

253 LAW COMMISSION REPORT- IS THE JUDICIAL SYSTEM READY FOR SUCH A CHANGE?

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I. INTRODUCTION

The 20th Law Commission headed by Justice A.P. Shah, came up with its 253rd Law Commission Report, on 29th January 2015.¹ The report put forward the proposal for setting up Commercial Courts in India. The report also proposed a bill called the 'The Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015' (hereinafter referred to as the 2015 Bill) which would provide for the constitution of such Courts for adjudicating certain commercial disputes.²

The main aim of this bill is to do away with the backlog of cases in various Courts across the country. The bill aims at disposing of these cases. The report puts forward that this bill, if adopted, will facilitate economic growth of the country, by disposing of, certain pivotal cases. The distinguishing feature of these Courts will be the nature of disputes they would deal with, i.e. the ones arising out of mercantile documents, joint ventures and partnership agreements, intellectual property rights, insurance etc.³ This, in turn, has widened the ambit of civil disputes and has provided a specific means to settle disputes of matters of a certain nature.

Another aim behind this Bill is to deal with high profile matters, and also the ones which cross the benchmark of certain pecuniary jurisdiction. The faster the settlement, the better are the economic gains for the country.

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¹Utkarsh Anand, 'Need exclusive Commercial Courts: Law Commission' *The Indian Express* (30 January 2015) 7.

²Law Commission of India, *The Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015*(Law Com No 20, 2015) <http://lawcommissionofindia.nic.in/reports/Report_No.253_Commercial_Division_and_Commercial_Appellate_Division_of_High_Courts_and__Commercial_Courts_Bill._2015.pdf> accessed 29 February 2016.

³ibid 61.

II. HISTORY OF COMMERCIAL COURTS IN INDIA

The Indian judiciary has time and again been criticised for its long pending judgements. As on March 31 2014, the number of pending cases in the High Courts was 3 million. These numbers ironically include just the civil matters and not the criminal ones, as they, if included, will only exorbitantly increase the number.⁴

In the past, various steps have been initiated by the Government of India, to curb this problem of an exorbitant number of cases. One such step was the 188th Report, wherein international practice of setting up of commercial courts for cases of high value was acknowledged.⁵ Further, another unique idea that was propounded was the system of high-tech video conferencing facilities similar to the ones used in foreign courts.⁶ The unique feature of the report was the introduction of 'case management conferences' which has never been implemented in India.

The next step towards the setting up of Commercial Courts was the 'Commercial Division of High Courts Bill, 2009'. The pecuniary jurisdiction fixed was Rs. 5,00,00,000.⁷ Further, a retrospective application of the governing law was proposed as all pending commercial disputes were to be transferred to the newly setup Commercial Courts.⁸ The impact this bill had on the Civil Procedure Code, was that it overrode the latter, in cases of conflict.⁹ Another feature of the Bill was that any decree or order of the Commercial Division was directly appealable to the Supreme Court.¹⁰

⁴AshishKabra and Vyapak Desai, 'Will India get its Commercial Courts?'(*The Firm*,28 August2015) <http://thefirm.moneycontrol.com/story_page.php?autono=1370224> accessed 29 February 2016.

⁵Law Commission, *Proposals for Constitution of Hi-tech Fast-Track Commercial Divisions in High Court*, (Law Com No17,2003) <<http://lawcommissionofindia.nic.in/reports/188th%20report.pdf>>accessed 29 February 2016.

⁶Law Commission, *Arbitration and Conciliation (Amendment) Bill (2001)* (Law Com No 16, 2001) <<http://lawcommissionofindia.nic.in/arb.pdf>>accessed 29 February 2016.

⁷ Commercial Divisions of High Courts Bill 2009.

⁸ibid.

⁹Law Commission of India, *The Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015* (Law Com No 20, 2015) 66<http://lawcommissionofindia.nic.in/reports/Report_No.253_Commercial_Division_and_Commercial_Appellate_Division_of_High_Courts_and__Commercial_Courts_Bill._2015.pdf> accessed 29 February 2016.

