich and the other the poor.

The following are the serious objections to the Bill:-

The Bill is based on recommendations made in the 188th Law Commission Report which was submitted on December 15, 2003. That seeks to *** copy the Commercial Division created in the United Kingdom, US and other countries. The Government *** copies these concepts from Western countries without any analysis of the situation prevailing in India.

Lack of statistics: The 188th Law Commission Report has merely made its recommendations without reference to any statistical data on the pendency of commercial cases in various courts in India. Management experts repeatedly point the need for collection of facts first. The present Bill will have disastrous consequences as it is equivalent to giving a Doctor's prescription without any diagnosis.

Lack of training judges: In the United Kingdom, barristers who have specialized in commercial cases becomes High Courts Judges. In India, there is no such practice and barring a few High Courts, there is no specialization in commercial cases. Further, except the four High Courts at Bombay, Delhi, Calcutta and Madras, the other High Courts have no expertise or training in handling original side cases.

Statutory changes: Serious defects have been pointed out by the Madras Bar Association. In particular, the definition of "commercial dispute" in Section 2(1)(a) of the Bill is too wide and will lead to extensive litigation. Similarly, major changes have to be made in Sections 3, 7, 8, 13, 14, 15, 16 etc. Further, adopting the CPC in toto is likely to lead to extensive delays both at the time of trial and later at the time of execution.

It is also *** to have a trial by a bench of two judges. In no country are trials conducted by a bench.

*** Expunged under the orders of the Chairman

Division among judges – split in judiciary: There is likely to be a rift amongst the judges as they may seek appointment to the Commercial Division as it may be treated as a prestigious appointment and also the possibility of arbitration work after retirement. If judges are rotated every eight weeks, the very purpose of having the Commercial Division will be defeated.

Rift amongst advocates – division in the Bar: The creation of a separate division for high value cases is likely to create division amongst lawyers also. A few lawyers in the High Court will monopolize the commercial work which will naturally involve very high fees as well. It will also deprive District lawyers of important work.

Judiciary – special provision for the rich: The creation of a separate division only for cases above Rs. 5 crores will require separate allocation of certain number of judges for the Commercial Division. Those parties who are willing to pay higher court fees will get faster justice. Keeping in mind the number of vacancies in the various courts, the creation of a Commercial Division only for high value cases is incorrect as the large corporations and rich individuals will get access to faster justice.

In the UK, there is no financial cut-off limit. All cases in the High Court which fall within the category of “commercial cases” are tried by the Commercial Division. There is no special privilege for cases involving more than 1 million pounds etc.

Implementation only on trial basis: Despite all the objections, if it is still decided to go ahead with the Bill and start Commercial Divisions in various High Courts, it is sincerely recommended that Commercial Divisions must be started on a trial basis. Even in the U.K., there was a pilot phase of one year before the Commercial Division was formally established.

It is suggested that Commercial Division may be started in Bombay and Calcutta High Courts (which already have original jurisdiction) and two other High Courts.

21st July, 2010

Sd/-
D. RAJA, MP

**THE COMMERCIAL DIVISION OF HIGH COURTS BILL, 2010
(AS REPORTED BY THE SELECT COMMITTEE)**

[Words underlined indicate the amendments suggested by the Select Committee and asterisks indicate omissions]

A

BILL

to provide for the constitution of a Commercial Division in the High Courts for adjudicating commercial disputes and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Commercial Division of High Courts Act, 2010. Short title, extent and commencement.

(2) It extends to the whole of India, except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different High Courts and for different provisions of this Act and any reference in any such provision to the High Court or to the commencement of this Act shall be construed as a reference to that High Court or the commencement of that provision:

Provided further that no notification under this sub-section shall be issued in relation to a High Court unless the Central Government has consulted the Chief Justice of the concerned High Court and the concerned State Government or State Governments.

Definitions.

2. (1) In this Act, unless the context otherwise requires,-

- (a) "commercial dispute" means a dispute arising out of ordinary transactions of merchants, bankers and traders such as those relating to enforcement and interpretation of mercantile documents, export or import of merchandise, affreightment, carriage of goods, franchising, distribution and licensing agreements, maintenance and consultancy agreements, joint venture agreements, shareholders agreements, subscription and investment agreements and agreements pertaining to the services industry including outsourcing services and financial services, mercantile agency and mercantile usage, partnership, technology development in software, hardware, networks, internet, website and intellectual property such as trademark, copyright, patent, design, domain names and brands and such other commercial disputes which the Central Government may notify.

Explanation I.- A dispute, which is commercial, shall not cease to be a commercial dispute merely because it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or for taking any other action against immovable property.

Explanation II.- A dispute which is not a commercial dispute shall be deemed to be a commercial dispute if the immovable property involved in the dispute is used in trade or put to commercial use.

Explanation III.- An application under section 34 or section 36 or an appeal under section 37 of the Arbitration and Conciliation Act, 1996 shall be deemed to be a commercial dispute if the amount in dispute or claim relates to a specified value;

26 of 1996.

