AILF INSIGHTS · COURTS AND DELAY

The government as litigant: reducing the State's share of court cases

Government departments are party to a large share of cases in India's courts. Why this happens and how litigation policy can change it.

The Union and State Governments, with their departments, public sector undertakings and authorities, are together regarded as the largest litigant in India's courts. Judges, Law Commissions and Ministers have all said so. If the State litigated less, the courts would have more time for everyone else.

Why the State is so often in court

- **Scale.** Government touches tax, land, employment, pensions, contracts and licences.
- **Caution.** An officer who decides not to appeal may be questioned later. Filing an appeal is the safe course, even when the case is weak.
- **Service matters.** Disputes between government and its own employees form a large category.
- **Inter-departmental disputes** that could be settled administratively.
- **Automatic appeals** in tax and revenue matters, sometimes for small amounts.

What has been tried

Governments have adopted litigation policies that call for the State to be a responsible litigant: to avoid unnecessary appeals, to stop pursuing cases on technical points and to prefer settlement. Monetary limits have been set below which tax appeals are not filed. Mechanisms exist to resolve disputes between departments and public undertakings without going to court. Progress has been real but uneven.

What would make a difference

Empower the decision not to appeal. A reasoned decision to accept a judgment should protect the officer who makes it.

Screen appeals. A legal committee in each department should certify that an appeal has merit.

Follow settled law. Where the courts have decided a question, departments should apply it to similar cases without requiring each citizen to sue.

Use mediation. Commercial disputes with contractors and suppliers are well suited to it.

Publish data. Each department's pending cases, success rate and costs should be visible.

Appoint capable counsel and brief them properly. Many adjournments are sought because government counsel have no instructions.

Where law firms come in

Firms advise both sides of this relationship. They act for citizens and companies against the State, and many advise public bodies. They can encourage settlement, help public clients review their dockets and train government law officers.

The public interest

Every needless government appeal costs twice: once in public money spent on the case, and again in the court time taken from other citizens. A State that litigates only when it should is a State that respects both its people and its courts.

Reducing government litigation needs no new law. It needs the will to decide, and the confidence to stop.

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