The Problem of Excessive Government Litigation

A litigant is person who is involved in a lawsuit ie. someone who is suing another person or is being sued by another person. Government litigation reportedly constitutes nearly half of all litigation in the Indian judiciary. In this post let us examine the problem of excessive government litigation and the need for reviewing the National Litigation Policy, 2010.

Government litigation constitutes nearly half of all litigation in the Indian judiciary

- There are more than 3 crore cases pending in different courts of India.
- Government litigation reportedly constitutes nearly half of all litigation in the Indian judiciary.
- However, there are no government sources to confirm the actual quantum of its litigation.
- The absence of this statistic itself is an indicator of how 'interested' various governments have been in attempting to understand this problem or tackling it meaningfully.
- Besides being a constraint on the public exchequer, government litigation has contributed to judicial backlog, thus affecting justice delivery in India.
- The Supreme Court, since the 1970s, has berated successive governments for being callous and mechanical in pursuing litigation.
- The Law Commission of India also studied this problem in its 126th Report in 1988,

and made appropriate observations on this front.
- In 2016, the Prime Minister of India, Narendra Modi broached the problem of excessive government litigation.

In more than 90% cases, the Government side fails to prove the point!

Many of the government litigations are actually cases of one department of the government suing another, leaving decision-making to the courts. Also, it most of the other cases, when government files a case, it is seen that the government side fails to prove the point.

Also read: Index of Industrial Production (IIP) - All About The New IIP Series (2011-12)

National Litigation Policy (NLP), 2010

The concept of a national litigation policy has been explored by many countries. The Australian Taxation Office, for example, conducts its litigation in accordance with the PS LA 2009/9 Conduct of Tax Office Litigation, which is an elaborate set of guidelines obligating the government to be a model litigant.

The Law Minister in the United Progressive Alliance government had launched a "National Litigation Policy" (NLP) in 2010 to transform the government into a "responsible and efficient" litigant.

The policy idealistically states that there should be greater accountability regarding governmental litigation, and mandates "suitable action" against officials violating this policy.

The NLP 2010 also creates "Empowered Committees" at the national and regional levels, to regulate the implementation of the policy

Why did NLP 2010 fail?

- The NLP has failed as an initiative due to ambiguity.
- The NLP 2010 has no scope for implementation.
- It is replete with rhetoric and generic phraseology.

- Instead of being an analytical policy document attempting to address the causes of excessive government litigation, it appears to have been drafted on anecdotal notions of the problem, with no measurable outcomes or implementation mechanism.
- The NLP 2010 fails to provide a yardstick for determining responsibility and efficiency.
- The text does not define "suitable action", or prescribe any method to conduct any disciplinary proceedings.
- There is ambiguity about their role and powers of Empowered Committees, resulting in lack of transparency in their functioning. While these committees are intended to be integral to the accountability mechanisms under the policy, the ambiguity in their roles and functions make them susceptible to a constitutional challenge.
- The NLP 2010 also lacks any form of impact assessment to evaluate actual impact on reducing government litigation. This absence of a monitoring mechanism is evident from the fact that there is no data available even today to accurately verify the extent of government litigation in India. Without such evaluation, this litigation policy remains a theoretical, ambiguous and fairly inadequate document on the pretext of policy reform.

The way forward

In 2015, after the National Democratic Alliance came to power, there was a discussion to review the NLP. This is yet to culminate in a revised NLP.

The bureaucracy needs to be sufficiently motivated to tackle the issue.

Finally, the ongoing revision of the NLP needs to ensure certain critical features are not missed out:

1. It must have clear objectives that can be assessed;
2. The role of different functionaries must be enumerated;
3. The minimum standards for pursuing litigation must be listed out;
4. Fair accountability mechanisms must be established;
5. The consequences for violation of the policy must be provided;
6. A periodic impact assessment programme must be factored in.

Reference:

1. The Hindu
2. Wikipedia