(b) “Commercial Division” means the commercial division in a High Court constituted under section 3;

(c) “High Court” has the meaning as assigned to it in clause (14) of article 366 of the Constitution;

(d) “notification” means a notification published in the Official except those where the trial has been concluded and closed for final argument. Gazette and the expression “notify” with its cognate meanings and grammatical variations shall be construed accordingly;

(e) “specified value” has the meaning as assigned to it in section 7;

(2) Any reference in this Act to the Code of Civil Procedure, 1908 or any provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding enactment or provision thereof in force in such area.

5 of 1908.

(3) Words and expressions used herein and not defined but defined in the Code of Civil Procedure, 1908 shall have the meanings assigned to them in that Code.

5 of 1908.

CHAPTER II

CONSTITUTION AND JURISDICTION OF COMMERCIAL DIVISION OF HIGH COURTS

3. (1) A High Court may, by order, constitute a division to be called the “Commercial Division” of that High Court having one or more Division Benches.

Constitution of Commercial Division of High Courts.

(2) A Commercial Division of a High Court shall consist of a single Judge.

(3) The Judge of a Bench of the Commercial Division of a High Court shall be nominated by the Chief Justice of that High Court.

4. (1) Notwithstanding anything contained in any law for the time being in force, after the issuance of an order under sub-section (1) of section 3 by a High Court, all suits relating to commercial disputes of specified value shall be filed in the High Court and such suits be allocated to the Commercial Division of that High Court.

Jurisdiction of High Court and allocation of matters to Commercial Division.

(2) All execution proceedings, arising out of the suits referred to in sub-section (1) and arising out of the matters specified in sections 11 and 12, shall be disposed of by the Commercial Division of the High Court.

Explanation.- For the purposes of this section, “High Court” means the

High Court exercising jurisdiction over the court of ordinary civil jurisdiction in which the suit or application could have, but for the provisions of this Act, been filed.

26 of 1996.

5. (1) Notwithstanding anything contained in the Arbitration and Conciliation Act, 1996, after issuance of an order under sub-section (1) of section 3 by a High Court,-

Jurisdiction and procedure of Commercial Division in arbitration matters.

- (a) all applications under sections 34 and 36; and
- (b) all appeals under clause (a) of sub-section (1) or sub-section (2) of section 37,

of that Act relating to commercial disputes of specified value shall be filed in the High Court and every such application or appeal, as the case may be, shall be allocated to the Commercial Division of that High Court.

26 of 1996.

(2) Every application under section 34 or section 36 of the Arbitration and Conciliation Act, 1996 relating to commercial disputes of specified value, pending in any Court subordinate to a High Court immediately before the issuance of any order under sub-section (1) of section 3 shall stand transferred to the High Court and shall thereafter be allocated to the Commercial Division of that High Court.

26 of 1996.

(3) Every application under section 34 or section 36 or an appeal under section 37 of the Arbitration and Conciliation Act, 1996 relating to commercial disputes of specified value, pending in the High Court immediately before the issuance of an order under sub-section (1) of section 3, shall, on the issuance of such order, be allocated to the Commercial Division of that High Court.

(4) Every application or appeal referred to in this section shall be disposed of by the Commercial Division as expeditiously as possible and endeavour shall be made to dispose of the matter within one year from the date of service of notice on the opposite party.

(5) The applicants or appellants in respect of the matters referred to in sub-section (1) shall, within sixty days from the date of service of notice on the opposite party, file paper books containing relevant documents including copies of oral evidence recorded, if any, and the opposite party shall likewise file a paper book within sixty days from the date of service of notice on such party.

(6) The applicants or appellants in respect of the matters referred to sub-section (2) and the opposite parties shall file paper books within sixty days from the date of service of notice on such parties or from the date of issuance of the order under sub-section (1) of section 3, whichever is later.

(7) Within thirty days from the date of filing of the paper books, all parties to the proceedings shall file brief written submissions after exchanging copies of the same.

(8) Where any party fails to comply with the time limits referred to in sub-sections (5) to (7), the Commercial Division may, if reasonable cause is shown, extend the time limit for a further period not exceeding thirty days, subject, however, to such order as to costs at the Commercial Division may deem fit.

Exclusion of jurisdiction of Commercial Division.

6. Notwithstanding anything contained in section 4, the Commercial Division of a High Court shall not entertain or decide any suit, application

or revision application or proceeding relating to any commercial dispute in respect of which the jurisdiction of the civil court is either expressly or impliedly barred under any other law for the time being in force.

CHAPTER III

SPECIFIED VALUE AND ITS DETERMINATION

Definition of specified value.

7. (1) For the purposes of this Act, “specified value”, in relation to a matter before a High Court, means such value of the subject matter of the commercial dispute in a suit, appeal or application which is not less than one crore rupees or such higher value as the Central Government may, in consultation with the High Court and the Government of the State or States to which the jurisdiction of the High Court extends, notify.

