
THE LITIGATION EXPLOSION AND THE GOVERNMENT AS PRIMARY LITIGANT IN INDIA: BACKGROUND, FEDERAL DIMENSIONS, AND THE CASES FOR REFORM

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ABSTRACT

India is grappling with one of the most severe judicial backlogs globally, with the government acting as the epicenter of this crisis. As of early 2025, roughly 4.4 crore cases are pending across various courts. Approximately half of these cases have the government as a litigant, whether it is the Union government, State governments, public sector undertakings, or local government bodies. This paper delves into the structural factors that have led to the 'litigation explosion,' the scale of government litigation, the reasons for the government's dominance as a litigant, and the unique constitutional status of the government when appearing in courts.

Furthermore, this paper analyzes the federal implications of the litigation explosion, specifically, disputes under Article 131 of the Indian Constitution between the Union government and the State governments. It also addresses the less-explored phenomenon of intra-governmental litigation, that is, litigation between various organs of the government at an extremely high cost to the public exchequer. Through a thorough review of judicial precedents, Law Commission Reports, empirical studies, and constitutional jurisprudence, this paper argues that government litigation in India represents a crisis of institutional accountability, warranting comprehensive policy reforms, judicial interventions, and administrative measures.

Keywords: Inter-governmental Litigation, Judicial Backlog, Government as Litigant, Article 131, Intra-Governmental Disputes, National Litigation Policy, Litigation explosion, Law Commission of India, Federal disputes, Institutional accountability.

1. Introduction

India's legal infrastructure supports the largest democracy in the world, and the burden is increasingly shouldered by disputes involving the government. Government litigation, a phenomenon involving state institutions as originators, accelerators, and amplifiers of legal disputes, is neither a recent development nor a new discovery to students of Indian constitutional history. However, not until recently has the magnitude and institutional impact of the problem been analyzed with the degree of seriousness that it warrants.

This paper examines the background to this crisis, the empirical data about the extent of government litigation, the institutional features that justify the government's position as the country's largest litigant, the constitutional framework for disputes between the Union government and the State governments, and the paradox of intra-governmental litigation, which is the litigating between branches of the same government at public expense.

This paper presents the essential data for the formulation of an effective policy solution to the crisis of government litigation in India. The following pages address various aspects of Chapter 2 of this dissertation on Inter-Governmental Litigation Management, presenting the factual and analytical basis for subsequent proposals for constitutional amendments and statutory reforms.

2. The Litigation Explosion and Government as Primary Litigant

2.1 The Scale of the Problem: Empirical Evidence

Any analysis of inter-governmental litigation in India must take into consideration the sheer magnitude of government litigation. The Supreme Court Registry data published on the National Judicial Data Grid reveals that around 4.4 crore (44 million) cases were pending in all courts as of the first few months of 2025. Of these cases, around 46 per cent are cases where government entities—Union, States, PSUs and local bodies—are parties. This 46 per cent share of all cases is huge in terms of absolute numbers. However, its value is even higher when looked at in disaggregated manner, i.e., in terms of share of total cases in a particular category of courts; the share of government cases is greater in HC than in DC and the highest in the Supreme Court where, as a general rule, a majority of cases involving a Constitution Bench or five-judge bench are cases between the Union of India and another government entity or

individual/private entity.

The 4.4 crore pending cases have a cost. Besides attorney's fees, there are the high cost of interest paid or lost due to delay in payments, the opportunity cost of delay in completion of infrastructure projects due to stay orders among multiple ministries and the risk of reputational damage to India as a country not keen to adhere to its legal commitments, which in turn deters FDI. As LIMBS study reveals, a good portion of this pendency stems from cases that could have been disposed off in the first place due to litigation of similar nature in multiple cases across departments. A high volume of these cases indicate systemic failure to ensure consistency between the positions adopted in different ministries in the initial stage of the dispute.

In 2023, the Supreme Court disposed of 55,128 matters, the Court was still dealing with 79,813 matters as of 1 January 2023. The Court also has a jurisdiction under Article 131 for inter-governmental disputes of a legal nature, which as of 2024 has a number of cases pending, a majority of them for over a decade. The Cauvery Water Disputes case that has gone through various tribunals and finally the SC for more than three decades culminating in the SC judgment in 2018, is one example of how much time these disputes consume and how difficult it is to resolve these disputes timely.