¹⁰ Law Commission of India, *The Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015*(Law Com No 20, 2015) 68-69<http://lawcommissionofindia.nic.in/reports/Report_No.253_Commercial_Division_and_Commercial_Appellate_Division_of_High_Courts_and__Commercial_Courts_Bill._2015.pdf> accessed 29 February 2016.

However, the Bill did not get the approval of the Rajya Sabha and came to a standstill. The recent report of the Law Commission has brought it back to life.

III. DRAWBACKS IN THE REPORT

The Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill was introduced in the parliament with a noble idea of reducing the backlog of cases and providing speedy justice and disposition of certain cases. However, despite the bill being an innovative step, it has certain flaws:

A) LACK OF ORIGINAL JURISDICTION

A major flaw in the provision of vesting the court with original jurisdiction is the lack of power with the Courts to vest jurisdiction in itself.¹¹ However, the Bill provides for original jurisdiction to the Courts to constitute a Commercial Division of the High Court.¹²

B) DIFFERENT PECUNIARY JURISDICTION

Another flaw in the bill is with respect to differing pecuniary jurisdictions of various High Courts across India. The Delhi High Court has a pecuniary jurisdiction of Rs. 20 lakhs,¹³ whereas that of Madras High Court is above 25 lakhs.¹⁴ The problem here being that value of commercial disputes has been fixed to 1 crore, without actually increasing the pecuniary jurisdiction of the Court.

Therefore, the position this Bill puts forward is that the same High Court will deal with similar cases, by applying two different procedures.¹⁵

¹¹C *Arulsamy & S Ubagaram v State of Tamil Nadu* [2003] 4 CTC 670.

¹²Law Commission, *The Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015* (Law Com No 20, 2015) 63-64, 67 <http://lawcommissionofindia.nic.in/reports/Report_No.253_Commercial_Division_and_Commercial_Appellate_Division_of_High_Courts_and__Commercial_Courts_Bill_2015.pdf> accessed 29 February 2016.

¹³ Delhi High Court (Amendment) Act 2003.

¹⁴ Tamil Nadu Civil Courts and Chennai City Civil Court (Amendment) Act 2010.

¹⁵Law Commission Of India, *The Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015* (Law Com No 20, 2015)<http://lawcommissionofindia.nic.in/reports/Report_No.253_Commercial_Division_and_Commercial_Appellate_Division_of_High_Courts_and__Commercial_Courts_Bill_2015.pdf>accessed 29 February 2016.

C) INCONSISTENCY WITH OTHER LAWS

The bill provides jurisdiction to the Courts, however, there might be a situation wherein the provisions of the Bill and the High Court rules might be inconsistent with each other. The problem here is that no clear solution for the same has been provided in the bill even though the Central law prevails over state laws in such matters. The High Court's come into the ambit of state laws¹⁶ and therefore, the Bill should override the High Court rules. But since there is no settled position on this issue, it seems to be a probable solution.

D) COMMERCIAL DIVISION CANNOT BE SETUP IN ALL HIGH COURTS

The Bill proposes that Commercial Divisions will be set up only in those High Courts that have original jurisdiction and pecuniary jurisdiction of not less than Rupees One Crore. However, the flaw in this feature is that as of now only five High Courts, i.e. Bombay, Calcutta, Delhi, Himachal Pradesh, and Madras have original jurisdiction.¹⁷

Therefore, implementation of this feature of the Bill will require amendments to the respective acts of the High Courts, increasing their pecuniary jurisdiction and also providing the other High Courts original jurisdiction, which seems to be a very far-fetched task.

E) DIGITALISATION OF THE PROCEEDINGS OF THE COURT

The Bill provides for digitalisation of all the proceedings of the Commercial Courts, which includes e-filing and all facilities for audio-visual recording. Though the idea is noble, it cannot be legally implemented, as a three-judge bench headed by Chief Justice HL Dattu of the Hon'ble Supreme Court bench held that there can be no recording of the proceedings of any court.¹⁸ Therefore, the centre cannot implement this aspect of the Bill, as it is against a set precedent of the Hon'ble Court.