(2) Every notification issued under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament.

Determination of specified value of subject matter of commercial disputes in a suit, etc.

8. (1) The specified value of the subject matter of the commercial dispute in a suit or appeal or application shall be determined in the following manner, namely:-

(a) where the relief sought in a suit, appeal or application is for recovery of money, the money sought to be recovered in the suit or appeal or application inclusive of interest, if any, computed up to the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining such specified value;

(b) where the relief sought in a suit or appeal or application relates to moveable property or to a right therein, the market value of the movable property as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining such specified value;

(c) where the relief sought in a suit, appeal or application relates to immovable property or to a right therein, the market value of the immovable property, as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining specified value;

(d) where the relief sought in a suit, appeal or application relates to any other intangible right, the market value of the said rights as estimated by the plaintiff shall be taken into account for determining specified value;

(e) where the counter-claim is raised in any suit, appeal or application, the value of the subject matter of the commercial dispute in such counter claim as on the date of the counter-claim shall be taken into account.

(2) Where, in a suit, application, revision application or appeal filed in a High Court, or transferred to the High Court in accordance with the provisions of this Act or pending before the High Court, a dispute arises to whether the subject matter of such suit, application, revision application or appeal, as the case may be, is a commercial dispute or not or such commercial dispute is of specified value or not, then, the said dispute shall be decided by the Commercial Division of that High Court.

(3) Where the Commercial Division of a High Court upon reference to it under sub-sections (2) after hearing the parties and comes to conclusion, -

(a) that the subject matter is a commercial dispute and the value of the subject matter in the commercial dispute in a suit, appeal or application is of the specified value so as to fall within the pecuniary jurisdiction of the Commercial Division, the suit, appeal or application (together with the counter claim, if any) shall be dealt with by the Commercial Division of the High Court;

(b) that the value of the subject matter in commercial dispute in a suit, appeal or application is less than the specified value and does not fall within the pecuniary jurisdiction of the Commercial Division, the suit, appeal or application (together with the counter claim, if any) shall remain where it is pending before such conclusion of the High Court.

(4) The manner of valuation and determination of the subject matter of commercial dispute in a suit, appeal or application under this Act shall override any provision for valuation of the subject matter of any suit under any law for the time being in force.

CHAPTER IV

PROCEDURE TO BE FOLLOWED BY COMMERCIAL DIVISION OF HIGH COURTS

5 of 1908.

9. (1) Except to the extent otherwise provided by or under this Act, the Commercial Division of a High Court shall follow the procedure specified in the Code of Civil Procedure, 1908.

Fast Track
Procedure to be
followed by
Commercial
Division of High
Courts.

(2) Notwithstanding anything contained in sub-section(1), the following procedure shall be followed by the Commercial Division of every High Court, in respect of the subject matter of commercial dispute of specified value in a suit which is filed on or after the commencement of this Act, namely:-

(a) The plaintiff shall file along with the plaint,-

- (i) the documents on which he sues or relies;
- (ii) as many copies of the plaint and documents referred in this clause as to the number of defendants;
- (iii) an affidavit containing his statement in lieu of examination-in-chief;
- (iv) affidavits containing statements of other witnesses in lieu of examination- in- chief;
- (v) brief issues that are likely to arise;
- (vi) list of interrogatories, if any;
- (vii) application for discovery and production of documents, if any, maintaining their relevancy;
- (viii) such other material as plaintiff may consider necessary;

(ix) full address, including electronic mail, fax and telephone number of all the claimants and defendants to the extent known to the plaintiff;

(b) the plaintiff shall furnish along with the plaint, requisite fee for service of summons on the defendants;

(c) where the plaintiff has furnished electronic mail addresses of the defendants, he shall be directed by the Commercial Division, without ***prejudice to the procedure for delivery of summons referred to in Order V of the Code of Civil Procedure, 1908, to send the summons along with the copy of the plaint to the defendant by electronic mail; 5 of 1908.

(d) the defendants shall, within a period of one month from the date of receipt of a copy of the plaint along with all the relevant documents, file his written statement along with all documents and his affidavit in lieu of examination-in-chief except copies of plaint referred to in clause (a);

(e) the defendants, shall, along with the written statement and affidavit of witnesses in lieu of examination-in-chief, if any, also file counter claim, if any, along with all documents except the copies of plaint or documents referred to in clause (a);

* * * * *

(f) the defendants shall also send, copies of written statement and all documents filed along with the written statement and copies of counter-claim, if any, to the plaintiff;

(g) the plaintiff shall, at the time of trial, file affidavit containing evidence in examination –in-chief of other witnesses, if any;

* * * * *

(h) the plaintiff may, within one month from the date of service of the written statement, or within such further time as may be allowed by the Commercial Division, file rejoinder, if any ;

(j) where the Commercial Division allows any application for discovery of documents, plaintiff and the defendants, as the case may be, shall be permitted to file supplementary statements, within a period as may be specified by the Commercial Division.

