ACCESS TO JUSTICE AND GOVERNMENT ATTITUDE AS A LITIGANT: CHALLENGES AND PLIGHT

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Abstract

Justice V.R. Krishna Iyer, J. has said that, the state should act like an informed litigator, not like an ordinary individual, and should not defend cases solely to protect the ego of a certain officer. Statutory authorities should not make frivolous and unreasonable objections, nor should they act callously and high-handedly, as some private litigants do. Legal system in India is facing a major challenge as a result of a large number of cases being brought before the courts by the Government, both at the State and Central levels, as well as public sector companies. Despite being a crucial aspect of a developing economy, the administration of justice has not received the necessary investment, resulting in insufficient resources being allocated to this important sector. Ironically, while the government and public sector entities are responsible for a significant proportion of the litigation, funding for the courts is classified as non-plan expenditure and receives little priority. This has led to criticism that the government is not providing enough resources to support the courts and judges, despite their own propensity for bringing cases to the courts. In fact, the government is responsible for almost half of the 30 million pending cases in Indian courts.

Key words-

Legal System, Litigants, Administration of justice, LIMBS, Hindrance in justice, ADR

INTRODUCTION

Despite several recommendations to reduce the number of disputes, the government has been slow to change its approach, and continues to engage in litigation across a range of areas, including service matters, disputes with private entities, and internal disputes between governmental departments and public sector undertakings. Data from the Legal Information Management and Briefing System (LIMBS) website shows that as of in 2022, the total number of pending cases of all types and levels reached 50 million or 5 crores, including over 169,000 district and high court cases that had been pending for more than 30 years. As of December 2022, 4.3 crore out of 5 crore cases, or more than 85% of all cases, were pending in district courts.

Railways have the highest number of unresolved cases, with 66,685 pending cases, out of which 10,464 have been pending for over a decade. On the other hand, the Ministry of Panchayati Raj has the lowest number of pending cases, with only three. It should be noted that since the data is constantly changing on the dynamic website LIMBS, the numbers mentioned in the document may not remain static.

There are two categories of such disputes in India. The first category involves citizens suing either the central or state governments for a range of issues, such as labor disputes, taxation, pension-related issues, and compensation claims by farmers. The

high number of such grievances against the state reflects the poor governance in the country.

The second category of cases involves disputes between different branches of the state, either at the central or state level. This leads to wastage of judicial resources, as one branch of the government takes up the time of the judiciary to sue another branch for issues that could be easily resolved through internal arbitration. Given the slow pace of the judicial system in the country, with a mere 17 judges for every 10-lakh people and a large number of undertrial prisoners languishing in jails, such intra-state litigation should be significantly limited.

Governments and statutory authorities sometimes engage in unwarranted litigation due to certain officers who hold baseless assumptions. These assumptions are that any claim against the government or authority is automatically illegal and should be fought in the highest court, and that it's better to avoid making decisions and let the courts handle them instead. This tendency to avoid decision-making and challenge all orders is not the official policy of these entities, but rather stems from officers' fear of being accused of making the wrong decisions. To address this issue, the Central Government is working on practical norms for defending cases and filing appeals, but it's important for all levels of government to take steps to reduce unnecessary litigation, which has been clogging up the justice system for too long.

Genuine efforts must be made to make justice more accessible and speedier for deserving litigants.

The problem of unwarranted litigation by governments and statutory authorities is a long-standing issue that has been hindering the effective functioning of the justice system. It not only causes unnecessary delays in the resolution of disputes but also results in a waste of public resources[1].

One of the main reasons behind this phenomenon is the mindset of certain officers who are responsible for taking decisions or handling litigation. They tend to be risk-averse and are afraid of being held accountable for any mistakes or incorrect decisions. As a result, they prefer to avoid making decisions altogether or challenging any orders against them, leading to a flood of litigation.

To address this problem, the Central Government has taken a proactive approach by formulating practical norms for defending cases and filing appeals against adverse decisions. This step will not only reduce unnecessary litigation but also promote efficiency and transparency in the system. However, it's important for all levels of government to take similar steps to reduce the burden of litigation on the justice system.

The issue of unwarranted litigation is particularly acute in State Governments and statutory authorities, as they have a higher volume of cases compared to the Central Government. It's crucial for these entities to take proactive steps to eliminate unnecessary litigation, which will help to ensure easy and speedy access to justice for bona fide and needy litigants.

In conclusion, the problem of unwarranted litigation by governments and statutory authorities is a complex issue that requires a multifaceted solution. While the Central

[1] Urban Improvement Trust, Bikaner v. Mohan Lal, (2010) 1 SCC 512.

Government has taken the first step towards reducing unnecessary litigation, it's imperative for all levels of government to work together to address this issue and ensure that justice is delivered in a timely and efficient manner.

Justice T S Thakur, a former Chief Justice of India, expressed his criticism of the government's approach as the "biggest litigant". He pointed out that a large number of cases against the government cannot be considered a sign of good governance, as the government should be responsive enough to prevent litigation where it can be rationally avoided. Justice Thakur acknowledged that the fact that people still have faith in the judiciary and its ability to settle disputes is a positive sign, but the high number of cases involving the government is a cause for concern. He emphasized the urgent need for the Indian government to reform its litigation system, as it is already problematic for individuals to have to go to court against the state. Moreover, the government's tendency to appeal decisions adverse to it and pursue litigation relentlessly to the highest courts aggravates the situation[2].

