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ON

GOVERNMENT AND PUBLIC SECTOR UNDERTAKING LITIGATION POLICY AND STRATEGIES

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CHAPTER I

INTRODUCTION

1.1. The central objective of planning in India, as envisioned in 1952, was to initiate a process of development which will raise living standards and open out to the people new opportunities for a richer and more varied life. This reiterates the directive principle enunciated in article 46 of the Constitution that 'the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation'. An under-developed economy is characterised by the co-existence, in greater or lesser degree, of unutilised or under-utilised manpower on the one hand and of the unexploited natural resources on the other. A nation, like an individual, has to work out its inner potentialities by a process of experimentation. One such experimentation was of economic planning for a transformation of the society along right lines. That was the genesis of the First Five Year Plan. A planned economy aiming at the realisation of larger social objectives entails a vast increase in governmental functions.[1] The essentials of Government policy in the sphere of industrial development have been stated in the Industrial Policy Resolutions of 1948 and 1956. The first Resolution lists certain industries like the manufacture of arms and ammunition, the production and control of atomic energy and the ownership and management of railway transport as being reserved exclusively for the Central Government. In the case of certain other industries also, such as, coal, iron and steel, aircraft manufacture, ship building, manufacture of telephone, telegraph, wireless apparatus and mineral oils, the State, including the Central and State Government and other public authorities, will be responsible for further development except to the extent that it regards the co-operation of private enterprise necessary for the purpose. The rest of the industrial field is to be open to private enterprise, individual as well as co-operative, but the State will intervene whenever the progress of any industry under private enterprise is found to be unsatisfactory.[2] This led to the enactment of the Industries (Development and Regulation) Act, 1951. The principal object of the Act was to enable the Government to implement its policy for the development and regulation of industries along the lines stated in the 1948 Resolution and in the First Plan document.

1.2. It became crystal clear that there were certain core industries which required a heavy capital outlay and in which the energising factor of profit in private sector will have relatively low profile. This led to the increasing participation of the Government in industrial development which, in turn, led to the question of the appropriate organisation for enterprises in public sector. The setting up of industries reserved for public sector by being managed by the Departments of the Government came in for a lot of criticism. The drawbacks of departmental management of public enterprises are well known. Successful management of such enterprises requires a great deal of initiative and power to take quick decisions on the part of the executives incharge and this can hardly be secured if the enterprise is directly under a Government department. On the other hand, the extent of autonomy which can be insisted upon for such enterprises at the present stage is a matter on which a definite judgment cannot be hazarded except in the light of further experience. Several of the industrial undertakings directly under the Central Government have already been organised as joint stock companies with Board of Directors vested with power of management in the same manner as in any undertaking in private sector. Recent inquiries into the working of industrial enterprises in some of the States reinforce the desirability of organising these enterprises as entities independent of day-to-day governmental control. Accordingly, a policy decision was taken on the recommendation of the Planning Commission at the time of drawing up of the First Five Year Plan that industrial undertakings under the State Governments should be organised as joint stock companies and operated on business lines

with the internal management entirely under the control of the Board of Directors. The main principle to be followed is that such enterprises should not be subject to governmental control in their day-to-day administration but should, nevertheless, be accountable to the public which is their ultimate owner as well as beneficiary.[3]

State monopolies were to be created in specified areas of trade, commerce and industry but it was apprehended that those who would be excluded from the trade, commerce and industry taken over by State monopoly may challenge it as being violative of the fundamental freedom guaranteed by article 19(1)(g). This apprehension turned genuine when a monopoly of transport sought to be created by the U.P. Government in favour of state operated Bus Service was struck down as unconstitutional because it deprived citizens of their rights under article 19(1)(g).[4] In order to sustain and protect monopolies in favour of public sector undertakings from the challenge under article 19(1)(g), Parliament amended clause (6) of article 19 by the Constitution (First Amendment) Act, 1951, with effect from 18th June, 1951, by providing that nothing in clause (g) of article 19(1) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise. Amended clause (6) of article 19 enabled the State, according to exigencies of the case and consistently with the requirements of any trade, business, industry or service, to exclude the citizens either wholly or partially. Such State monopoly, based upon the theory underlying the amendment, does not appear to be based on the pragmatic approach, but on the doctrinaire approach which socialism accepts. The amendment clearly indicates that State monopoly in respect of any trade or business must be presumed to be reasonable and in the interests of general public, so far as article 19(1)(g) is concerned.[5]

1.3. These policy decisions led both the Central Government and the State Governments to set up corporations as instrumentalities of the State and yet, some of them were set up under an Act of the Parliament and some were registered as Government companies. State monopolies like Oil and Natural Gas Commission, Life Insurance Corporation and the Industrial Finance Corporation came into existence. Similarly, State Road Transport Corporations were set up under Road Transport Corporations Act, 1950, and State Finance Corporations were set up under State Financial Corporations Act, 1951. This is the genesis of public sector undertakings.

1.4. Undoubtedly, even though constitutional challenge to the validity of State monopolies, also styled as public sector undertakings, failed in view of the amendment of clause (6) of article 19, these public sector corporations were potential breeding grounds for conflicts. Two potential breeding grounds for conflicts surfaced over a period, viz., the conflict between the corporations and their large number of employees as well as the corporations and the consumers of their goods and services. Occasionally there were conflicts between two public sector undertakings as well as State and one or more public sector undertakings. The issue about their status and position in constitutional scheme figured before courts of law in conflicts between these public sector undertakings and their employees. The employees of the Government, both Central and State, enjoy certain protection under the Constitution. They had the protection of Part III of the Constitution as well as Part XIV of the Constitution. Even though the tenure of office of persons serving under the Union or a State was at the pleasure of the President or the Governor, as the case may be,[6] yet they cannot be either dismissed, removed or reduced in rank without following the procedure prescribed by article 311. Now the employees of the public sector undertakings felt alienated from the protection of Part III of the Constitution, though the undertakings themselves were the 'State' operating under a different garb. This raised a query as to what is the status and position of these public sector undertakings in, or in relation to, the constitutional scheme. The further enquiry was whether the expression 'State', as defined in article 12 of the Constitution, which included, *inter alia,* other authorities within the territory of India or under the control of the Government of India, would comprehend these public sector undertakings which are the instrumentalities