(3) For the purposes of recording of statement in cross-examination and re-examination of parties and witnesses, the Commercial Division may appoint an advocate of not less than ten years standing at Bar or a Judicial Officer not below the rank of Senior Civil Judge as Commissioner.

(4) In a case before the Commercial Division,-

(a) all parties shall file written submission before the commencement of oral submission;

(b) the time limits for making submissions (including oral submission) shall be fixed in advance, at the case management conference.

(5) The Commercial Division shall, within thirty days of the conclusion of arguments, pronounce judgment***;

Provided that in case there is any delay in pronouncing the judgement the reasons for such delay shall be recorded in writing as part of the judgement:

Provided further that no such delay shall in any case exceed a further period of thirty days.

10. *** Save as otherwise provided under this Act, a *** Commercial Division may-

Case management conference and examination of witnesses.

- (a) hold one or more case management conferences;
- (b) fix a time schedule for finalisation of issues, cross examination of witnesses, filing of written submission and for oral submission;
- (c) provide for record of evidence in cross-examination and re-examination;
- (d) appoint commissioner for recording of cross-examination or re-examination. ***

* * * * *

CHAPTER V
TRANSFER OF PENDING SUITS, APPLICATIONS OR PROCEEDINGS TO
COMMERCIAL DIVISION OF THE HIGH COURT

11. All suits, applications or proceedings relating to commercial disputes of specified value pending in the courts subordinate to a High Court, except those cases where the trial has been concluded and posted for final argument, shall, on the issuance of an order under sub-section (1) of section 3, stand transferred to the High Court having jurisdiction over such courts and shall thereafter be allocated to the Commercial Division of such High Court.

Transfer of suits, applications or other proceedings from courts subordinate to a High Court to such High Court.

Allocation of suits, applications or other proceedings pending in a High Court to its Commercial Division.

12. The following suits, applications or proceedings in which the subject matter of commercial dispute is of a specified value and pending in every High Court shall, on the issuance of an order under sub-section (1) of section 3, be allocated to its Commercial Division, namely:-

(i) all suits wherein subject matter of the commercial dispute in such suit is of specified value;

(ii) all appeals against decrees by courts subordinate to the High Court wherein subject matter of the commercial dispute in such appeal is of specified value;

* * * * *

(iii) appeals against orders passed in interlocutory applications in suits, by courts subordinate to the High Court, wherein subject matter of the commercial dispute in such appeal is of specified value;

(iv) revision applications filed under section 115 of the Code of Civil Procedure, 1908, for setting aside interlocutory orders of the courts subordinate to the High Court, wherein subject matter of the commercial dispute in such revision application is of specified value;

5 of 1908.

(v) applications under article 226 or article 227 of the Constitution filed for setting aside or quashing the interlocutory orders passed by courts

subordinate to the High Court, wherein the subject matter of the commercial dispute in such application is of specified value;

CHAPTER VI
MISCELLANEOUS

Appeal to Supreme Court.	<p>13. (1) In respect of suits of the category referred to in sub-section(1) of section 4, section 5, section 11 and clause (i) of section 12, an appeal shall lie to the Supreme Court against any decree passed by the Commercial Division.</p> <p>(2) An appeal shall lie to the Supreme Court against the orders of the Commercial Division referred to in clauses (a) to (w) of Rule 1 of Order XLIII of the Code of Civil Procedure, 1908.</p> <p><i>Explanation.-</i> In this section, the word “decree” shall include all decrees which are to be treated as decrees for purposes of Rule 4 of Order XXI, Rule 58 and Rule 103 of Order XXI of the Code of Civil Procedure, 1908.</p>	<p>5 of 1908.</p> <p>5 of 1908.</p>
Execution of decrees or orders.	<p>14. The decrees or orders passed by the Commercial Division shall be executed by the said Division and the provisions of the Code of Civil Procedure, 1908 relating to execution of decree or order shall, so far as may be, apply to the Commercial Division.</p>	<p>5 of 1908.</p>
Application of other laws not barred.	<p>15. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.</p>	
Act to have overriding effect.	<p>16. Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.</p> <p>17. The High Court may, by notification, make rules for carrying out the provisions of this Act.</p> <p>18. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as may appear to it to be necessary for removing the difficulty:</p> <p style="padding-left: 40px;">Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.</p> <p>(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.</p>	<p>Power of High Court to make rules.</p> <p>Power to remove difficulties.</p>
	<p>19. In the Arbitration and Conciliation Act, 1996,-</p> <p style="padding-left: 40px;">(a) in section 2, in sub-section (1), for clause (e), the following clause shall be substituted, namely:-</p> <p style="padding-left: 80px;">‘(e) “Court”, in relation to,-</p> <p style="padding-left: 120px;">(i) sections other than sections specified in sub-clause (ii), means-</p> <p style="padding-left: 160px;">(a) the principal Civil Court of original jurisdiction in a district, or</p> <p style="padding-left: 160px;">(b) any Court of co-ordinate jurisdiction to which the Court</p>	<p>Amendment of Act 26 of 1996.</p>

referred to in sub-clause (a) transfers a matter brought before it,
and includes the High Court in exercise of its original jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes ;
and

(ii) section 34, 36 and 37 where the arbitration is relating to commercial disputes of specified value, means the Commercial Division of the High Court constituted under sub-section (1) of section 3 of the Commercial Division of the High Court Act, 2010;

(b) in section 37, in sub-section (1), in clause (b), the following proviso shall be inserted, namely:-

“Provided that where the arbitration is relating to a commercial dispute of specified value, the appeal shall lie to the Supreme Court in accordance with the provisions contained in section 13 of the Commercial Division of High Courts Act, 2010.”.