Section 80 of the Civil Procedure Code, 1908, and the 126th Law Commission Report state that the activities of the government and public sector undertakings are vast and varied. They may not be aware of any legal action being taken against them until it has already begun. However, it was assumed that the government and public sector undertakings would not engage in frivolous litigation or pursue irrelevant reasons. To provide them with an opportunity to remedy any wrongdoing or reconsider their decisions, it was legally mandated to serve them with a notice of the intended cause of action. The purpose of this notice is to allow the government or public sector undertaking to take appropriate action before being dragged to court. This is why provisions like section 80 of the Code of Civil Procedure exist.

To keep Section 80 of the CPC in the law books, there needs to be a significant and fundamental change in how notices are handled on behalf of the government, public officers, and public sector organizations. When a notice is received, the party receiving it should immediately be informed that their concerns are being reviewed and a decision will be made as soon as possible. This will prevent unnecessary litigation and give the government and public officers a chance to examine any claims made against them before getting involved in avoidable legal disputes. The law exists to advance justice and not to trap those who are ignorant or illiterate. Failure to heed this warning could result in Section 80 being eliminated. Although the government has not yet agreed to delete this section, it would be advisable to remove some of its unfavorable aspects[3].

LITIGATION TENDENCIES OF GOVT.: A HINDRANCE IN ACCESS TO JUSTICE:

To survive in the market, justice must be seen as reliable, dependable, and instill confidence in the citizenry it serves. It is crucial that the justice system works solely for

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[2]http://www.dnaindia.com/india/report-sc-judge-accuses-government-of-being-the- biggest-litigant-2060534 , last accessed on 24/03/2023

[3]Section 80, Civil Procedure Code, 1908 Notice, (1) Save as otherwise provided in sub- section (2), no suit shall be instituted against the Government (including the Government of the State of Jammu and Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at their office....

the benefit of the people it serves.4 On the other hand, when public sector undertakings engage in excessive litigation, it results in increased costs for manufacturing products, which leads to higher prices and lower profits. This, in turn, affects the capital output ratio as the public sector undertakings incur mounting expenses on litigation. The funds used to meet these expenses are collected from the public through taxation and are better utilized for other purposes.

Moreover, frivolous litigation for the sake of prestige and other reasons only adds to the backlog of the courts, causing unnecessary congestion[4].

The courts have noted that when an individual goes up against the government or a public sector entity, it's an unfair fight since the individual's resources are limited while the state or entity has unlimited resources to waste on pointless litigation. This can be frustrating and overwhelming for the individual who has taken the matter to court. This type of situation is often described as a battle between a giant and a small person. Therefore, civil remedies for administrative wrongdoing rely on the actions of individual citizens, but it's always an unequal contest when an individual goes against the state.

The individual lacks the few legal procedures available in criminal cases that can help restore the balance of power. They must bear the cost of challenging the vast resources of the State, including personnel, funds, and legal expertise, through a civil lawsuit seeking a declaratory judgment or an extraordinary remedy such as an injunction, writ of mandamus, or writ of prohibition.

Even the lowest-paid employees are not immune to the arduous legal battles that reveal the haughty and overbearing nature of the executives in government or public sector enterprises. This behavior serves as a warning to low-level employees, discouraging them from challenging the decisions made by higher-ups. Furthermore, retired employees are often treated even worse than those currently employed by public sector enterprises and the government.

In certain ministries and departments, there are numerous cases that have been pending for over a decade. The databases of various courts display an abundance of pending cases every year, some of which have been unresolved for many years, and the chances of obtaining justice in these cases are slim due to a variety of reasons. The delay in delivering justice is caused by a variety of factors, including the lengthy procedural process followed by the Indian legal system, the lack of accountability of lawyers who prioritize financial gain over the speedy resolution of cases, and the lack of responsibility of judges who do not dispose of cases as quickly as possible. These issues have been highlighted by prominent jurist Nani A. Palkiwala, who once remarked that the legal redressal process in India is so time-consuming that it could be considered infinite. Lawsuits in India are said to be the closest thing to eternal life on Earth, and the pace at which cases proceed is so slow that it would be deemed sluggish even in a community of snails. While justice must be impartial, it need not be slow, and it is important to address these issues in order to improve the efficiency of the legal system in India[5].

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[4]Dr. Cyrus Das, K.Chandra: Judges and Judicial Accountability, Second IndianReprint (2005), Universal Law Publishing Co. Pvt. Ltd. Delhi. Pg 130.

[5]Palkhivala Nani A., We the nation - lost decade, New Delhi, UBS Publications1994, at 215.

It is a well-established fact that in the conduct of government business, no one person takes personal responsibility, and decisions are made at various levels at a leisurely pace. It is not uncommon for the government to intentionally delay filing an appeal or revision in order to give an advantage to the opposing litigant, especially when the stakes are high, or when the parties involved are influential or well-connected. Because of this, courts do not require strict proof of every instance of delay. Unfortunately, many people end up resorting to court because they cannot find alternative means of resolving disputes without going to trial. To add to this, the prevailing culture is for the State to file appeals to the highest level possible, which results in private citizens being crowded out of the court system[6].

LESSONS TO BE LEARNED FROM OTHER COUNTRIES:

To find effective methods for handling government litigation, it is advisable to look to other countries that have implemented successful models. One such country is France, which has established a clear differentiation between service liability and personal liability within their government litigation system. The government of France works in the best interest of the community and provides compensation even in cases where they are not proven to be at fault.