of the State. The State could have done what a monopoly was required to do under the garb of a public sector undertaking, either set up as a corporation under an Act or registered as a Government company as understood in Section 617 of the Companies Act, 1956. The question raised was what are those 'other authorities' which the founding fathers intended to comprehend in the expression 'State' in article 12. Scanning article 12, it was held that it 'winds up the list of authorities falling within the definition by referring to 'other authorities' within the territory of India which cannot obviously be read as *ejusdem generis* with either the Government and the Legislature or local authorities. The words are of wide amplitude and capable of comprehending every authority created under a statute and functioning within the territory of India or under the control of the Government of India. There is no characterisation of the nature of the 'authority' in this residuary clause and consequently it must include every type of authority set up under a statute for the purpose of administering laws enacted by the Parliament or by the State including those vested with the duty to make decisions in order to implement those laws'.[7] Developing this line of approach, Electricity Board of Rajasthan was held to be 'other authority' within the meaning of article 12 on the ground that other authorities in article 12 will include all constitutional or statutory authorities on whom powers are conferred by laws. It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities. Under the Constitution, the State is itself envisaged as having the right to carry on trade or business as mentioned in article 19(1)(g).[8] Despite this clearly enunciated legal position, Oil and Natural Gas Commission, Life Insurance Corporation and Industrial Finance Corporation, all State monopolies, raised the question whether they were 'other authorities' within the meaning of the expression in article 12. That put into focus the question what is the 'State'. 'To some people State is essentially a class-structure, an organisation of one class dominating over the other classes'; others regard it as an organisation that transcends all classes and stands for the whole community. They regard it as a power-system. Some view it entirely as a legal structure, either in the old Austinian sense which made it a relationship of governors and governed, or, in the language of modern jurisprudence, as a community 'organised for action under legal rules'. Some regard it as no more than a mutual insurance society, others as the very texture of all our life. Some class the State as a great 'corporation' and 'others consider it as indistinguishable from the society itself'.[9] A note of a salutary fact must be taken. "The tasks of government multiplied with the advent of the welfare state and consequently, the framework of civil service administration became increasingly insufficient for handling the new tasks which were often of a specialised and highly technical character. At the same time, 'bureaucracy' came under a cloud. The distrust of Government by civil service, justified or not, was a powerful factor in the development of a policy of public administration through separate corporations which would operate largely according to business principles and be separately accountable."[10] The question was then posed whether such a corporation is an agency or instrumentality of the Government for carrying on a business for the benefit of the public and the answer was in the affirmative. Once it became the instrumentality of the Government, it was comprehended in the expression 'other authorities' in article 12. Applying the same criteria, International Airport Authority set up under International Airport Authority Act, 1971, was held to be an instrumentality or agency of the Government and, therefore, comprehended within the expression 'other authority' in article 12.[11] Moving away from the dispute between employees and the corporation, in a dispute between a registered society which had set up an engineering college and the students seeking admission to the same, the status of society came in for consideration. The court, applying the well-established criteria, held the society registered under Jammu and Kashmir Registration of Societies Act, 1898, to be an instrumentality or agency of the State and the Central Government, and was, therefore, held to be an authority within the meaning of article 12.[12] Departing from the earlier view, it was held that the Council of Scientific and Industrial Research, a society registered under the Societies Registration Act, was not an instrumentality of the State.[13] The trend proceeded in the direction of clearly establishing that where a function of the State was carried on by a body established by the State, it is none-the-less an instrumentality of the State and, therefore, 'other authority' within the meaning of article 12 of the Constitution.[14] An attempt to distinguish

the case of a Government company, as defined in section 617 of the Companies Act, 1956, which would mean that it is a company in which not less than 51% of the paid up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, including its subsidiary, failed when Project and Equipment Corporation of India Ltd., a wholly owned subsidiary company of State Trading Corporation, which itself was a Government of India undertaking, was held to be an instrumentality or agency of the State and, therefore, governed by Part III of the Constitution.[15] It is thus now unquestionably established that either a corporation set up under a statute enacted by Parliament or State Legislature or a Government company or even a co-operative society if it satisfies certain criteria, namely, it is carrying on a public or Governmental function and is either aided by the State or its management is captive under the State, then, notwithstanding the form it has adopted, would be comprehended in the expression 'other authorities' in article 12 of the Constitution and would for practical purposes be State for the purposes of the Constitution.

1.5. If the public sector undertakings by and large are comprehended in the expression 'other authorities' in article 12 and are shown to be the instrumentalities and agencies of the State and hence 'the State' for all purposes, consistent, of course, with the purpose for which they have been set up, they should act like State and when a body is supposed to act like a State, amongst others, it must be fair and just and rational in its activities, in its relation to its employees, on the ground that the State is an ideal employer and its activities must be conducive to the formation and setting up of a welfare State. The ideal of the Constitution unquestionably is to set up a welfare State. And, apart from other things, the welfare State must eschew litigious attitude. This report deals with the problem of litigation policy and strategy of public sector undertakings as part of the ongoing programme of the Law Commission for recommending basic judicial reforms.