Annexure -1**Select Committee on Commercial Division of High Courts Bill, 2009, as passed by Lok Sabha**

Statement showing the list of witnesses who appeared before the Select Committee

S.NO.	NAME
1.	Shri Goolam E. Vahanvati, Attorney-General of India
2.	Shri Prashant Bhushan, Senior Advocate
3.	Dr. Anupama Singh, Rakshak Foundation
4.	Shri Sunil Kant Munjal, Confederation of Indian Industry
5.	Justice Shri R. K. Mahajan (Retd.)
6.	Shri Dharendra Negi, J. Sagar Associates
7.	Shri Gautam Patel, Bombay Bar Association
8.	Shri Gul Kriplani, President, Indian Merchants' Chamber
9.	Shri Bharat Bhasin, Chairman, Legal Affairs Committee, Bombay Chamber of Commerce and Industry
10.	Shri S. K. Bhattacharya, Managing Director, State Bank of India
11.	Shri Alok K. Mishra, CMD, Bank of India
12.	Shri Arun Kaul, ED, Central Bank of India
13.	Shri R. K. Bakshi, ED, Bank of India
14.	Shri B. P. Singh, Deputy Managing Director, IDBI
15.	Shri S. Raman, ED, Union Bank of India
16.	Shri Sandeep Bakshi, DMD, ICICI Bank Ltd.
17.	Shri Harish Engineer, ED, HDFC
18.	Shri M. R. Umarji, Chief Adviser, (Legal), Indian Bank Association
19.	Shri Arvind P. Datar, Madras Chamber of Commerce and Industry, Tamil Nadu Chamber of Commerce, Tamil Chamber of Commerce, Southern India Chamber of Commerce and Industry
20.	Shri T. M. Bhasin, CMD, Indian Bank
21.	Shri Y. L. Madan, ED, Indian Overseas Bank
22.	Shri M. Varadhan, Bar Council of Tamil Nadu
23.	Shri Vedantam Srinivasan, Madras Bar Association
24.	Shri Jose John, King & Partridge
25.	Shri P. S. Surana, Surana & Surana
26.	Shri M. R. Nayak, Chairman, Chairman, ED, Allahabad Bank
27.	Shri Bhaskar Sen, CMD, United Bank of India
28.	Shri Ajai Kumar, ED, UCO Bank
29.	Shri P. R. Banerjee, Bar Council of West Bengal,
30.	Dr. A. Bhattacharya, Director (Finance) Ministry of Finance
31.	Shri N. G. Khaitan, FICCI (ERC) & Bharat Chamber of

	Commerce
32.	Shri H.C. Sehgal, Co-Chairman, Law & Justice Committee, PHD Chamber of Commerce

Annexure-II

Select Committee on Commercial Division of High Courts Bill, 2009, as passed by Lok Sabha

Statement showing the individual/organisation who submitted Memoranda to the Select Committee

Memorandum No.	Individual/Organisation
1	Justice (Retd.) Shri V.R. Krishna Iyer, Kerala
2	Varghese & Jacob, Cochin
3	Shri R.S. Gora, New Delhi
4	J. Sagar Associates, Gurgaon
5	CII, New Delhi
6	Shri T. Ragvan, Chennai
7	Shri R.K. Mahajan, Shimla
8	Shri TGN Kumar, Chennai
9	Rakshak Foundation, New Delhi
10	Vaish Associates, Mumbai
11	Shri Hemant K. Maheshkar, Nasik
12	Shri M Hari Kumar, Mumbai
13	Mars & Partner, New Delhi
14	Advocates Association, Ranchi
15	Shri S. Balaraman, Chennai
16	Shri N. Sethuramaswami, Chennai
17	Shri Ved Kumar, New Delhi
18	Shri Rawan Kr. Sharma
19	Shri Jiten P. Mody, Mumbai
20	Shri Prashant Bhushan, New Delhi
21	Allahabad Bank, Kolkata
22	Shri Arvind P. Datar, Chennai
23	Bank of India