In his analysis of the French system for addressing government accountability, Dr. I.P. Massey criticized the common law nations for not attempting to achieve the same effectiveness:

"At the time when the common law jurisdictions were still lost in the darkness of the feudal principle of government immunity, a progressive idea of government liability was flourishing in France, which had recognized the principle of government liability. It is rather unfortunate that not only in India but in the UK and the US also, courts have not tried to develop any principle of public law relating to government liability but are still busy in stretching the private law principles to a domain for which they were not designed[7]."

The current legislation in France regarding the government's accountability for wrongful conduct is rooted in differentiating between two types of faults: "Service fault" and "Personal fault[8]." However, due to the broad interpretation of these terms by the judiciary, even actions that are typically considered exempt for government officials under common law systems may hold them liable under French law.

In the following lines, Brown & Garner have clarified the legal position in the French legal system regarding government liability:

"The activity of the state is carried on in the interest of the entire community; the burden that it entails should not weigh more heavily on some than on others. If then state action results in individual damage to particular citizens, the state should make redress, whether or not there bea fault committed by the public officers concerned. The state is, in some ways, an insurer of what is often called social risk…[9]"

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[6]State of Bihar v. Subhash Singh [1997] 1 SCR 850.

[7]I. P. Massey, Administrative Law 471 (1980)

[8]Ibid

[9]Brown & Garner, French Administration101(1983)

Australia recently changed its attitude to litigation, emphasizing the necessity of following best practices in order to conduct legitimate legal proceedings. The Judicial Act of 1963, which is the main statute governing this, makes the idea that a monarch can do no wrong irrelevant in Australia. The Hon. Robert McClelland, Attorney-General, has stated that the Australian Government is dedicated to upholding the highest professional standards when handling legal disputes, and that any infringement of the model litigant commitment would be judged unacceptable. The Rule of Law Institute of Australia applauded these remarks and argued that the government must make it clear that while taking legal action against citizens, the Crown must conduct itself in a manner consistent with good litigation practice[10].

England:

Through the European Communities Act of 1972, which Britain ratified in 1973, a substantial new type of governmental duty developed. This meant that under the rules of the European Court of Justice, which is based in Luxembourg, any failure to uphold commitments towards the community could result in the government being liable for compensating or paying damages. The EU treaties, as well as the rules, policies, and decisions of the EU Council or EU Commission, are only a few examples of the sources from which the duties to the community may derive.

The implementation of the Human Rights Act 1998 has expanded the potential accountability of public authorities[11]. As anticipated, there was a significant influx of legal actions brought against public authorities on the very day the Act became effective. The Act includes specific provisions for redress, particularly for violations of convention rights by public authorities in regular courts, at the request of individual claimants[12]. As long as an individual meets the Convention's criteria for being a "victim" of the alleged violation, they are now empowered to initiate legal proceedings against a public authority in the appropriate court or tribunal[13].

United States:

In the United States, even though it is a republic, the state enjoyed similar immunities to those in monarchial England[14]. However, in 1946, the Federal Tort Claims Act was enacted, which made the state liable for torts related to property, life, and person. This act stated that the United States would be held accountable in the same manner as a private individual under similar circumstances. Nevertheless, the United States is not responsible for any torts committed while performing statutory duties if they are carried out with due care. The Indian government can learn from these countries and find a solution to the problem of facing numerous litigations.

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[10]http://www.nortonrosefulbright.com/knowledge/publications/55750/the-model- litigant-policy-in-the-spotlight. (last visited on 7th Nov, 2022).

[11]H.W.R. Wade & C.F. Forsyth, Administrative Law 637 (10th ed., 1995)

[12]Ibid

[13]Beatson & Tridimas, New Directions in European Public Law 153 (2002)

[14]S P Sathe, Administrative Law 589 (7th ed. 1970)

ANGUISH AND ANGER OF JUDICIARY ON THE LITIGATION TENDENCIES OF GOVERNMENT:

Since the 1970s, the Supreme Court has criticized successive governments for their insensitive and mechanical approach to litigation. The court has emphasized the importance of governments and statutory authorities being responsible and honest litigants, refraining from presenting false, frivolous, vexatious, or unjust arguments that hinder the dispensation of justice[15]. The court expressed its frustration and anger in a particular case involving the government, stating that state governments should not waste public resources on futile litigation when there is no chance of success. The court also noted that the cost of

approaching the court is high, making it difficult for many litigants to afford the expense involved. Therefore, the court stressed that state governments, which are accountable to the public, should avoid challenging a High Court judgment that is clearly correct and just to save the parties involved from unnecessary expenses[16].

J. Krishna Iyer criticized state authorities for their unpleasant approach to litigation in cases involving the government's involvement in economic activities in the public sector. He emphasized that the State is not a regular party trying to win a case by any means necessary, as its goal should be to address valid claims, uphold a solid defense, and avoid exploiting legal technicalities to evade responsibility or gain an unjust advantage over a weaker party.

The government is a morally upright party in legal proceedings and does not value immoral legal victories. Even if the case is weak, the government is willing to settle the dispute in order to reduce litigation costs and save time. Due to the large number of legal cases involving the government, there is a policy to reduce the volume of lawsuits by avoiding unnecessary court battles and offering to end pending cases on fair terms. This policy was established at a Law Ministers Conference in India in 1957, and legal advisors to the government have been given the authority to act accordingly. This is not a moral lesson from a judge, but rather a reflection of the government's positive approach to litigation[17].

