

Status Note on National Litigation Policy

As per Government of India (Allocation of Business) Rules, 1961, Department of Legal Affairs is mandated to conduct of cases in the Supreme Court, High Courts and all other courts on behalf of the Central Government. The courts' dockets are clogged by pending litigations. As per the Supreme Court website, as on 01.03.2015, total 61,300 cases are pending before the Supreme Court. As on 31.03.2014, total 44,79,023 cases were pending in the High Courts. In Districts and Subordinate Courts, as on 31.03.2014, total 2,73,60,814 cases were pending. Out of these pending cases, many litigation are undertaken or contested by the Government, both States and Central, and public sector undertakings. It is often said that the Government is the biggest litigant.

2. Repeatedly it is pointed out that the indifference of the Government compels people to come to courts in search of relief and thus the Government enjoys the dubious distinction of being the largest litigants in the courts involving a big draught on public exchequer. Commenting on the absence of litigation policy on the part of the State, Justice Krishna Iyer in *Dilbagh Rai Vs. UOI & Ors.* AIR 1974 SC 130 has observed as follows:

"The judgment just delivered has my full concurrence but I feel impelled to make a few observations not on the merits but on governmental disposition to litigation, the present case being symptomatic of a serious deficiency. In this country the State is the largest litigant to-day and the huge expenditure involved makes a big draft on the public exchequer. In the context of expanding dimensions of State activity and responsibility, is it unfair to expect finer sense and sensibility in its litigation policy, the absence of which, in the present case, has led the Railway callously and cantankerously to resist an action by its own employee, a small man, by urging a mere technical plea which has been pursued right up to the summit Court here and has been negatived in the judgment just pronounced."

Justice Iyer, further stated, "It is not right for a welfare State like ours to be Janus-faced and while formulating the humanist project of legal aid to the poor, contest the claims of poor employees under it pleading limitation and the like.

3. Again in the case of *State of Punjab v. Geeta Iron & Brass Works Ltd.*, (1978) 1 SCC 68, Supreme Court made following observations regarding litigation policy of the Government:

"We like to emphasise that Governments must be made accountable by Parliamentary social audit for wasteful litigative expenditure inflicted on the community by inaction.An opportunity for settling the dispute through arbitration was thrown away by sheer inaction. A litigative policy for the State involves settlement of governmental disputes with citizens in a sense of conciliation rather than in a fighting mood. Indeed, it should be a directive on the part of the State to empower its law officer to take steps to compose disputes rather than continue them in Court. We are constrained to make these observations because much of the litigation in which Governments are involved adds to the case load accumulation in Courts for which there is public criticism. We hope that a more responsive spirit will be brought to bear upon governmental litigation so as to avoid waste of public money and promote expeditious work in Courts of cases which deserve to be attended to."

4. In respect of court cases between one Departments of the Government with other or between one Department of the Government and PSU, the Apex court in the case of *Chief Conservator of Forests v. Collector*,(2003) 3 SCC 472, has made following observations:

"It was not contemplated by the framers of the Constitution or CPC that two departments of a State or the Union of India will fight litigation in a court of law. It is neither appropriate nor permissible for two departments of a state or the Union of India to fight litigation in a court of law. Indeed, such a course cannot but be detrimental to the public interest as it also entails avoidable wastage of public money and time. Various departments of the Government are its limbs and, therefore, they must act in coordination and not in confrontation. Filing of a writ petition by one department against the other by invoking the extraordinary jurisdiction of the High Court is not only against the propriety and policy as it smacks of indiscipline but is also contrary to the basic concept of law which requires that for suing or being sued, there must either a natural or a juristic person. The States/Union of India must evolve a mechanism to set at rest all interdepartmental controversies at the level of the Government and such matters should not be carried to a court of law for resolution of the controversy."

5. In its 126th Report on "Government and Public Sector Undertaking Litigation Policy and Strategies", the Law Commission expressed the need of having a Litigation Policy to avoid litigation or reduce it at any cost which will bring down the load on the court system resulting in reduction of expenses on judicial set up.

6. The Ministry of Law and Justice, earlier held a 'National consultation for strengthening the judiciary, towards reducing pendency and delays', on 24th and 25th October, 2009 on how best to tackle problem of huge pendency in courts. The resolution presented by the then Minister of Law and Justice in the said consultation acknowledged the initiative undertaken by the Government of India to frame a National Litigation Policy (NLP) with a view to ensure conduct of responsible litigation by the Central Government and urges every State Government to evolve similar policies.

7. To implement the said Resolution, Department of Legal Affairs, formulated a National Litigation Policy in the year, 2010 and launched the same on 23rd June, 2010. The National Litigation Policy, 2010 was based on the recognition that Government and its various agencies are the pre-dominant litigants in courts and Tribunals in the country. Its aim is to transform Government into an Efficient and Responsible litigant. This policy was also based on the recognition that it is the responsibility of the Government to protect the rights of citizens, to respect fundamental rights and those in charge of the conduct of Government litigation should never forget this basic principle. However, the said Policy of 2010 could not be implemented.

8. The said National Litigation Policy of 2010 has been reviewed and formulation of a National Litigation Policy, 2015 is under consideration of the Government with a view to bring down pendency and reduce the Government Litigation.