Memorandum No.	Individual/Organisation
24	Bar Council of Tamil Nadu
25	Bar Council of West Bengal
26	Bharat Chamber of Commerce, Kolkata
27	Bombay Bar Association
28	Bombay Chamber of Commerce & Industry
29	Central Bank of India
30	Shri G. Masilamani, Chennai
31	HDFC Bank
32	ICICI Bank
33	IDBI Bank
34	Indian Bank
35	Indian Merchants Chamber, Mumbai
36	Indian Overseas Bank
37	Shri T. Mohan, Madras, Bar Association
38	Madras Bar Association, Madras Chamber of Commerce & Industry, Southern India Chamber of Commerce & Industry
39	State Bank of India
40	Surana & Surana, Chennai
41	Tamil Nadu Chamber of Commerce & Industry
42	Shri Vedantham Srinivas, Chennai
43	Bengal Chamber of Commerce & Industry
44	Southern India Chamber of Commerce & Industry
45	Tamil Chamber of Commerce
46	UCO Bank
47	Union Bank
48	United Bank of India
49	Shri Goel S. Pal, New Delhi
50	Bank of Baroda

Ministry of law & Justice
(Department of Justice)

Statement showing Institution, Pendency and Disposal of
Commercial Disputes of 5 crore and above

Sl. No.	Name of the High Court	No. of Cases instituted	No. of Cases pending	No. of designated benches
1	Allahabad	*	*	9
2	Andhra Pradesh	51	51	*
3	Bombay	3111	921	6
4	Calcutta	*	*	*
5	Chandigarh	*	8	0
6	Chhattisgarh	*	0	0
7	Delhi	*	306	0
8	Gujarat	*	98	0
9	Himachal Pradesh	*	0	0
10	Jammu & Kashmir	*	*	*
11	Jharkhand	11	10	0
12	Karnataka	*	38	*
13	Kerala	0	0	0
14	Madhya Pradesh	2	2	*
15	Madras	*	*	3
16	Orissa	*	0	*
17	Patna	0	0	0
18	Rajasthan	*	*	*
19	Sikkim	*	0	0
20	Tamil Nadu	*	95	*
21	Uttarakhand	*	2	0

* **Information not received from the High Court**

Shri M. Rama Jois, M.P.

Matters to be considered by the Select Committee regarding the Commercial Division of the High Courts Bill, 2009 already passed by the Lok Sabha and pending before the Rajya Sabha.

I

[1] Uniform law regulating the constitution and organisation of all the High Courts necessary-

The first and most important aspect to be considered is the status given to the High Courts under the scheme of the Constitution and the object and purpose of conferring legislative power on the Parliament only regarding the constitution and organisation of the High Courts vide entry-78 of the Union List. Prior to the commencement of the Constitution under the Government of India Act, 1935, power to make law regarding the constitution and organisation of the High Courts was vested in the provincial legislature. In the Constitution, this legislative power was specifically included in entry-78 of the Union List. This change was brought about in the Constitution with the object of bringing uniformity in the constitution and organisation among all the High Courts in India. Under the Scheme of the Constitution, the High Courts occupy the highest position in each State being the highest court of appeal and revision. Regarding this change brought about, Sri. Alladi Krishnaswami Iyer stated in the Constituent Assembly as follows:-

“We have already taken a particular step in regard to the High Court that is appointment of the Judge in the hands of the President. Secondly so far as the organisation and jurisdiction is concerned, the idea is that there must be uniformity in the organisation of the High Courts in the different parts of India, subject of course to the provisions of the

Constitution. Therefore, in so far as the organisation is concerned, with a view to emphasize the principle of uniformity and to see that there is uniformity in the different High Courts, this power is transferred to the Central Legislature. It will be realized that we have High Courts and High Courts. There are High Courts which have been functioning for several years for a century. There are High Courts which have come into being recently and it is also proposed to bring in all the High Courts in the State under the jurisdiction of Parliament and see that there is a certain uniformity in the organisation and constitution of the different High Courts in India. The only legislature that can function in this regard is the Parliament. That is why that part of the amendment provides for it.”

Therefore, the clear intention of the Constitution has been that the common law regulating the constitution and organisation of the High Courts has to be enacted by the Parliament. In addition, the Parliament has also similar power including conferment of jurisdiction of High Courts by virtue of Article 4 of the Constitution while making a law for States Reorganisation and also in view of the topic ‘Administration of Justice’ having been shifted to Concurrent List vide entry 11-A by Constitution 42nd Amendment Act 1976 with effect from 3-1-1977.

But no such legislation has been undertaken by the Union so far in this regard. The resultant position is some of the High Courts are still functioning under the letters patents issued more than a century before by the British Government and some new High Courts have inherited the jurisdiction of the erstwhile High Courts given to them under the letters patent issued by British Crown and the jurisdiction and powers of a few other High Courts is regulated by laws made by the Parliament in exercise of its powers under Articles 3 and 4 of the Constitution relating to reorganisation of States and in some cases States Legislatures have proceeded to make laws to regulated the constitution and organisation of the High Courts though it is within the legislative power of the Union Legislature.

The resultant position is as follows:-

Chartered High Courts have Original Civil Jurisdiction, others do not have it.