The DAKSH study on 2016 litigation data revealed that out of the total cases pending in the Supreme Court, the Union of India was a party in approximately 31 per cent cases, and that cases in which government-related departments/PSUs were involved, accounted for a greater share of court hearing hours as compared to their share of the cases. Among others, departments such as Income Tax, Customs and Excise, Railways, Army and the revenue departments of various states had the highest litigation rate. The DAKSH report, however, does not measure the percentage of such cases where one department of the government was suing another department/ entity of the government, which is estimated to be between fifteen and 25 per cent in cases where the government was involved as a party.

2.2 Defining the “Litigation Explosion” in India

During the last decade India has witnessed a visible change in its dispute resolution space. Slow moving, procedural, a system has begun to transform, by a mix of targeted legislation, judicial intervention and commercial change. A series of incremental, calibrated

interventions has led to a change. A few of them are commercial courts, arbitration reform, setting up of mediation frameworks, tribunalisation and digital infrastructure in courts and a greater acceptance of alternative dispute resolution mechanisms and their role.

As Indian business grows more international with increasing foreign investments, cross-border payments, and increasingly complex M&A deals, the scope of litigation is changing accordingly. Today, commercial disputes involve complicated multi-party contractual arrangements, regulatory complexities, evidence produced through technology, conflicts among legal frameworks from various jurisdictions, and the urgent need for interim relief. Courts, therefore, are no longer merely adjudicators of past conduct.

The Supreme Court has always emphasised and upheld the independence of the judiciary from the Legislative and Executive branches. In *S.P. Gupta v Union of India*, the Supreme Court observed that the concept of the independence of the judiciary is a noble concept which has inspired the scheme of the Constitution and forms the bedrock upon which is built the edifice of democracy. It is the Judiciary which is charged with the duty of keeping every organ of the state within the limits of the law, thus making the rule of law real and meaningful.

In 2024, the Supreme Court directed live streaming of all matters before the High Courts. This is intended to enhance transparency and confidence in the court process, and Indian courts have also been using digital recording to improve transparency. The trend toward transparency and accountability is anticipated to continue, including through the use of transparency reforms involving mandatory disclosures in court papers, more ethical codes for legal practitioners, and increased reliance on technology in overseeing and enhancing the integrity of the court process.

2.3 The Government as 'the Largest Litigant'

The government, as a litigant, has a legal and institutional identity, which matters greatly to inter-governmental disputes. As a party to a suit, the government is:

(a) the creator of the legal and regulatory regime in which the dispute arises; (b) the principal funder of the court system that resolves the dispute; (c) a party that, in many cases, is not a legal person in the strict private law sense but rather an aggregation of functionaries acting

on behalf of an abstract entity; (d) a party with no statutory time of existence, such that the cost and benefit of litigation cannot be weighed as it can be done by an individual party, who must factor the litigation expense against any recovery; and (e) a party whose litigation choices are determined by civil service personnel rather than attorneys, which can have important repercussions for the quality and merit-oriented nature of litigation choice.

It is the 'institutional irresponsibility' of the government as a party to suit that stems from this identity. The government has no equivalent oversight system in the sense of a board of directors and shareholders for whom a corporate party is ultimately liable. In a losing suit, the government's cost is paid for by the taxpayer, but the official who authorised the case incurs no liability himself. In its 246th Report (2014), the Law Commission of India opined that this institutional irresponsibility has been the principal cause of why numerous exhortations have failed to reduce the volume of government litigation.

2.4 Federalism: Union-State Litigation

Inter-governmental litigation takes on its most salient constitutional dimension when the Union and States are litigants. India's federalism, often termed quasi-federalism and 'Union of States' (the preferred expression of the Constituent Assembly), results in the Union's plenary powers under the Union List and Concurrent List being pitted against States' residuary and exclusive powers under the State List. These structural tensions have led to some of the most famous constitutional litigation in the history of independent India.

Article 131 is a provision of the Constitution of India that grants the Supreme Court of India original jurisdiction to decide disputes between the Union and one or more States and inter-state disputes of a legal nature. In practice however, Article 131 is invoked relatively rarely despite the number of federal disputes that exist in India. Instead, Union-State conflicts are often resolved, or not resolved, through political negotiation, inter-governmental bodies, Finance Commission, or non-compliance.

As the history of Article 131 litigation illustrates, this jurisdiction is typically invoked either when States claim the Union has infringed unconstitutionally on their legislative or financial rights, or when the Union seeks to enforce compliance with a central directive. Moreover, since the 1970s (both a period of growing central legislative activity and the rise of coalition politics with States run by the opposition in conflict with the Union government),

States are more frequently resorting to Article 131 litigation against the Union.