1.6. There is an alternative route which takes one to the same destination. The goal of setting up a Democratic Socialist Secular State was to be achieved by concrete steps taken towards implementing the Directive Principles of State Policy. One of the fundamental assumptions on which a welfare State can be founded is to so arrange the social order that in it justice, social, economic and political, will inform all institutions of national life.[16] It is, therefore, a safe assumption that Industrial Policy Resolutions would have twin objectives to be attained, namely, to avoid concentration of wealth and means of production to subserve the common good by distributing ownership and control of material resources of the community on instrumentalities of the State which are more or less expected to work on no profit no loss basis. The aims and objectives of the Constitution are clearly reflected in the Resolutions dated 6-4-1948 and 30-4-1956 laying down the industrial policy of the State which, amongst other things, required the State to progressively assume a predominant and direct responsibility for setting up new industrial undertakings. Public corporations, State holding companies and State controlled societies were chosen as the vehicles for translating this industrial policy into action-oriented programme. Whatever garb they may wear, their life and soul, bone and blood, is the State itself. They are limbs of the State and they exist for the sole purpose of running the huge apparatus of the State industry smoothly and efficiently in pursuit of the objectives of the State policy.[17] They should, however, be distinguished from a Department of the Government under the administrative control of any Ministry, otherwise a provision like sub-section (4) of section 32 of the Payment of Bonus Act, 1965, would create an unnecessary confusion. National Textile Corporation was appointed as an authorised controller under section 18A of the Industries (Development and Regulation) Act, 1951, for reviving a sick unit, called the Model Mills. As the workmen raised a demand for bonus for the period 1964-65 to 1967-68, it was sought to be countered by urging that on the appointment of an authorised controller, the Model Mills is an establishment engaged in an industry carried on by or under the authority of a Department of the Central Government and, therefore,

excluded from the operation of the Payment of Bonus Act. Negativing the contention, it was held that on the appointment of an authorised controller, only the management changes but the unit remains by itself a unit irrespective of the nature and character of management.[18] The stand taken by the employer that since the appointment of an authorised controller, the Model Mills becomes an establishment in an industry run by a Department of the Union Government betrays a very narrow outlook and self-defeating attitude because if the unit becomes a Department of the Government, it may at best go out of the tentacles of the Payment of Bonus Act but it would be subject to all the provisions of the Constitution. A clear policy statement was made that the public sector corporations or companies must run on commercial principles and in business like manner to achieve the goals and objectives set for them but eschewing all the private sector tantrums of exploiting workmen. In any view of the matter, as these corporations and companies have been held to be instrumentalities and agencies of the State, they are within the purview of Part III of the Constitution. However, these public sector undertakings, having acquired the format of a Government company or a corporation, have more or less betrayed an approach of the private sector when they lost the battle on the ground of application of Part III of the Constitution. An alternative was adopted by urging that Part XIV of the Constitution would not apply to the employees of these corporations and a Government company on the specious plea that the employees of these bodies are not members of a civil service of the Union or an all-India service or a civil service of the State or held a civil post under the Union or the State. The protection of Part XIV was sought to be avoided by this contention on their behalf. Even that stood negatived when the courts ruled that these public sector undertakings will be subject to the limitation on heir power imposed by article 14 in that they cannot act in an arbitrary manner or be guilty of discrimination and the actions qua not only their employees but even the consumers of their goods and services will have to be judged in the light of the constitutional culture.[19] To illustrate, a State Finance Corporation, after having entered into a contract to finance the project of setting up a five star hotel, backed out after the project was half through, leaving the victim to the so-called remedy of a suit for damages for a breach of contract because it was contended that contractual obligations even of a public sector undertaking, which is an instrumentality of the State, cannot be enforced by a high prerogative writ. This last attempt equally failed and the State Finance Corporation, by a writ of *mandamus,* was directed to fulfil its obligation of financing the project within the limits agreed upon.[20]

1.7. Keeping in abeyance for the time being the question of treating all public sector undertakings as being within the comprehension of article 12 of the Constitution, their role as public sector undertakings must be emphasised by specifically contrasting them with private sector enterprises in contradistinction to which they were brought into existence. The Industrial Policy Resolution aimed at reducing disparities in income and wealth which were then existent, to prevent private monopolies and concentration of economic power in different fields in the hands of small numbers of individuals. The State, therefore, resolved to assume a predominant and direct responsibility for setting up new industrial undertakings and other service facilities. In certain commodities, State trading was to be accelerated; the adoption of the socialist pattern of society without the word 'socialist' being in the preamble was accepted as a national objective; the economic planning was to aim at rapid development; and, with this end in view, all industries of basic and strategic importance or in the nature of public utility services were to be in the public sector. High capital intensive industries, which the State alone can undertake without being influenced by the fact of a profit motive in short term, were also to be in the public sector.

1.8. The ground norms were laid for mixed economy. But over a period, the demarcating line between the public sector and private sector is becoming dim. If private sector were to imply that the capital for setting up industrial units will be provided by the entrepreneurs and where the State financed the project either wholly or substantially, the industrial undertaking would be treated as one in public sector, then this has become a euphemism. A survey would show that the so-called private sector undertakings mobilise their financial resources from the public without the entrepreneur in any way

