# Tackling government litigation

It is trite to say that the government is the biggest litigant in India. No less than the Prime Minister and the Chief Justice of India have acknowledged this in the recent past, goading the other — the judiciary and the executive, respectively — to explore ways of addressing this issue. The solutions to the issue that have been proposed so far have failed to understand the underlying causes.

According to the Ministry of Law and Justice, government departments are a party to around “46 percent” of court cases. This figure, albeit unverified, hides more than it reveals about the nature and extent of the problem of government litigation. For a start, it does not tell us what the term “government” means. To a layperson, everything from a local panchayat to the Prime Minister’s Office could be representative of the “government”. In addition, entities such as nationalised banks and universities, which most laypersons may not identify as “government’, are “State” for the purposes of Article 12 of the Constitution. Thus, any attempt at resolving the issue of “government litigation” must be based on the premise that the government in India functions in so many myriad forms that a one-size-fits-all approach to deal with the issue is impossible.

A misconception regarding government litigation is that the government itself is a source of all cases involving the government. This appears to be the reason why existing policies attempt to address the issue of “government being a compulsive litigant” and do not consider cases where the government is a respondent. As a Vidhi Centre for Legal Policy report on the Supreme Court shows, only 7.4% of fresh cases filed before the court in 2014 were by the Central government. An ongoing study at Vidhi of writ jurisdiction of the Karnataka High Court seeks to shed light on this significant, yet ignored, aspect of government litigation.

The writ jurisdiction vested in High Courts under Article 226 of the Constitution enables an ordinary citizen to access the highest court in her State to address grievances against any authority, including any government, for violation of any of her fundamental or other rights. As such, the number and nature of writ petitions filed before a High Court are indicative of the extent of friction between citizens and the government. Data for the year 2016 show that writ petitions constitute nearly 60% of all fresh cases filed before the Karnataka High Court. Further, a study of the respondent profile of writ petitions filed over five years (2012-16) shows that nearly 80% of them are filed against a combination of the State Government; parastatal agencies such as the Karnataka State Road Transport Corporation, universities, etc.; and local bodies such as the Bangalore Development Authority and the Bruhat Bengaluru Mahanagara Palike. Most of these petitions filed against the State government are in relation to service, land revenue, land acquisition and education. Those against parastatal agencies such as KSRTC are in relation to service and labour-related matters, while those against local bodies are service, land acquisition and tax-related.

This analysis of petitions filed against the state at various levels of governance shows that a multi-pronged approach needs to be adopted to tackle the issue of “government litigation”, depending on the kind of litigation. For example, to reduce writ petitions filed under service and labour classifications, the state must put in place robust internal dispute resolution mechanisms within each department which inspire confidence in its workers as a means of addressing their grievances against the management.

On the other hand, a study of land acquisition matters reveals that such petitions are mostly filed to challenge orders passed by quasi-judicial authorities on grounds of a violation of principles of natural justice or other basic principles of law. To reduce the incidence of such writ petitions, the state must either ensure that quasi-judicial authorities are judicially trained or create a separate class of judicial officers to discharge quasi-judicial functions.

So far, the policies aimed at addressing the supply-side issues of government litigations are found to be lacking in data, research and analysis. A broadly worded policy such as the National Litigation Policy (2010) only provides a distant goalpost of transforming government into a “model litigant”. However, what is needed is an implementable action plan to ensure that citizens are not forced to file cases against the government and its agencies in the first place. This will require a relook at the functioning of litigation-prone departments and formulating solutions unique to each department.

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Marriage is a civil contract — adultery or divorce should have only civil consequences

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