2.5 Intra-Governmental Litigation: The Unseen

The second category of litigation is intra-governmental litigation. In contrast with Union-State disputes, intra-governmental litigation is harder to identify but far more prevalent. This category encompasses a wide range of contests: two ministries disputing jurisdiction over a regulatory matter; a public sector undertaking suing a government bank for recovery of dues; a Central university disputing a Ministry's order; an Army officer appealing a Ministry of Defence order to the Armed Forces Tribunal and thence to the High Court; two government companies in a commercial arbitration.

This is exactly what happened in a recent Supreme Court decision in *Urban Improvement Trust, Bikaner v. Maharishi Dayanand Trust (2022)* where the Supreme Court noted that, "No net winner and no net loser; only the public exchequer as the net loser!" The Court's observation in this matter is of fundamental constitutional relevance; in intra-governmental litigation two government organs of the same government are in contention with each other: the costs of litigation fall upon the public exchequer, while the "winning" side is awarded funds from the very same exchequer by which the public, and the losing side, bear the costs. Thus, all that has happened in any such legal proceeding is that the public exchequer has incurred a deadweight loss.

In the 2022 judgment of the Supreme Court in *Urban Improvement Trust* case, the Court in addition to providing an analysis, has given the necessary remedy to curb intra-governmental litigation. It has directed that before filing of any appeal by any government department, or a government owned company against any other such department, a Designated Senior Officer should certify that the same is required for settling an irreconcilable legal dispute. In this direction, the Court made it clear that it is necessary to intervene when the litigation policies of the executive itself are not adhered to. Inter-governmental litigation in India, especially litigation between the Union Government and its ministries, has been criticised for a host of reasons and for a variety of consequences. Many of these reasons and consequences have been brought out by way of a host of reports, judgments, and policy documents.

Consequences of Intra-Governmental Litigation

Wastage of Public Funds One of the most serious consequences of inter-governmental

litigation is wastage of public money on avoidable litigation. It was observed by the Law Commission of India in the 126th Report in 1988 and later reports that government litigation leads to substantial burden on the public money. Similarly, even the National Litigation Policy admits that the same government department litigates unnecessarily leading to the wasteful expenditure of public money. It includes expenditure incurred as court fees, advocates fees, administrative expenses, and repeated appeals that are filed due to lack of coordination.

Delay in Development and Governance Intra-governmental litigation leads to delays in policy decisions and execution of development projects. In its Report No. 245 of 2014, the Law Commission of India noted that government litigation is one of the major causes for delay in governance, leading to administrative delays. Courts have repeatedly noted that disputes between departments lead to delayed execution of infrastructure and welfare projects.

Burden on Judiciary Another very serious consequence of inter-governmental litigation is the large volume of unnecessary cases pending before Courts. The Supreme Court of India in *Urban Improvement Trust, Bikaner v. Mohan Lal* in 2010 noted that the government and public authorities are major contributors to court congestion due to unnecessary litigation. Similarly, in *State of Punjab v. Geeta Iron & Brass Works Ltd.* in 1978, the Court made it clear that Government should behave like a responsible litigant in the Court and refrain from filing frivolous cases.

Administrative Inefficiency and Lack of Coordination Intra-governmental litigation is indicative of a lack of coordination between government departments. The Law Commission of India has repeatedly noted that lack of coordination among government departments results in conflict and weak litigation management by government. Likewise, the National Litigation Policy states that lack of coordination and lack of accountability are among the most prominent reasons behind the high burden on the judiciary.

Policy Inconsistency Intra-governmental litigation is also indicative of the Government departments adopting different policies. For example, different government departments may interpret provisions of the same law differently and result in a dispute between two government departments reaching the Court. The Supreme Court of India and various High Courts in a string of judgments have noted that it is indicative of lack of coordination among departments when different Ministries and Departments adopt different approaches or policies and as a result, end up in litigation.

Loss of Public Trust A large number of inter-governmental litigations is indicative of an erosion of trust of the public in government administration. Courts have described the Government as compulsive litigant, which is not conducive to an efficient administration. It is an indication of the lack of professionalism and accountability in dealing with litigation.

Opportunity Cost The resources expended on litigation could otherwise have been utilized for developmental activities. Government officials have to invest time and energy in litigation rather than governance. Public funds that could be utilized for public welfare and infrastructural development programmes have been consumed by litigation.