The State is not allowed to behave like an ordinary individual who needs to contest every decision made against them[18]. Rather, the State Government should act in a fair and equitable manner towards its citizens and avoid using technical arguments to defeat their legitimate and rightful claims, except in situations where tax or revenue has been received without objection or where the State Government would suffer serious harm otherwise. Essentially, the State Government is expected to prioritize justice and fairness towards its citizens[19].

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[15]Urban Improvement Trust, Bikaner v. Mohan Lal, (2010) 1 SCC 512.

[16]Ibid

[17]P.P. Abu backer v. The Union of India , A.I.R. 1972 Ker. 103

[18]State of Orissa v. Orient Papers & Ind. Ltd., MANU/SC/0255/1999.

[19]Bhag Singh & Ors. v. Union Territory of Chandigarh through LAC, Chandigarh [(1985) 3 SCC 737]

Even though the State holds significant power, it is anticipated that it will act responsibly and only resort to litigation as a last resort. This is because the State has a duty to act justly and in the best interests of the public. Therefore, it is advisable for the State to make decisions that prevent unnecessary legal disputes, which aligns with the principles of good governance.

Governments are the biggest parties involved in legal disputes, and in order to improve the effectiveness of their legal systems, it is necessary to reduce the number of unnecessary lawsuits and ensure that necessary lawsuits are conducted properly. Without taking serious action to address these issues, any efforts to reduce the backlog of court cases through seminars and conferences will be useless, and any resolutions made in those settings will be nothing more than empty slogans. We hope that those in charge will recognize the seriousness of this problem and take concrete steps to actually improve the legal machinery[20].

Therefore, the current situation necessitates the Government and its agencies to take decisive measures to address the problem of misconduct among their officers and prevent them from either overstepping the authority of the court or mishandling cases. These cases provide a bleak image of the officials involved, and considering the substantial amount of public funds spent on such litigation, a certain level of accountability and responsibility towards the citizens is essential. The people have the right to know the actions taken by those in power to eliminate this issue and rectify the situation. To achieve this, it is recommended that a committee be established at every court level, comprising not only senior executives but also a retired judicial officer. This committee should thoroughly examine the handling of cases, propose effective solutions, and ensure their implementation. Officials responsible for intentional or careless conduct leading to lost cases and financial loss to the public should be held personally accountable. Until this is implemented, the condition of government litigation in the courts will not improve, and the public will continue to bear the consequences[21].

CONCLUSION:

This extensive discussion highlights the importance of viewing the litigation undertaken by public sector undertakings and the government from the vantage point of courts. It emphasizes that the litigious culture recklessly cultivated by these bodies, who are obligated to manifest constitutional culture in their dealings and conduct, has resulted in them pursuing litigation at the drop of a hat and pursuing it right up to the Apex Court. The public ultimately bears the costs of this litigation as the expenses are paid out from the coffers of the State, including public sector undertakings.

To address this issue, the Law Commission is set to recommend that bureaucrats shed their "let the courts decide" attitude and take decisions that help the government reduce its share of cases in courts. By taking quick decisions, many issues can be resolved without having to resort to litigation. According to reports, government litigation

[20] Spl. Land Acquisition Officer v. Karigowda & Ors. (2010)

[21] Union of India v. Rahul Rasgotra (1994) 2 SCC 600.

constitutes nearly half of all litigation in the Indian judiciary, but there is no official data available to confirm this. The introduction of the Legal Information Management and Briefing System (LIMBS) may help to address this issue.

The government's decision to introduce arbitration and mediation clauses in work contracts for its staff can help to relieve the burden on the courts and save employees from years of stress and anguish. It is important for governments and public authorities to adopt the practice of not relying on technical pleas to defeat legitimate claims.

Additionally, the discussion highlights the need for the government and public sector undertakings to adopt a more responsible and accountable approach towards litigation. The Constitution imposes a duty on them to adhere to constitutional values and principles, including the duty to act fairly and reasonably. The indiscriminate filing of appeals and petitions in courts not only imposes a burden on the judiciary but also reflects poorly on the government's commitment to upholding the rule of law.

The lack of official data on the extent of government litigation is also concerning. It indicates a lack of effort on the part of successive governments to address the issue in a meaningful way. The introduction of LIMBS, a web-based case management system, can help to track government litigation and enable better coordination and management of cases.

In conclusion, the discussion emphasizes the need for a shift in mindset among government officials and public sector undertakings towards a more proactive and responsible approach to litigation. This requires a commitment to reducing the burden on the courts, adopting alternative dispute resolution mechanisms, and upholding constitutional values and principles.

To rephrase the first passage: The court has a responsibility to act fairly towards citizens, and should generally avoid taking up technical pleas unless necessary. If the plea is valid, the court must uphold it, but it is preferable for the government and public authorities to avoid unproductive litigation that wastes resources and impedes socially beneficial programs. However, if a claim is unfounded or evidence has become unavailable due to delay, a technical plea may be warranted[22].

To paraphrase the second passage: Litigation is often seen as a costly and unproductive use of time and money. To conserve resources and prioritize spending on socially beneficial programs, it is important for both public sector undertakings and the government to develop strategies to avoid or reduce unnecessary litigation. More litigation means more strain on the court system, which not only increases costs for the state and public sector undertakings but also requires more resources for setting up courts and staffing them. Therefore, minimizing litigation can help reduce the burden on the court system and cut down on related expenses[23].