becoming personally responsible about the liability to return the money. If Balance Sheet of any big private sector undertaking is analysed, it will appear at a glance that those in management, have mobilised all financial resources from the public, *to wit,* share capital, loans and deposits from public, bonds and debentures, borrowing from nationalised banks, Industrial Development Bank of India, Industrial Credit and Investment Corporation of India and such public financing houses. The family controlling the management hardly has one per cent. or less holding in the capital. On the other hand, a public sector undertaking is financed wholly by the State or by share capital, majority of which is held by the State. When the State finances an industrial undertaking, the resources are provided by the Government from the taxes levied by the State or borrowings from the market. Thus, financing of both public and private sector undertakings is done by people at large directly or indirectly and yet the euphemism survives that a private sector undertaking is beyond the reach of constitutional writs and enjoys a power which can be used detrimental to the society. Why? The public sector undertakings, on the development of law as set out hereinbefore, are amenable to the constitutional writs that may be issued by the courts; but not the private sector. To illustrate the point, it would be advantageous to recall section 25-0 and 25R of the Industrial Disputes Act, 1947. Briefly stated, section 25-0 imposed a liability on an employer who intends to close down an industrial undertaking to serve a notice ninety days before the date on which the intended closure is to become effective on the appropriate Government, stating clearly the reasons for the intended closure of the undertaking. The sub-sections of section 25 set out the procedure on receipt of the notice and they are not relevant for the present discussion. Section 25R provides for imposition of penalty for closure without complying with the provisions of sub-section (1) of section 25-0. Several employers, including one company Excel Wear, challenged the constitutional validity of section 25-0 and 25R contending that they violate the fundamental freedom guaranteed by article 19(1)(g) of the Constitution in as much as the fundamental right to practise any profession or to carry on any occupation trade or business inheres the negative right not to be compelled to carry on trade if the employer does not wish to carry on his trade. This contention found favour with the Court observing :

> "It is wrong to say that an employer has no right to close down a business once he starts it. If he has such a right, as obviously he has, it cannot but be a fundamental right embedded in the right to carry on any business guaranteed under article 19(1)(g) of the Constitution."[21]

The whole of section 25-O, which merely imposed a liability to give notice before intended closure, was struck down as violative of article 19(1)(g). Shorn of verbiage, an employer may close down a business or an industrial undertaking rendering all workmen jobless for extraneous and irrelevant reasons and the workmen can seek no relief. The Government is powerless. No attempt was made to examine the financial structure of Excel Wear. If it was done and if it was found that the employer who claims an absolute and unconditional right to close down the undertaking had an investment which can only be said to be illustory in relation to the total investment in the project, his right to play with the lives of thousands of workmen because the undertaking is in private sector and beyond the reach of the court can be negatived in larger public interest. In fact, there is a recent movement by public sector undertakings to be freed from the yoke of the Constitution. At any rate, the object, purpose and underlying philosophy towards setting up public sector undertakings must mould its approach towards its employees, the consumers of its product and even other public sector undertakings. At any rate, it cannot afford to develop a litigious culture exhibited by private sector employers. And yet numerous cases can be quoted where the public sector undertakings not only brought entirely frivolous disputes right up to the Supreme Court but delayed the resolution of disputes by raising absolutely unsustainable, frivolous, preliminary objections.[22] 'The Indian economic methodology for abolition of mass poverty and building up of economic self-reliance is through the strategy of the public sector corporations. Inevitably, a crop of profound juristic issues claims our attention and demands our solutions if, as a nation, we are not to halt and hesitate and be bogged down by protracted litigation exercises'.[23] It is, therefore, inevitable that not only the public sector undertaking has to eschew litigation but avoid litigious culture which is the bane of private sector undertakings.[24]

1.9. The present Law Commission charged with a duty to recommend basic reforms in legal justice system was requested by its terms of reference to devise 'the desirability of formulation of the norms which the Government and public sector undertakings should follow in the settlement of disputes including a review of the present system for conduct of litigation on behalf of the Government and such undertakings'. The very term of reference equates public sector with Government in the matter of litigation and seeks to distinguish both from individuals and private sector undertakings who indulge in litigation times without number. This subsumes that the Government and public sector undertakings must have their own litigation policy and strategies and they must be devised with a view to encouraging avoidance of litigation and settlement of disputes by alternative methods. Litigation is generally believed to be an unproductive investment both in time and money. Public sector undertakings and the Government have to conserve the resources, determine priorities of expenditure by a judicious approach so that unproductive litigation does not eat away a large chunk of the scarce resources, smoothering socially beneficial schemes for want of financial assistance. This cannot be done unless litigation policies and strategies, both by public sector undertakings and Government, are worked out keeping in view the end that litigation has to be avoided at all costs. More the litigation, more the courts and, apart from the litigation costs which the State and public sector undertakings bear, the State has also to bear the expenses on setting up courts, providing personnel for manning judicial posts and other incidental expenses on staff, books, buildings, libraries, *et. al.* Avoid litigation or reduce it at any cost which would bring down the load on the court system, inevitably resulting in reduction of expenses on judicial set up.

1.10. The purpose of this report is to lay down broad guidelines on litigation policies and strategies of the public sector undertakings and the Government with a view to reducing litigation, saving avoidable costs on unproductive litigation, releasing the energies of officers held up in court work, reducing load on court system and thus realise the promise of article 39A of the Constitution.