Even regarding exercise of the extraordinary jurisdiction under Article 226 there has been no uniformity, in that:

- (a) In some High Courts writ jurisdiction is exercised by Division Bench of two judges.
- (b) In some High Courts writ petitions are being entertained by Division Bench and thereafter referred to single Judge.
- (c) In some High Courts single Judges entertain writ petition and thereafter refer to Division Bench.
- (d) In some High Courts Division Benches entertain appeal against the decision of High Courts rendered by a single Judge following the pattern of Letters Patent Appeals though under the Constitution High Court is one and no appeal is feasible or possible against the High Court itself calling them as “INTRA COURT APPEALS” though as stated by the Supreme Court in AIR 1970 SC page 01, the very concept of appeal means an appeal from a lower court to a higher court and single Judge of a High Court is also High Court and not a court lower to Division Bench.

It is therefore high time that the Parliament which has been given the power to make law regulating the constitution, organisation as also jurisdiction and power of the High Court to enact a uniform law covering all aspects such as civil and criminal appeals, revision and Writ Petitions and bring about uniformity in all the High Courts. The piecemeal legislation like the Bill under consideration is going to complicate the object of reforming the higher judiciary.

II

[2] Whether there is justification to confer Original Civil Jurisdiction on the High Courts as proposed in the Commercial Division of the High Courts Bill, 2009 when two Committee of Chief Justices have recommended abolition of original civil jurisdiction in all the High Courts:-

The scheme of the Constitution assigns special and pivotal role to the High Courts namely:

[1] Power and Responsibility to act as a guardian, protector and enforcer of fundamental rights enshrined under Part-III of the Constitution as also all other legal rights by the issue of high prerogative writs under Article 226 which is conferred on the High Courts by the Constitution itself. This is the extra ordinary jurisdiction conferred on the High Courts. The writ jurisdiction and power of judicial review has given the **pride of place to the High Courts** and constitutes sufficient work load on the High Courts.

[2] Power of judicial review by way of superintendence and control over all the courts, tribunals and authorities within the territory of its jurisdiction (under Articles 226 and 227) conferred on the High Courts is also regarded as part of basic structure of the Constitution which cannot be taken away even by any amendment to the Constitution and accordingly exclusion of jurisdiction of High Courts in service matters by Article 323A(2) introduced by 42nd amendment of Constitution was struck down by a seven judge bench. (Reference L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 para 78 & 79 at p. 300-301).

[3] In addition, Appellate and Revisional Power exercisable under Special statutes including taxation laws are vested in the High Courts.

[4] Further, First and Second Appeals in Civil matters, criminal jurisdiction to award (by confirmation), death sentence, appellate criminal jurisdiction in respect of sessions' triable offences, reference (civil and criminal) and civil revisions and reference under Article 228 regarding interpretation of the provisions of the Constitution involved in any case before any Court are also to be heard and decided only by the High Court.

[5] Original jurisdictions by way of functioning as election tribunals to try election petitions under the Representation of People Act has been vested in the High Court only.

With these jurisdictions the High Courts are already over burdened. Therefore, any addition of original civil jurisdiction as is sought to be done under the Bill will make the docket load on the High Courts unbearable.

[3] **No original jurisdiction except n six High Courts:-**

Another most important aspect to be borne in mind is that out of the 20 High Courts established in different States, only six High Courts have got original civil jurisdiction. They are: High Court of Calcutta, Bombay, Madras, Delhi, Jammu and Kashmir and Himachal Pradesh.

Therefore, the appropriate course is to abolish the original civil jurisdiction of the aforesaid High Courts to bring about uniformity in all the High Courts and that the original civil jurisdiction of unlimited pecuniary value should be entrusted to the City Civil Courts in Metropolitan Cities and Principal Civil Court of original jurisdiction in other places.

The question whether the original jurisdiction of the High Courts should be continued or abolished has been the subject matter of consideration by Justice Satish Chandra Committee who give its report in 1986 recommending that ordinary civil jurisdiction of the High Courts should be abolished and that the original civil suits pending before some of the High Courts must be transferred to the City Civil Courts or the District Judge's Court having unlimited pecuniary jurisdiction. Government of India accepted the Justice Satish Chandra Committee report which is extracted in Justice Malimath Committee report, which reads:-

“Government of India, Ministry of Home Affairs (Department of Justice), addressed a communication to the Registrars of High Courts (D.O. No. 35/2/86-Jus(M) dated October 5, 1988) enclosing a summary of recommendations of the Satish Chandra Committee as accepted by the Government of India. Accordingly, the Government of India have accepted the following, amongst others recommendations of the said Committee.

Ordinary Original Civil Jurisdiction of High Courts:-

- (i) The Ordinary Original Civil Jurisdiction of the High Court of Delhi, Himachal Pradesh and Jammu & Kashmir be abolished forthwith.
- (ii) The City Civil Courts in the three Presidency Towns be vested with unlimited pecuniary jurisdiction for civil work.

