

Standing Committee Report Summary

The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015

- The Standing Committee on Personnel, Public Grievances, Law and Justice (Chairperson: Dr. E.M. Sudarsana Natchiappan) submitted its report on the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 on December 10, 2015. The Bill was introduced in Rajya Sabha on April 29, 2015, and referred to the Standing Committee for examination, on April 30, 2015. The Bill was withdrawn on December 11, 2015, as another Bill (replacing an Ordinance promulgated in October 2015) on the same matter was introduced in Lok Sabha on December 7, 2015.
- The Bill enables the creation of commercial divisions in high courts with original civil jurisdiction, and commercial courts in all states. It seeks to enable fast track resolution of commercial disputes of the value of rupees one crore and above.
- **Definition of a commercial dispute:** The Bill defines a commercial dispute to include any dispute related to transactions between merchants, bankers, financiers, traders, etc. The Committee felt that this definition may lead to multiple interpretations as these provisions were already defined in other Acts. Hence, it suggested that all Acts which contain a definition of commercial disputes could be included in the Schedule to the Bill.
- **Value of a commercial dispute:** The Bill states that commercial divisions in high courts and commercial courts will deal with all matters relating to commercial disputes involving an amount of one crore rupees or more. The Committee recommended that this value be increased to two crore rupees or more.

Further, the Committee noted that since the pecuniary jurisdiction of the Delhi high court has been raised from Rs twenty lakh to Rs two crore, the commercial division that would be set up in that high court may not entertain commercial disputes below the value of two crore rupees. Thus, there is a need to harmonise the provisions relating to pecuniary jurisdiction in the Bill and the Delhi High Court (Amendment) Act, 2015.
- **Transfer of disputes to the new courts:** The Bill states that all suits of a value of Rs one crore or more that are pending in the high court or district court shall be transferred to the commercial division or commercial court respectively. The Committee noted that this may overburden the commercial divisions and commercial courts that are to be set up. Instead, a clause may be inserted in the Bill that only permits fresh cases to be transferred to the newly established commercial courts. However, litigants may still be permitted to approach the newly set up courts if the pending dispute is a commercial one.
- **Power to appoint commercial court judges:** Under the Bill, judges to a commercial court will be appointed by the Chief Justice of the concerned high court. The Committee observed that this is against Article 233 of the Constitution, which states that appointments to district courts must be made by the Governor in consultation with the relevant High Court. However, the Committee noted that the Ordinance promulgated in October 2015 is in conformity with the Constitution.
- **Vacancy of High Court judges:** The Committee observed that, as on September 2015, of the sanctioned strength of 1,017 posts for high court judges, 392 posts were vacant across various high courts. This may be counter-productive to the objectives of the Bill. The Committee recommended that the government must ensure that these posts are filled up by those with specialised knowledge and relevant experience.
- **Set up commercial courts on a pilot basis:** The Bill states that commercial courts will be set up in all states, except those where the high courts have original jurisdiction. Commercial divisions will be set up in those high courts which exercise original civil jurisdiction, namely the high courts of Delhi, Bombay, Madras, Calcutta and Himachal Pradesh. The Committee noted that number of commercial cases that were filed varied across states. Thus, it suggested that commercial courts and divisions could be established in certain states on a pilot basis. They could then be expanded to other states on a need basis. During the pilot stage, the government must obtain data on pendency of commercial cases, and the financial implications of setting up such courts.

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