To summarize the final passage: While the scope of interference under Article 136 of the Constitution is limited, the Supreme Court has taken a practical approach in some cases to ensure justice is served and miscarriages of justice are prevented. The court has a duty

[22]Madras Port Trust v. Hymanshu International by its Proprietor v. Venkatadri (Dead)by L.Rs. (1979) 4 SCC 176

[23]Law Commission of India 126th Report, 1988, Government and Public Sector Undertaking Litigation Policy and Strategies

to correct injustices done by lower courts and technicalities should not prevent justice from being imparted. Ultimately, the court exists to administer justice, and failure to do so would undermine the purpose of the court system.

The cases discussed in this work demonstrate how a liberal interpretation of the law has led to an increase in appeals, ultimately questioning the necessity of the Supreme Court's jurisdiction. To prevent this, the Court should only consider disputes under Article 136 if conflicting decisions exist between different High Courts or tribunals, or if no specific law covers the situation. In a constitutional context, the Court must exercise its jurisdiction with caution to maintain the balance between tribunals and ordinary courts. Therefore, the Court should make its powerful instrument, Article 136, known more by its presence than its exercise. To reduce the Supreme Court's backlog, a national tribunal should be established at the apex of specialized tribunals to achieve uniformity in opinions. The Supreme Court should only entertain issues involving constitutional interpretation, public importance, uniformity in decisions, and grave violations of fundamental rights under Article 136.

However, these criteria are not absolute and subject to the facts and legal questions of each case. Restructuring the filing and admission of Special Leave Petitions (SLPs) will impact the functionality of the Supreme Court, but limiting the exercise of power under Article 136 may result in a reduction of petitions. The proposed reforms do not limit the Court's jurisdiction but suggest greater discipline in interpreting that jurisdiction. Therefore, it is different from restricting the Supreme Court's power.

In recent years, the Supreme Court has frequently exercised its power under Article 136, resulting in a considerable increase in the number of cases pending before it. This has led to a growing backlog of cases, which has been a matter of concern for the judiciary and the public at large. The excessive use of this power has also led to the dilution of its significance, as people now approach the Supreme Court more readily.

The proposed solution to this problem is to streamline the filing and admission of SLPs and restrict the exercise of power under Article 136 to certain categories of cases. The aim is not to limit the Court's jurisdiction but to suggest greater discipline in interpreting that jurisdiction. The criteria proposed for the Court's consideration are not absolute and subject to the facts and legal questions of each case.

To achieve this goal, it is suggested that a hierarchy of appellate tribunals be established, with a National Tribunal at the apex to achieve uniformity in opinions. This would reduce the burden on the Supreme Court and ensure that only matters of great importance or those involving conflicting decisions of different High Courts or tribunals are considered under Article 136. Matters involving constitutional interpretation, public importance, uniformity in decisions, and grave violations of fundamental rights should be entertained under Article 136, but only in exceptional circumstances.

However, it is important to note that limiting the exercise of power under Article 136 may result in a proportional reduction of SLPs. This is because the Supreme Court has granted special leave to appeal in regular civil and criminal matters, cases pertaining to land acquisition, and other disputes involving questions of socio- economic justice. Therefore, it is necessary to strike a balance between reducing the burden on the Supreme Court and ensuring that people have access to justice.

In conclusion, the proposed reforms aim to address the problem of the growing backlog of cases in the Supreme Court and the excessive use of power under Article 136. Restructuring the filing and admission of SLPs and establishing a hierarchy of appellate tribunals with a National Tribunal at the apex can help achieve this goal. The criteria proposed for the Court's consideration are not absolute and subject to the facts and legal questions of each case.

Therefore, it is essential to strike a balance between reducing the burden on the Supreme Court and ensuring that people have access to justice[24].

THE WAY FORWARD: RECOMMENDATIONS:

The increasing backlog of court cases has become a matter of concern in recent decades, as the population grows and citizens become more aware of their legal rights. This backlog affects not only lower courts and tribunals but also the Supreme Court, as cases are referred to it for review. Some experts suggest that guidelines should be established to restrict special leave petitions under Article 136 in order to alleviate this backlog. Others argue that the Supreme Court should only handle cases of constitutional importance, but this approach could go against the spirit of the constitution.

The Supreme Court was established as an apex court to lay down the law for the entire country and to correct errors made by lower courts or tribunals. However, the Court's tendency to interfere with tribunal orders without adhering to basic norms affects the smooth functioning of administrative adjudication. In order to address this issue, appeals from tribunals should be directed to appellate tribunals and then to a national tribunal consisting of experts. The Supreme Court should not entertain appeals on the premise that its wisdom cannot be wrong, as this approach can lead to a backlog of cases and cause delays that result in a denial of justice.

While the conscience of the Court may compel it to address individual cases, such ventures can contribute to docket explosion and exacerbate the problem of delayed justice. Thus, it is better to establish a national tribunal for appeals and limit the Supreme Court's involvement to cases involving manifest injustice.

It is important to remember that the Supreme Court's primary purpose is to provide guidance on legal matters and to ensure that justice is served fairly and efficiently. The establishment of administrative tribunals was intended to provide speedy and expert resolution of disputes relating to public matters, and it is crucial to respect the role of these tribunals in the legal system.

In addition to the establishment of tribunals, there are other solutions that could alleviate the backlog of cases and improve the efficiency of the legal system. One approach is to promote alternative dispute resolution methods such as mediation and arbitration, which can often resolve disputes more quickly and at a lower cost than traditional court proceedings.