CHAPTER II

GOVERNMENT AND PUBLIC SECTOR UNDERTAKINGS AS LITIGANTS—VIEW FROM COURTS AS A VANTAGE POINT

2.1. The courts' dockets are clogged by litigation undertaken or contested by the Government, both State and Central, and public sector undertakings. Administration of justice is still not treated as a social overhead in a developing economy, and accordingly, investment in administration of justice is generally insufficient and inadequate. Not only the court procedures are of 19th century vintage but even their equipment, namely, court buildings, typewriters, library and other facilities are also of the same vintage. While resort to litigation by Government and public sector undertakings is prodigious, when it comes to grants for administration of justice, it is styled as non-plan expenditure and receives a back seat. This led to a remark that while Government are stingy on courts and Judges, they are prodigal with litigation. This betrays a lack of litigation policy either at the State or public sector level. Even though absurd policy resort to litigation cannot be checkmated, more often resort to court litigation is an escape route for accountability for decision. To illustrate, an officer having been satisfied that the claim against the Government or the public sector undertaking is genuine, yet, to avoid taking an affirmative decision by a policy of do nothingness, the litigation is invited. Once the court intervenes, it is assumed that the concerned Department or the undertaking should not take any decision and leave it to the court to adjudicate the claim. The matter does not rest there. The indifference arising out of a lack of social audit encourages such officer to prefer an appeal if the decision is adverse and by vertical movement, the matter generally reaches the apex court. The officer continues to litigate at the cost of the public exchequer or the corporation itself. A social audit might reveal that more than half the litigation involving Government and public sector undertakings is the outcome of irresponsible indifference to the claim made against it or inability to take affirmative action. In the absence of any effective grievance-resolution mechanism, the employees of the Government and the public sector undertakings freely resort to litigation. The officer who initiates litigation is so much involved into it that his own work as an employee suffers. The officer who deals with the litigation on behalf of the corporation equally wastes his time on litigating incidentals. A type of largesse is distributed in selecting lawyers who receive fat fees for appearing for public sector undertakings and Government. Till today, no concerted effort has been made to devise and lay down litigation policies and strategies involving the dictum 'don't litigate, if necessary, arbitrate',[1] nor has any attempt been made to find any alternative method for resolution of disputes involving Government and public sector undertakings. The whole approach manifests a kind of drift and its spill over is unmanageable court dockets, unending litigation and utterly wasteful expenditure diverting scarce resources of the society to unproductive non-plan expenditure.

2.2. The justice system, which has to carry the load and burden of unimaginative approach on the part of the Government and public sector undertakings in the matter of their litigation policies, has often sounded a warning reminding the Government and the public sector undertakings the expectations from it especially to eschew litigious culture. The courts have also pointed out that the fight between an individual on the one hand and the Government or the public sector undertaking on the other is, by any stretch, an unequal fight inasmuch as the resources of the individual are limited and the State or public sector undertakings have unlimited resources to be invested in futile litigation so as to exhaust and exasperate the individual who has taken cudgels to bring the matter to the court. The fight was described as one between a Goliath and a dwarf in such a situation. 'The civil remedies for administrative wrong-doing thus depend upon the action of individual citizens. In such an action, the individual is pitted against the State—always an unequal contest. The individual does not have even the few procedural devices that the common

law imports into criminal actions to try to redress the balance. At his own expense, he must challenge the vast panoply of State power, with all its resources in personnel, money and legal talent, by a civil action for a declaratory judgment or for an extraordinary remedy-injunction, writ of *mandamus* or writ of prohibition. Aside from the manifold technical insufficiencies of these forms of action, the financial impediments to such an action are staggering. As a result of these impediments, in the United States, where almost the sole institutional protection against administrative error or arbitrariness is such an action, usually only great corporations or individuals who are supported by large voluntary associations have been able to carry through litigation.'[2] Having said this, it was concluded that in the backdrop of African conditions, to rely upon such individual actions as a primary means of policing administrative action is to rely upon what is non-existent.[3] The observation will apply *mutatis mutandis* to Indian conditions.

2.3. Lack of accountability either to Public Accounts Committee of the Parliament or to the Parliament itself has to some extent contributed to this policy of do nothingness and the litigation multiplies. More and more administrative actions directly affect the people at large. A lack of credibility about the actions taken by the Government and the public sector undertakings has also contributed to the litigation explosion involving Government and public sector undertakings. Ordinarily, when in course of commercial activity, plants or equipment belonging to the Government or public sector undertaking are sold, the court would be reluctant to examine the fairness or correctness of the decision. If the Directorate of a Government company has acted fairly, even if it faltered in its wisdom, the court cannot, as a super-auditor, take the Board of Directors to task. The function, from the point of view of court, is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for itself by rules of public administration.[4] The Chief Justice of India, presiding over the Bench in the case, observed that: 'If public property is dissipated, it would require a strong argument to convince the court that representative segments of the public or at least a section of the public which is directly interested and affected would have no right to complain of the infraction of public duties and obligations. Public enterprises are owned by people and those who run them are accountable to the people.[5] It was for the first time that the jurisdiction of the court was widened to inquire whether public property has been dealt with in public interest because, after the introduction of the expression 'socialist' in the Preamble in 1976, public property partook the character of socialist property and the courts' interference, though very limited in character, has sometimes worked wonders and, therefore, should not be abhored.

2.4. In exercise of the power conferred by Haryana Minor Minerals (Vesting of Rights) Act, 1973, the State of Haryana declared its intention to grant a lease for winning minor minerals. Avoiding the details, it may be stated that the bids received at the auctions were found to be unsatisfactory as not procuring an adequate price. After rejecting the bid at the three auctions, the Chief Minister granted lease to one person who approached at the price of Rs. 4,50,000 per year, the contract being for five years. This action of the Chief Minister was challenged by the person whose highest bid was already rejected contending that the surreptitious disposal of the public property has adversely affected public interest and he, as the highest bidder, should have been given one opportunity after receipt of the letter to whom the contract was given. The matter reached the Supreme Court of India. In order to test the argument whether the price of Rs. 4,50,000 per year was adequate and sufficient to dispose of public property, the highest bidder who had moved the Court was invited to give his bid in the Court and an auction followed in the Supreme Court itself leading to the highest bid of Rs. 25,00,000 per year in respect of a contract covering a period of five years. The State of Haryana would thus get Rs. 1,25,00,000 against the disposal of the property by the Chief Minister for a paltry amount of Rs 22,50,000. Could this be rejected on the tenuous plea that neither the wisdom nor the fairness of the action of the Chief Minister could be questioned in a court of law? The situation is *res ipsa loquitur*. The Court, while interfering and allowing the appeal observed that one would require multi-layered blind-fold to reject the appeal on a tenuous ground such as sanctity of administrative action so that

the State is denied its real value and the respondent may enjoy aggrandised unjust enrichment. In reaching this conclusion, the Court said as under:

> "An owner of private property need not auction it nor is he bound to dispose it of at current market price. Factors such as personal attachment, or affinity, kinship, empathy, religious sentiment or limiting (all limit sic) the choice to whom he may be willing to sell may permit him to sell the property at a song and without demur. A welfare State as the owner of the public property has no such freedom while disposing of the public property. A welfare State exists for the largest good of the largest number, more so when it proclaims to be a socialst State dedicated to eradication of poverty. All its attempt must be to obtain the best available price while disposing of its property because the greater the revenue, the welfare activities will get a fillip and shot in the arm. Financial constraint may weaken the tempo of activities. Such an approach serves the larger public purpose of expanding welfare activities primarily for which the Constitution envisages the setting up of a welfare State."[6]

2.5. The litigation is thus sometimes engendered by failing to perform duty as if discharging a trust. Power inheres a kind of trust. The State enjoys the power to deal with public property. That power has to be discharged like a trust keeping in view the interests of the *cesti que trust.* Failure on this front has been more often commented upon by the court which, if it was taken in the spirit in which it was made, would have long back energised the Government and the public sector to draw up its litigation policy. When entirely frivolous litigation reaches the doorsteps of the Supreme Court, one feels exasperated by the inaction and the policy of do nothingness evidenced by blindly following litigation from court to court. Dismissing a special leave petition by the State of Punjab, the Court observed that the deserved defeat of the State in the courts below demonstrates the gross indifference of the administration towards litigative diligence. The Court then suggested effective remedial measures. It may be extracted:

> "We like to emphasize that Governments must be made accountable by parliamentary Social audit for wasteful litigative expenditure inflicted on the community by inaction. A statutory notice of the proposed action under section 80 CPC is intended to alert the State to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted. Now section 80 has become a ritual because the administration is often unresponsive and hardly lives up to the Parliament's expectation in continuing section 80 in the Code despite the Central Law Commission's recommendations for its deletion. An opportunity for setting 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."[7]

Nearly a decade has passed since the observations but not a leaf has turned, not a step has been taken, and the Law Commission is asked to deal with the problem!

2.6. A little care, a touch of humanism, a dossier of constitutional philosophy and awareness of futility of peurile litigation would considerably improve the situation which today is distressing. More often it is found that utterly unsustainable contentions are taken on behalf of Government and public sector undertakings. Notice under section 80 CPC has become a trap for the unwary. If those on whom power to take decisions is conferred exercise the power in a reasonable manner, resolution of disputes can never be said to be intractable and, in the context of a welfare State, litigation and socially

beneficent activities cannot co-exist. The public sector undertakings are inseparably adjuncts of a welfare State.

2.7. The temptation to refer to some more cases in order to convince even the most rugged that by and large Government and public sector undertakings are guilty encouraging, pursuing and perpetuating frivolous litigation. It is not for a moment suggested that private sector corporate undertakings and even groups of individuals have not avoided initiating utterly useless litigation for unjust enrichment. To take only one illustration, most of the tax litigation has the avowed object of not only not paying the tax if possible by raising technical contentions but even if the tax is payable, the attempt to use the court to delay the payment of tax as long as possible is clearly discernible. To illustrate, approximately 15,000 cases involving indirect taxes were pending in the High Courts and the Supreme Court, blocking roughly a revenue of Rs. 3,816.17 crores.[8] Similarly, 6,502 tax appeals commencing from the year 1972, were pending in the Supreme Court of India on June 30, 1986.[9] The tendency to use courts as an instrument of unjust enrichment deserves to be put down with a heavy hand. And, in this process, the Government and public sector undertakings can contribute a lot.

2.8. At any rate, philosophy of welfare State must permeate every action of Government/public sector undertaking but more often it is found to be sadly lacking. The workmen employed by the contractors for Asian Games Project realised that they were not being paid minimum wage prescribed for construction workers. It is well-settled that minimum wages can never be denied under any pretext. The court, when its attention was drawn to it, pointed out that the provisions of labour laws are strictly observed otherwise the workmen would be comprehended in the expression 'forced labour' within the meaning of article 23 of the Constitution of India, and the situation arose because the Government did not remain vigilant while paying to the contractors that they did not observe rigorous requirement of minimum wage laws.[10]

2.9. Numerous socially beneficent legislations have been enacted by the parliament in implementation of the Directive Principles of State Policy enunciated in articles 41, 42 and 43. One such Act is the Contract Labour (Regulation and Abolition) Act, 1970. The underlying intendment of the Act is to regulate in the first place but in final analysis to abolish contract labour. The goal to be achieved is the abolition of contract labour. The Government and the public sector undertakings must pursue this goal relentlessly. Food Corporation of India was set up under an Act of Parliament, called 'The Food Corporations Act, 1964,' to provide, amongst other, for the establishment of Food Corporations for the purpose of trading in foodgrains and other foodstuffs and for matters connected therewith and incidental thereto. The Corporation has numerous depots at various places in India, one such place being Siliguri. At the relevant time, 464 workmen were attached to the depot for handling foodgrains. Even though the work was round the year, they were employed by a contractor engaged by the Corporation. Later on, Corporation became wise to social accountability and abolished contract system and brought the workmen on its own roll as its employees. The workmen had certain standing grievances and served a notice of demand. Forthwith, exhibiting the culture of private sector, the Corporation re-introduced the contractor system and fought the litigation brought by the workmen till the Supreme Court of India where the Court pointed out that the abolition of the contract system by the Corporation and the introduction of a direct payment system brought about a basic qualitative change in the relationship between the Corporation and the workmen and these cannot be altered to the disadvantage of workmen by the unilateral action of the Corporation. There are other numerous such socially beneficent statutes, such as, Employees State Insurance Act and Employees Provident Funds Act. Under both these statutes, apart from the Corporation set up under each statute, the workmen covered by the Acts also contribute to the coffers of the Corporation. There can be disputes between the workmen and the Corporation, between the employer and the Corporation. and between the employer and the workmen. In all these areas, it is largely found that there is no attempt at settlement of the dispute but a perpetuation of the litigation. Should the workmen, who contribute to the coffers of the Corporations for enjoying the benefits to be extended by the Corporation for which they are set up, be denied the same

by spending on litigation involving the workmen themselves? Cases have come to Court where it was found that for paltry amounts, the matters were dragged up to the Supreme Court.