²⁴⁶Department-Related Parliamentary Standing Committee On Personnel Public Grievances Law and Justice *Delhi High Court (Amendment) Bill*, (2014) <<http://www.prsindia.org/uploads/media/Delhi%20high%20court/SCR-Delhi%20High%20Court.pdf>> accessed 29 February 2016.

¹⁶The Bombay High Court (Original Side) Rules(9 September, 2015) <<http://bombayhighcourt.nic.in/libweb/rules/OSrules/bhcosrules.html#1>> accessed 29 February 2016.

¹⁷Pradeep Thakur, 'SC Panel rejects audio-video recording of trials' (*The Times of India*, 18 November 2014) <<http://timesofindia.indiatimes.com/india/SC-panel-rejects-audio-video-recording-of-trials/articleshow/45185944.cms>>accessed 29 February 2016.

¹⁸*Setun Bibee v Abusally Marikar* [1953] 55 NLR 236.

IV. NEED FOR COMMERCIAL COURTS AND SUGGESTIONS

The proposed creation of Commercial Courts is a very useful and viable idea. The author tries to bring out the salient features of the Bill which make it paramount to accept the Bill.

I) CASE MANAGEMENT CONFERENCE

The Civil Procedure Code, which is the law governing the majority of commercial and civil matters,¹⁹ is silent when it comes to case management conferences. However, countries like England and Singapore, which are known to be the major hubs of trade and commerce, have it as a feature in their courts. This feature is used by the Courts in England to exercise their broad case management powers, fix case management direction and review the litigants' compliance with previous directions of the Courts.²⁰

The basic idea behind this concept is to keep a check on the frivolous nature of a case. Further, it promotes out-of-court settlement, as the dispute might be settled even before going to trial, thereby reducing the number of cases. This approach is also followed in Singapore, where, Order 108, Rule 3(8) of the Rules of Courts provides for pre-action protocols and practices.²¹

In the case of *Rameshwari Devi v. Nirmala Devi*,²² the apex court discussed the concept of case management conferences and held that the Courts should adopt and adhere to this mechanism as it fixes dates for every step to be taken by the Court during a case.

II) SPECIALISED JUDGES

Another idea which was raised in the report was of specialised judges, i.e. judges having specialised knowledge in a certain subject matter or law, and handling matters in that field only. In India, no such practice is followed but various countries in the world do follow it and reap its benefits too. Tokyo and Hong Kong are two of the best examples of specialised judges. Both have on and off the job training for judges and every judge has a specialisation under a certain law, and he deals with matters pertaining

¹⁹Case Management Conference' (*Drukker Solicitors*, 12 May 2013) <<http://www.drukker.co.uk/publications/reference/case-management-conference/#.VecH7vaqqko>> accessed 29 February 2016.

²⁰*ibid.*

²¹*Rameshwari Devi v Nirmala Devi* (2011) 8 SCC 249.

²²Keith Steele and Belinda Bell, *Economic Consequences of Litigation in the World* (Kluwer Law International 1998) 12.

to that law only.²³

III) COURT FEES

Court fees for filing cases in India is not very high, and by paying a certain sum, a case can be filed in the Courts. However, such liberty is often misused by wealthy parties, which is why the concept of Singapore High Courts should be adopted here.

The courts in Singapore increase the Court fees with every passing day while a suit is being argued in the Court.²⁴ This increase is dependent on the nature of the parties, wealth of the parties and valuation of the suit. This step not only deters frivolous suits but also initiates speedy disposal of cases, as no party wants to lose money just by holding on to the case.

IV) TIME BOUND

A) FILING OF DOCUMENTS

The Courts in India, witness inordinate delays while giving out judgement.²⁵ The primary reasons for the same are reserving of judgements for long and the delay in filing of court documents. However, the commercial courts do not face this bane, as it has been proposed that via changes in the Civil Procedure Code, the proposed action is non acceptance of written statements after 120 days from the day of issuing of summons.

C) PRONOUNCING THE JUDGEMENT

Further, another idea proposed by the Hon'ble Supreme Court in the case of Anil Rai v. State of Bihar²⁶ is of vital importance here. The Court in the above case criticised delay in writing of judgements by the judges and therefore held that where a judgement is not pronounced within three months of reserving it, an application can be filed in the

²³Court hearing and fees', (*Singapore Supreme Court*), < <http://www.supremecourt.gov.sg/rules/court-processes/civil-proceedings/commencement-of-an-action/court-fees-and-hearing-fees>>accessed 29 February 2016.