Another potential solution is to invest in modern technology and infrastructure to streamline court processes and make them more accessible to the public. For example,

[24]Order dated 11.01.2016 in Mathai @ Joby v. George & Anr., SLP (C) No. 7105 of2010.

the use of electronic filing systems and online case management tools could help reduce paperwork and simplify the process of tracking case progress.

It is also important to address the root causes of the backlog, which include the shortage of judges and the slow pace of hiring new judges. This problem can be compounded by the retirement of senior judges, which can further delay the resolution of pending cases.

Overall, there is a need to take a comprehensive approach to addressing the backlog of cases in the legal system. By implementing a range of solutions, including the establishment of tribunals, investment in modern technology, and hiring new judges, it is possible to improve the efficiency of the legal system and ensure that justice is served in a timely and fair manner.

National Litigation Policy:

The National Litigation Policy was implemented in 2010 by the United Progressive Alliance government to decrease the number of pending cases in Indian courts and shorten the average pendency time from 15 years to three years. The policy aimed to promote responsible litigation and discourage unnecessary litigation. However, the policy could not be successfully implemented despite efforts by successive law ministers.

The current Modi government is now formulating its own policy to reduce government litigation by appointing officers to scrutinize cases and encouraging dispute resolution outside of courts. In 2015, a committee of secretaries cleared the draft policy, which was subsequently sent to a high-powered panel of ministers for review. The proposed policy aimed to assist in out-of-court settlement of cases among government bodies and reduce the filing of new cases through preventive measures. However, little is known about the current status of the draft policy and its final form, despite Prime Minister Modi's statement that reducing government litigation is a priority[25].

The proposed National Litigation Policy would also aim to avoid litigation between government departments and PSUs, restrict appeals to a minimum, and make appeal an exception unless it affects government policy.

The National Litigation Policy, when implemented, was expected to have a significant impact on India's legal system. It was designed to reduce the backlog of cases and provide a framework for responsible litigation, which would ultimately lead to more efficient and effective resolution of legal disputes. The policy recognized the importance of avoiding unnecessary litigation, which can cause undue delay, increase costs, and adversely affect the quality of justice.

One of the key features of the policy was the provision for identifying and avoiding frivolous or meritless cases. This would ensure that only genuine and significant cases are filed, thereby reducing the workload of the courts and allowing them to focus on the cases that matter most. The policy also aimed to promote alternative dispute resolution mechanisms, such as mediation and arbitration, as an effective way to resolve disputes outside of the court system.

[25] Betwa Sharma, India's Biggest Litigant Is Doing Little To Unclog The Courts (28/04/2016),The Huffington Post, accessedfromhttp://www.huffingtonpost.in/2016/04/28/the-indian government-is-_n_9776988.html on 24/03/2023

Another important aspect of the National Litigation Policy was its focus on reducing litigation between government departments and public sector undertakings (PSUs). This would help to streamline the functioning of the government and ensure that resources are used effectively. The policy would also reduce the burden on the courts by preventing unnecessary litigation between government bodies.

The proposed policy by the Modi government seeks to build on the foundation laid by the 2010 National Litigation Policy. It aims to further reduce government litigation by appointing officers to scrutinize cases and encourage out-of-court settlement of disputes. It is hoped that this policy will result in a more efficient and effective legal system, which will benefit both the government and citizens of India[26].

In conclusion, the National Litigation Policy is an important initiative aimed at improving the functioning of the legal system in India. Its implementation will help to reduce the backlog of cases, promote responsible litigation, and streamline the functioning of the government. The proposed policy by the Modi government has the potential to build on this foundation and further improve the legal system in India[27].

LIMBS (Legal Information Management and Briefing System):

LIMBS, which stands for Legal Information Management and Briefing System, is a new online platform launched last year that aims to streamline court cases brought against the government. The system aims to prevent different government ministries from taking conflicting positions on the same issue in court, which has become a growing problem in recent times. Additionally, LIMBS seeks to encourage the resolution of disputes between governments and public sector units outside of court, which will help reduce the backlog of cases significantly. LIMBS is a more specific system compared to a vague LP, and even though it is still in its early stages, it provides data (which will continue to improve) for tracking cases pending with Union government ministries/departments. As of June 2019, the LIMBS database shows that there are 135,060 pending government cases and 369 contempt cases[28].

Liability of Erring Officers:

Can the society or taxpayers be held responsible for the unjust and unpredictable actions of public officials, or should those responsible for such actions bear the cost? This court, as well as English courts, do not consider it acceptable for the State to compensate citizens for any harm or loss resulting from the arbitrary behavior of its employees[29].