2.10. The contractors working on Salal Hydroelectric Project failed to observe the mandatory provisions of the labour laws applicable to the workmen. It was found as a fact that the workmen were being exploited by the contractors. In a petition before the Supreme Court of India, a direction was given to the State of Jammu and Kashmir to tighten up its inspection machinery to see that the contractors discharge their obligations under the labour laws. Should the workmen be compelled to come to the court, not for specific cause but for a direction that the labour laws, which are mandatory in character, be implemented?[12]

2.11. Repeatedly it is pointed out that the indifference of the Government/public sector undertakings compels people to come to courts in search of relief and thereby the Government/public sector undertakings enjoy 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, it was pointed out that in the context of expanding dimensions of State activity and responsibiliy, is it unfair to expect finer sense and sensibility in its litigation policy, the absence of which in the case before the court led the railway callously and cantankerously to resist an action by its employee, a small man, by urging a mere technical plea which has been pursued right up to the summit Court and was ultimately negatived by it.[13]

2.12. Echoing this very sentiment, the Kerala High Court pointed out that the State is no ordinary party trying to win a case against one of its own citizens by hook or crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical victory or overrule a weaker party, to avoid just liability or score an unfair advantage simply, because legal devices provide such an opportunity. The State is a virtuous litigant (like an ideal employer) and looks with unconcern on immoral forensic success so that when on the merit the case is weak, Government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in courts. The lay out of the litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show down where a reasonable adjustment is feasible and ever offering to acceding a pending proceeding on just terms, giving legal mentors of Government some initiative and authority in this behalf. The learned Judge further proceeded to observe that:

> "I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957."[14]

2.13. The Supreme Court was constrained to point out that a Government company like Central Coal Fields went on disputing the statutory liability and attempted to protract the litigation by carrying the matter from court to court on frivolous grounds.[15]

2.14. Unquestionably, municipal corporation set up under a statute is comprehended in the expression 'other authorities' in article 12 and must consequently, therefore, eschew litigation wherever it is avoidable. A municipal contractor under the terms of contract was to complete the work contracted for within a year. It was found that the grant under the head was inadequate and was insufficient to meet his bill. He was requested to split the work over a period of three years and ultimately he agreed to split it over two years subject to the condition that some extra payment will have to be made relevant to the increased rates of materials and wages which he may have to pay. On the completion of the work, the contractor submitted his bill claiming 20% extra charges over and above agreed to in the contract and the corporation declined to pay the extra charges. A suit followed and fell into the lap of the Supreme Court which held that both under the contract and in law and equity, the contractor was entitled to recover extra charges as

claimed by him. Obviously this was an avoidable litigation pursued relentlessly, disclosing a myopic vision and adding to the workload in the courts. It discloses a case of managerial failure.[16]

2.15. Numerous cases can be quoted manifesting an ugly feature that either two public sector undertakings fight each other or a public sector undertaking on the one hand and the State or the Central Government on the other resort to litigation. Is it not necessary that these bodies should have a standing machinery outside the court area for resolving the disputes irrespective of the fact that the State and the Central Government may be ruled by political parties of different hue and colour? A few illustrative cases may be noted here. State of Rajasthan instituted a suit in the District Court against the Union of India for recovery of compensation for loss on account of damage caused to the goods of the State Government. In this case, the Union of India represented the Railway Administration. A contention was taken that the suit is not maintainable in view of article 131 of the Constitution which provides that Supreme Court of India alone, to the exclusion of any other court, will have original jurisdiction in any dispute—(a) between the Government of India and one or more States. Suing Railway Administration for recovering damages for the loss suffered is not a suit comprehended in article 131. Obviously, therefore, the contention can be styled as frivolous and yet the matter was litigated up to the Supreme Court which held that the District Court had jurisdiction to try this suit.[17]

2.16. Another illustrative case is equally instructive. Special Area Develoment Authority, Korba, is constituted under section 65 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973, which under the relevant law, could exercise powers of a Class I municipality constituted under the Madhya Pradesh Municipalities Act, 1961. Armed with this power, the Authority levied and demanded property tax which Western Coalfields Ltd., a Government of India undertaking, and Bharat Aluminium Company Ltd., another Government of India undertaking, resisted on the ground that the property belonging to these two companies were the properties of the Union of India and, therefore, shall be exempt from taxes imposed by State or by any authority within a State in view of the provision contained in article 285 (1) of the Constitution. Does it require long argument to convince anyone that a property belonging to a Government company registered under the Companies Act could by no stretch of logic be said to be the property belonging to the Union, notwithstanding the fact that the companies were Government companies within the meaning of section 617 of the Companies Act, 1956? If this contention was raised for the first time, one can even overlook the indulgence into avoidable litigation but there were numerous precedents such as the one in the *Heavy Engineering Mazdoor Union* vs. *State of Bihar* and *APSRTC* vs. *ITO*, and yet the matter was pursued up to the Supreme Court without success.[18] But there is another and more serious objection to such type of litigation in that both the appellant and the respondent were public sector undertakings and yet the litigation was pursued with vengeance spending more money than the stake involved in the matter.