²⁴ IANS Ghaziabad, 'India not concerned about delay in justice: SC judge' (*The Indian Express*, 9 March 2013) <<http://www.newindianexpress.com/nation/article1494933.ece>>accessed 29 February 2016.

²⁵ *Anil Rai v State of Bihar* [2003] AIR 3173(SC).

²⁶ Mohamed Imranullah S, 'Chief Justice wants to cut excessive delay in judgements', (*The Hindu*, 11 September 2014) <<http://www.thehindu.com/news/national/tamil-nadu/chief-justice-wants-to-cut-excessive-delay-in-judgments/article6398588.ece>>accessed 29 February 2016.

High Court, for the same. Moreover, a delay of six months in pronouncing of a judgment can lead to fresh arguments being heard in front of another bench. However, the said guidelines have not been applied by the Courts, but can be applied with a view to cut down on the inordinate delay.²⁷

D) ORAL ARGUMENTS

One of the primary reasons for the delay in delivery is the duration of time involved in oral arguments. A proposed solution to this problem is time bound oral arguments. In India, there exists no law which limits the time for arguments in a case. However, there exist legislation and rules like the Pension Fund Regulatory and Development Authority Rules, 2014²⁸ and the Security Appellate Tribunal Rules, 2000²⁹ which provide for time bound oral arguments during appeals in disputes. Therefore, such a procedure can be adopted and implemented in the Civil Procedure Code and commercial courts.

V) DIRECT APPEAL

The Hon'ble Court in the case of Mahendra Lal Das v. the State of Bihar³⁰ has held that the main purpose of litigation is to ensure speedy justice. The option of a direct appeal to the Supreme Court provided in the bill furthers this aim. This provision will reduce the unnecessary barriers and hurdles and dispose of the matter faster.

All of the above steps, if followed, will lead to shorter trials and eventually to the adjudication of cases at a better speed.³¹

V. IMPACT ON CIVIL PROCEDURE CODE

The 2015 bill proposed by the Government seriously affects the Civil Procedure Code, 1908 and creates a situation which requires an amendment to the said law. The bill provides for amendments to the Code in respect of direction for filing written statements and documents and various other provisions.³²

²⁷Pension Fund Regulatory and Development Authority Rules 2014,s 16(1).

²⁸Security Appellate Tribunal(Procedure) Rules 2000, s 16(1).

²⁹*Mahendra Lal Das v State of Bihar*[2001] AIR2989 (SC).

³⁰Civil Procedure (Amendment No 4) Rules 2015.

³¹Prapti Patel, 'How The Proposed Commercial Courts Will Speedily Resolve Disputes In High-Value Commercial Transactions' (*My Law Net*,1 September 2015) <<http://blog.mylaw.net/how-the-proposed-commercial-courts-will-speedily-resolve-disputes-in-high-value-commercial-transactions/#sthash.3GmucZeY.dpuf>> accessed 29 February 2016.

³²Civil Procedure Code 1908.

I) DIRECTIONS FOR FILING WRITTEN STATEMENTS WITHIN SPECIFIED PERIOD

The current position of law for the filing of written statement is that a written statement is to be filed after 30 days from the serving of a summons,³³ and the same can be extended by the Court after the 90 days period.³⁴ This power is at the discretion of the Court. However, the bill makes it mandatory for the Court to not accept the written statement after 120 days. Therefore, Order 8, Rule 1 of the Civil Procedure Code will have to be amended.

II) STRICTER COURT FEES

The 2015 Bill also provides for a model for the Court fees, wherein the longer the case proceeds, the larger is the sum of the fees. However, Section 35 and 35A of the Civil Procedure Code, 1908 which deal with costs mention no such facet. Therefore, to implement this provision of the Bill an amendment will be required in the Act.