Although it is difficult to prevent absurd policies from resulting in litigation, court litigation is often used as a means of avoiding accountability for decisions. For instance, an officer may recognize that a claim against the government or a public sector

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[26]Gaurav Vivek Bhatnagar, Government is the Biggest Litigant, says Modi but Little isDone to lessen the burden of Judiciary (22/01/2017), The Wire, accessed fromhttps://thewire.in/101808/government-biggest-litigant-says-modi-little-done-lessen- burden-judiciary/ on 26/03/2023

[27]Ameen Jauhar, Time to Move towards a new litigation Policy (18/11/2016), The Hindu, accessed from http://www.thehindu.com/opinion/columns/time-to-move- towards-a-new-litigation policy/Article16666713.ece on 26/03/23

[28]Adapted from "What is LIMBS?," Live Law, last modified June 13, 2019

[29]Lucknow Development Authority v. M.K. Gupta, (1994) 1 SCC 243

organization is valid but choose to take no action, inviting litigation instead. Once the court becomes involved, the department or organization is assumed to refrain from making any decisions and defer to the court's ruling. This practice is encouraged by a lack of social audit, which would reveal that many cases of litigation involving the government and public sector organizations arise from indifference or an inability to take affirmative action. In the absence of an effective grievance-resolution mechanism, employees of such organizations are free to resort to litigation. The officer who initiates litigation may become too involved in the process, to the detriment of their regular work, and lawyers who represent government and public sector organizations can receive large fees. So far, no effort has been made to devise litigation policies and strategies or alternative dispute resolution methods for these cases. This approach leads to a lack of direction, overwhelming court dockets, and wasteful expenditure, which diverts resources from productive planning[30].

The consequences of such a practice are significant, as it leads to a waste of valuable resources and creates a burden on the justice system. The problem is exacerbated by a lack of effective policies and strategies to address the issue, as well as a dearth of alternative methods for dispute resolution. As a result, the government and public sector organizations continue to engage in unending and costly litigation, with no clear end in sight.

One potential solution to this problem is the implementation of a social audit system, which would promote transparency and accountability in government and public sector organizations. Such a system would help to identify instances where litigation is being used to avoid taking affirmative action and would encourage officials to find alternative solutions to disputes.

Another approach would be to encourage alternative methods of dispute resolution, such as arbitration or mediation, rather than resorting to litigation as the default option. This would not only reduce the burden on the court system but also encourage more efficient and effective resolutions to disputes.

It is essential that the government and public sector organizations take steps to address this issue, as the costs of unending litigation and wasteful expenditure are borne by the public. By implementing effective policies and strategies, and by encouraging alternative dispute resolution methods, the government and public sector organizations can promote accountability and transparency, while also reducing the burden on the justice system and preserving valuable resources for productive planning.

It is imperative that those who are responsible for the loss of public funds due to their negligence should be held accountable for their actions. This calls for drastic measures to be taken in order to prevent further decay and to fulfill promises made for improving the system's functioning. Any statutory authority or administration that owes a duty to the public must carry out its functions in a reasonable, honest, and bona fide manner. Failure to do so will result in the authority being held responsible for any losses or damages suffered by those affected. Frivolous and unjust litigation by governments and statutory authorities is on the rise, which is a matter of concern. These authorities must

[30]Law Commission of India 126th Report, 1988, Government and Public Sector Undertaking Litigation Policy and Strategies.

act responsibly as litigants and cannot raise frivolous objections or act in a callous or highhanded manner. They are expected to show remorse when their officers act negligently or in an overbearing manner. In cases where there is no explanation or excuse for the wrong actions of their officers, the authorities should make restitution and provide appropriate compensation. Their harsh attitude towards genuine grievances of the public and their indulgence in unwarranted litigation needs to be corrected[31].

A member of the permanent executive must comply with the orders of the court passed in exercise of judicial review. When a court issues directions to executive authorities, it is expected that they will discharge their duties expeditiously in accordance with the rules and directions. If they fail to do so, they are required to explain the circumstances to the court or seek further time for compliance if there is an unavoidable delay. (*UOI v. Rahul Rasgotra*[32], *State of Maharashtra vs. Narayan Deshpande*)[33].

In the case of *State of Bihar v. Subhash Singh*[34], it was held that if an officer fails to take the necessary steps as ordered by the Court, the Court has the power to impose costs personally against the officer for non-compliance. However, in the case of *Deep Jot Singh v. Union of India (UOI) and Ors.*[35], the Apex Court opined that the liability of costs should not be ultimately imposed on an income taxpayer and should not be allowed to be paid by the public exchequer. Instead, the respondents should pay the costs initially, and then the costs should be recovered from the salary of the officers or officials responsible for the undue delay. In another case, *State of Andhra Pradesh v. Food Corporation of India*[36], the Court expressed shock at the manner in which the State Government was filing petitions, resulting in a waste of time and public money. The Court directed that an inquiry be made to identify the person responsible for the delay and recover the costs involved in filing the petitions from that person. The State Government was also instructed to submit a report on this matter to the Court within four weeks.

Presently, the concern at hand extends beyond the granting of recompense, as the question arises as to who should bear the responsibility for it. The exercise of power and authority by public officials encompasses various aspects. The funds utilized to compensate for the inaction of individuals entrusted with duties under the Act are derived from taxpayers' contributions. Thus, it is crucial for the Commission to carefully and convincingly record circumstances when determining that a complainant is entitled to compensation for mental anguish, harassment, or oppression. In such instances, the department responsible should be directed to provide the complainant with immediate remuneration from the public funds. However, those found to be responsible for such reprehensible behavior should be held accountable and made to repay the compensation proportionately, particularly in cases where multiple functionaries are involved (*Lucknow Development Authority v. M.K. Gupta*)[37].

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[31] Id 26

[32] (1994) 2 SCC 600

[33] AIR 1976 SC 1204

[34] [1997] 1 SCR 850

[35] (2007) ILR 2 Del 220

[36] 2004 (13) SCC 53

[37] (1994) 1 SCC 243

Law Officers to be selected cautiously:

In terms of legal disputes, the Government is in a league of its own as the largest litigant in the country. However, it appears to lack a coherent policy, plan, or effective management strategy for handling such extensive litigation. The process of selecting law officers also leaves much to be desired, as the Government enjoys an unreasonably wide area of discretion in this regard.