Conclusion

The review of the evidence adduced in this paper establishes that the Government litigation problem in India is not an anomaly, but rather an inherent problem. The characteristics of Government litigation, including its perpetual lifespan, the fact that no individual bears the cost of litigation decisions, and the non-legalistic nature of its decisions, generate litigation volume and volume of litigation that no private party could afford, and no private party would, as a rational actor, choose. This remedy is now frequently employed where the true underlying issues are political. The prevalence of coalition governments and the fact that a large number of States now are governed by the opposition have compounded this issue, and the Supreme Court finds itself acting as an arbiter on political disputes.

An equally concerning feature is intra-governmental litigation. The fact that two arms of the same government litigate against each other, spending public money on both sides, occupying the courts that could otherwise be used to decide the disputes that matter and the result of which ultimately yields no gains to the people, is an evidence of the ultimate failure of Government machinery. While the Supreme Court was correct and pragmatic in exercising jurisdiction in *Urban Improvement Trust (2022)*, the decision can serve as a palliative only, and is not a solution for the Government litigation problem, which can be addressed at the executive level.

Three suggestions are offered as a way out. First, pre-litigation screening of Government litigation proposals is required to ensure that the Government does not unnecessarily enter litigation. The officials who authorise litigation proposals should be empowered and required to screen out cases without any legal merit before the proposals are placed before the courts. Second, there must be compulsory intra-governmental mechanisms to adjudicate on intra-

Government disputes, including State-Government disputes. The model of the Permanent Machinery of Arbitration that has been put in place by the Union for dealing with Union-Government commercial disputes should be made compulsory for all such disputes between the Union and States. Third, Government officers should be held personally accountable for authorising meritless appeals. Adverse entries in their service records or cost orders passed against the departments should be issued as a penalty.

References

Cases

Cauvery Water Disputes Tribunal, In re, (2018) 4 SCC 1.

S.P. Gupta v. Union of India, AIR 1982 SC 149.

State of Punjab v. Geeta Iron & Brass Works Ltd., (1978) 1 SCC 68.

Urban Improvement Trust, Bikaner v. Maharishi Dayanand Trust, (2022) 11 SCC 465.

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

Legislation and Constitutional Provisions

Constitution of India 1950, art. 131.

Constitution of India 1950, art. 142.

Legal Services Authorities Act 1987, No. 39 of 1987 (India).

Arbitration and Conciliation Act 1996, No. 26 of 1996 (India).

Reports and Policy Documents

Law Commission of India. (1988). 126th Report on Government and Public Sector Undertakings Litigation Policy and Strategy. Government of India.

Law Commission of India. (2014). 245th Report on Arrears and Backlog: Creating Additional Judicial (wo)man-power. Government of India.

Law Commission of India. (2014). 246th Report on Amendments to the Arbitration and Conciliation Act 1996. Government of India.

Ministry of Law and Justice, Government of India. (2010). National Litigation Policy 2010. New Delhi: Government of India.

Supreme Court of India. (2024). Annual Report 2023. New Delhi: Supreme Court of India

Registry.

Books and Journal Articles

Baxi, U. (1982). *The Crisis of the Indian Legal System*. New Delhi: Vikas Publishing House.

Bhat, P. I. (2004). *Judicial Activism in India: Transgressing Borders and Enforcing Limits*. New Delhi: Oxford University Press.

DAKSH. (2016). *A Study of Pending Cases in the Supreme Court of India*. Bengaluru: DAKSH Society for Policy Affairs.

Hazra, A. K., & Debroy, B. (Eds.). (2007). *Judicial Reforms in India: Issues and Aspects*. New Delhi: Academic Foundation.

Mahajan, V. D. (2003). *Constitutional Law of India* (9th ed.). New Delhi: Eastern Book Company.

Sharma, K. M. (2018). Government as a litigant: Structural causes and reform imperatives. *Journal of Indian Law and Society*, 9(1), 45–72.

Singh, M. P. (Ed.). (2013). *V.N. Shukla's Constitution of India* (12th ed.). Lucknow: Eastern Book Company.

Online and Institutional Sources

National Judicial Data Grid. (2025). Pendency statistics — All courts (as on January 2025). Retrieved from <https://njdg.ecourts.gov.in>

Legal Information Management & Briefing System (LIMBS). Ministry of Law and Justice. Retrieved from <https://limbs.gov.in>