III) TIME BOUND ORAL ARGUMENTS

Another new provision which the 2015 Bill provides for, is putting a cap on the duration of the oral arguments. The problem here is that no such cap exists in court cases. Therefore, implementation of this feature also requires amendment of the Civil Procedure Court or the respective Acts of the High Courts.

IV) SUMMARY JUDGEMENT AND CASE MANAGEMENT HEARING

Two new provisions given by the 2015 Bill are of summary judgements and case management hearings. The foreign courts in the past have discussed the two in various pronouncements,³⁵ but they have not been implemented by the Courts in India. Therefore, the introduction of them will require the legal validity to be provided to them in form of a legislation or amendment to the Civil Procedure Code, 1908.

³³A *Sathyapal v Yasmin Banu Ansari* [2009] ILR1399(KAR).

³⁴*Pierce v Ford Motor* 190 F2d, 910 (1951) (U); *Al Raw v The Security Service*(2012)1 AC 531 (UK).

³⁵Abhinav Garg, 'Delhi HC sets up commercial courts to ensure speedy disposal of trials'(*The Times Of India*, 26 March 2015) <<http://timesofindia.indiatimes.com/india/Delhi-HC-sets-up-commercial-courts-to-ensure-speedy-disposal-of-trials/articleshow/46695899.cms>> accessed 29 February 2016.

VI. APPLICABILITY AND PRESENT STATUS

The Bill was presented in the parliament in the year 2015, and even before a verdict from the parliament came on the same, certain courts started following the guidelines provided in the Bill. The Delhi High Court became the first court which set up Commercial Divisions in its premises.³⁶

Further, internationally the concept of Commercial Divisions and Courts has been appreciated. The finest example of the same is Singapore, where The Singapore International Commercial Court has been launched in January 2015.³⁷ The main objective behind such a Court is to dispute settlement for the litigants by a panel of specialist judges. This idea is very similar to the one proposed in the Bill, with respect to the specialist judges.

Another example on the same lines is that of New York where the Courts have separate divisions for commercial matters altogether.³⁸

VII. CONCLUSION

The 2015 bill with the recommendation of the Law was introduced in the parliament with an aim of economic growth and faster disposal of cases. However, certain apprehensions regarding its applicability were raised. It was also contended that the Bill will require several amendments to the Civil Procedure Code, 1908. The inception for this demand for separate Commercial Courts started with the 188th Law Commission report. Later, various other reports and Bills were presented and the final one was 2015 one, which gathered lots of debate.

The Bill truly does have certain drawbacks, one of them being the jurisdiction issue. The Bill provides for setting up of Commercial Division in courts having original jurisdiction. However, the issue with the same is that not every high court in India has original jurisdiction. Therefore, setting up of Commercial Division in all high courts will require amendments. Secondly, the pecuniary jurisdiction of every high court also differs. Therefore, to attain the goal of a lower or upper limit for entertaining plaint, a uniform pecuniary jurisdiction has to be provided to the courts. Thirdly, the Bill provides

³⁶Yu-Jin-Yay, 'Singapore Launches International Commercial Courts'(DLA Piper, 30 March 2015) <<https://www.dlapiper.com/en/asiapacific/insights/publications/2015/03/international-arbitration-newsletter-q1-2015/singapore-launches-international-commercial-court/>> accessed 29 February 2016.

³⁷'Commercial Divisions - NY Supreme Court' (*New York Courts*) <<http://www.nycourts.gov/courts/comdiv/>>accessed 29 February 2016.

for recording of proceedings, which is legally not possible as a supreme court precedent categorically denies it.

However, despite these drawbacks, the Bill does put forward certain new and innovative ideas, which surely will ensure better functioning of the judicial system. The ideas put forward include a time cap on the arguments, time limits for deciding a case, increase in costs according to the duration of the suit and one of the best feature being that of specialist judges, which will deal with matters where their specialisation rests. These steps will provide for better decisions given by the judges.

These provisions and features of the Bill, however, will affect the Civil Procedure Code too as certain provisions of the Bill are not present in the legislation and some require amendments to be made. However, *in toto* the Bill, if accepted by the parliament, will indeed be beneficial for the economy and the public at large. All of this is however conditioned upon the removal of the ambiguities that still exist in the Bill.