According to the Law Commission, the Department of Legal Affairs handles the litigation on behalf of the Union of India in all courts. The Attorney General, as the highest-ranking law officer of the Government of India, has the right to argue in any court and address Parliament under certain circumstances. However, the available information suggests that the Attorney General has limited influence in the selection of his colleagues. Similarly, at the state level, the Advocate General is the topmost law officer, but has no say in the appointment of Government pleaders or public prosecutors attached to the High Court. It is necessary to streamline this process and restrict the Government's wide discretionary power in the selection of law officers[38].

Legislature's Role:

The issue of excessive litigation is not solely the responsibility of the Judiciary and Executive branches of government. This limited perspective fails to take into account the broader impact of the issue. The Judiciary is concerned because it is struggling to manage the overwhelming number of cases on its docket, while the Executive is concerned with the wasteful expenditure and misuse of time by its officers who may be hesitant to make decisions. However, it is also the responsibility of the Legislature, as one of the three branches of constitutional democracy, to address this issue.

To this end, a Parliamentary Committee on Litigation with powers similar to those of the Public Accounts Committee should be established. This committee would have the authority to review all litigation brought by or on behalf of the government, and to question the appropriateness of the decisions made in each case. By doing so, it could help ensure that future litigation is only pursued when necessary, and that resources are not wasted on frivolous or unnecessary legal battles. The committee would also have the power to request detailed information about the expenses incurred by the government, public sector undertakings, and other government departments in their litigation efforts, as well as to investigate specific cases where litigation was avoidable but still pursued. Additionally, the committee could look into the motivations behind government appeals in order to determine whether they are being pursued for extraneous or irrelevant reasons. Such a committee would hold government officials accountable for their decisions regarding litigation, and the composition of the committee should be decided by the Parliament itself.

Alternate Dispute Resolution:

Government departments and Public Sector Undertakings (PSUs) are increasingly turning to arbitration for resolving disputes related to drilling contracts, ship hiring, highway construction, and other matters. Therefore, it is crucial to draft commercial

[38]Law Commission of India 126th Report, 1988, Government and Public SectorUndertaking Litigation Policy and Strategies.

contracts with great care, including arbitration agreements, which should be given top priority. The Ministry of Law and Justice acknowledges its significant role in this regard.

It is important to promote the use of arbitration as an alternative to resolve disputes at all levels. However, it is also essential to ensure that such arbitrations are cost-effective, efficient, timely, and conducted with integrity. Unfortunately, in many cases, arbitration has become similar to court litigation, which must be prevented[39].

The lack of precision in drafting arbitration agreements often causes delays in arbitration proceedings, leading to disputes about the appointment of arbitrators and resulting in prolonged litigation before arbitration even begins. To avoid this, parties must take care to draft clear and accurate arbitration agreements that reflect their intentions, especially when leaving certain decisions to named individuals such as engineers who are not meant to be subject to arbitration[40].

Furthermore, some departments or corporations may have preferred arbitrators, but the selection of an arbitrator should be based solely on their knowledge, skill, and integrity, and not for extraneous reasons. It is important to ensure that the chosen arbitrator can devote sufficient time to expeditiously dispose of the reference.

In cases where an arbitration award goes against the government, it is common for objections to be filed challenging the award. However, these objections often lack merit and fall outside the scope of challenge before the courts. Therefore, routine challenges to arbitration awards should be discouraged, and parties should formulate clear reasons for challenging awards before deciding to file proceedings to challenge them.

Proper Use of Section 80, CPC:

The Law Commission of India has recommended amendments to the Civil Procedure Code, which includes deleting section 80 and providing a special procedure for government litigation, emphasizing the need for a just settlement of claims where the State is a party. The Commission argues that as the State's role and responsibility expand, it is unfair to contest the claims of poor employees seeking legal aid while formulating a humanist project. The Commission further states that the absence of notice would be hardly relevant in cases where the writ of mandamus or habeas corpus is involved, as the Court would insist upon the party making a demand for justice which, for all practical purposes, would tantamount to notice. In cases of writ of quo warranto, the government has enough advance information and no consideration should be given to a submission that the government did not receive notice in large areas of litigation (*Dilbagh Rai Jarry v. Union of India and Others*)[41].

In essence, the Law Commission of India's report stresses the need for a more sensitive approach to government litigation policy. The report argues that as the State's role and responsibility continue to expand, it is only fair to expect a finer sense of sensibility in the State's litigation policy. The recommendation to delete section 80 and provide a special procedure for government litigation reflects this need for a more proactive approach towards just settlement of claims where the State is a party.

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[39]National Litigation Policy, 2010

[40]Ibid

[41]AIR 1974 SC 130

Moreover, the report also sheds light on the importance of notices in certain types of cases. The report acknowledges that in cases involving writ of mandamus or habeas corpus, the Court would insist on the party making a demand for justice, which is akin to notice. However, in cases of writ of quo warranto, where the legality of occupying an office is questioned, the government already has enough advance information, and no consideration should be given to the submission that the government did not receive notice in large areas of litigation.

Overall, the Law Commission of India's report highlights the need for a more proactive and sensitive approach to government litigation policy. The report acknowledges the importance of notices in certain types of cases and recommends amendments to the Civil Procedure Code to ensure a just settlement of claims where the State is a party.