- (iii) All the cases pending in the Ordinary Original Civil Jurisdiction of the High Courts be forthwith transferred to the Courts below.”

The same matter was again considered by Malimath Committee comprising of three senior Chief Justices.

The Committee agreed with the recommendations of the Satish Chandra Committee that original civil jurisdiction of some of the High Courts should be abolished but disagreed to the extent of transfer of cases already pending in some of the High Courts to the Civil Courts.

In accordance with the above recommendations of Justice Satish Chandra Committee report, by Maharashtra Act 15 of 1987, original civil jurisdiction of the Bombay High Court was abolished. By a separate legislation, unlimited pecuniary civil jurisdiction was vested in the City Civil Courts. The constitutional validity of the said law has been upheld by the Hon'ble Supreme Court by a five judge bench in *Jamshed N. Guzadar Vs. State of Maharashtra and Ors.* – 2005 (2) SCC 591. Though the implementation has been delayed seeking a report from the State of Bombay about the infrastructure and other facilities being made ready in the City Civil Courts as stated in para-85 of the said judgment.

This being the position, the present Bill which proposes to confer filing civil suits of commercial nature whose pecuniary value is Five Crores or more on all the High Courts in India runs counter to the recommendation of the Justice Satish Chandra Committee and Justice Malimath Committee report and the earlier decision of the government of India.

In order to ensure uniformity in all the High Courts, the Justice Malimath Committee recommended that the following enactments should be passed by the Parliament.

“Against the aforesaid background, we are the opinion that for achieving uniformity throughout the country, Parliament should enact a law providing for:

- (1) abolition of an Appeal to a Division Bench against the decision or order rendered by a Single Judge of the High Court in a proceeding under article 226 or article 227 of the Constitution; and
- (2) conferment of power on the High Courts in the matter of deciding which category of cases under article 226 and 227 of the

Constitution should be heard by a Single Judge or a Division Bench, as the case may be.”

Another important para in Justice Malimath Committee report regarding the enormous increase in the pendency of the cases which should be taken into account.

“Hasty and imperfect legislation without adequate investigative exercise on the part of the Executive regarding the real need for the enactment or such law or a proper public debate and institutional consultation with expert bodies, professional association etc., results in more institution of cases in the High Courts.”

It appears that no such steps had been taken before the introduction of the Bill in question and there is no **assessment of impact** about the increase of load on the Supreme Court and the High Courts.

Observations made in the above para should be given due weight and therefore the present proposal without proper public debate and expert consultation with the expert bodies, professional associations should not be enacted.

IV

Further, the present Bill is intended to cover civil disputes of commercial nature whose value is Rs.5 Crores or above. There is no rational basis to exclude other civil disputes of similar value as the object is speedy disposal of such civil disputes.

V

It is also pertinent to take note of the fact that in the first instance, to bring uniformity, original criminal jurisdiction vested in the letters patent High Courts was abolished and was vested in the District and Sessions Court.

VI

Some of the difficulties arising out of the provisions of the Bill are as follow:

Under Section 8(4) it is provided that the manner of valuation and determination of the subject matter of commercial dispute in a suit, appeal or application under this Act shall override any provision for valuation of the subject matter of any suit under any law for the time being in force.

But under Section 8 of the Bill there are no criteria or yard stick for ascertaining the pecuniary value of the cases of commercial nature.

In the absence of any specification of the method for valuation of suits of commercial nature, it would effect the question of quantum of court fee payable on such suits also.

It is not clear as to whether the Commercial Division should be only at Principal Seat of the High Court or at Benches also in different places.

Section 9(5) of the Bill provides that the Commercial Division shall pronounce judgment within 30 days from the date of conclusion of the arguments. It can be assumed that in several cases it may be impossible to deliver judgment within 30 days from the date of conclusion of the arguments, in such heavy cases and particularly when the case is tried by a Division Bench. There is no provision to the effect that in cases where it becomes impracticable for the Court to pronounce the judgment within 30 days, the Court has the power to deliver judgment thereafter recording reasons in writing as to why the judgment could not be delivered within 30 days.

The right of appeal to the Supreme Court under Section 13:

Section 13 of the Bill provides right of appeal against the judgment and orders of the Commercial Division to the Supreme Court specified under clauses (1) and (2). Conferring of such right of appeal on the Supreme Court would increase the burden on the Supreme Court which is already over loaded.

Under the Scheme of the Constitution, the appeal lies to the Supreme Court when certificate of fitness is given by the High Court under Article 133 or leave is granted by the Supreme Court itself under Article 136. Creating right of appeal against the judgment and orders passed by the Commercial Division is sure to impose unbearable burden on the Supreme Court.

In fact there is necessity to reduce the docket load on the Supreme Court in respect of ordinary civil and criminal matters so that the Supreme Court takes up important constitutional matters covering the whole Country as such matters of National Importance are pending for over twelve years.

5th January, 2010

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M. RAMA JOIS, M.P.