2.17. Even low paid lowest grade employees are not spared the tortuous litigation, disclosing arrogance and superiority complex of the executive of the public sector undertaking/Government, almost serving a notice how can a low grade employee challenge their decision. One Shankar Dass, a cash clerk in Delhi Milk Scheme under the administrative control of the Government of India, was dismissed from service even though the court trying his case had released him on probation under section 12 of the Probation of Offenders Act, 1958. The poor clerk deprived of his livelihood was forced to go to the court and he was pursued from court to court for a period of 23 years. The Supreme Court ultimately holding that the penalty of dismissal was 'whimsical', ordered reinstatement in service with full back wages from the date of dismissal till reinstatement.[19] One fails to discern any principle, object or motive in pursuing such litigation manifesting cruel, harsh, unfair and unjust treatment of a low paid employee. A humanitarian touch would have saved the Corporation of paying back wages for 23 years to a man from whom service could not be taken. Had he been reinstated with a minor penalty, the clerk would have served and the Delhi milk Scheme would not have been compelled to fork out money, both on unproductive litigation and on absent clerk. There is a similar case of a forest guard from Madhya

Pradesh disclosing same attitude and receiving same critical comments from the court.[20]

2.18. Apart from employees in service or in position, the treatment of retired employees at the hands of public sector undertakings and Government is far more blameworthy. Two cases will illustrate this point. One Padmanabha Nair was not paid his pension and gratuity admissible on retirement roughly for a period of two years and three months and that too without any rhyme or reason. Payment of pension and gratuity are measures of social justice available on retirement when all avenues of income have come to a standstill. In this case, the employee concerned demanded interest by way of damages on the ground that the amount to which he was entitled has been unjustifiably withheld. The court, having regard to all the facts, directed payment of interest. That itself is hardly satisfactory. The agony and the litigation both are relevant factors.[21]

2.19. The next case draws a more sordid picture of utter indifference and callousness bordering on vendetta. One Devaki Nandan Prasad retired after rendering service for 39 years in Bihar Education Service. Under the relevant rules he was entitled to pension. But the same was not paid till 1971 when he filed a petition in the Supreme Court of India claiming pension and arrears. Shockingly, a contention was taken on behalf of the State of Bihar that pension being a gratuitous payment, the action in a court is not competent for enforcing payment of the pension under the relevant rules. A Constitution Bench negatived the contention and issued a *mandamus* in 1971 directing the State of Bihar to compute the pension and pay the same.[22] Despite the *mandamus* of the Supreme Court, the failure to obey which may land the person to whom it is directed in a contempt proceeding, for a period of nearly 12 years, no action was taken by the State of Bihar and the poor pensioner was pushed from pillar to post. He again knocked at the door of the Court. The Court noticed that a pensioner since 16 years is knocking at the doors of the Court of Justice and the Executive in search of his hard-earned pension and is being rebuffed by those who would meet the same fate by the passage of time and yet with his meagre resources he has again been dragged to the apex Court for the second time after a lapse of 12 years during which the *mandamus* of the court has been treated as a scrap of paper. Having gone into the facts of the case, the Court directed on April 22, 1983, to compute the pension and to pay the same by July 31, 1983, failing which an action in contempt would be initiated. The Court directed Rs. 25,000 be paid to the pensioner as exemplary costs for the callous, indifferent and whimsical attitude of the authorities.[23] The bureaucracy disclosed an attitude for which Bourbans in history were notorious, namely, they learn nothing and forget nothing. The same attitude permeated and the poor pensioner had to come to the Supreme Court for the third time. This time the Court meant business. A notice for contempt was issued. While disposing of the matter, the Court observed that it would do no credit to the respondent if the history of litigation is recapitulated and it would bring the administration of the State of Bihar into disrepute. The helplessness of the Chief Minister of the State who was defied by the bureaucracy was taken note of. Ultimately, the State of Bihar paid up Rs. 4,34,163 to the appellant and costs.[24]

2.20. A still agonising case may be referred to and unfortunately emanating from the State of Bihar. One Rudul Sah was acquitted by the Court of Sessions on June 3, 1968. Even after acquittal, he was detained and continued to be detained in prison for a period of 14 years as if he was an undertrial prisoner. A writ of *habeas corpus* procured his release. He contended that his continued detention was unlawful and that this was in gross violation of the rules and the Constitution and, therefore, he demanded relief by way of rehabilitation, reimbursement of expenses and compensation for illegal incarceration. The Court, after meticulously examining all the facts of the case, observed that 'the Government of Bihar could have afforded to show a little more courtesy to this Court (Supreme Court of India) and to display a greater awareness of its responsibilities by asking one of its senior officers to file an affidavit in order to explain the callousness which pervades this case'. As usual, one lowpaid lower grade jailor was sought to be made a scapegoat for this criminal indifference. To the claim for compensation, a caveat was filed that the petitioner may be directed to file a suit if so advised. The Court rejected this argument as manifesting inhuman attitude. The Court observed

that 'the right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilization is not to perish in this country as it has perished in some others too well known to suffer mention ; it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy'[25]. The Court directed the State of Bihar to pay to the petitioner in all Rs. 35,000 leaving it open to the petitioner to sue for more damages, if so advised. These cases be speak not merely a buraucratic mentality but an utter callous indifference to the process of law and the writs of the highest court, simultaneously not only manipulating litigation but exposing the State exchequer to make huge payments which are easily avoidable.

2.21. When it comes to an oppressive attitude by a public sector undertaking, it makes no difference whether the victim of oppression is a low paid employee or a highly paid officer. One A.L. Kalra was an officer employed by P & E of India Ltd., a wholly owned subsidiary of the State Trading Corporation, a Government of India undertaking. He applied for and obtained an advance for purchasing a plot of land and a new motorcycle under the relevant advance rules. There was a default in refund and repayment and the same was being recovered by deduction from his salary. Yet a disciplinary inquiry was initiated against him and he was removed from service. An appeal to the appellate authority was dismissed. A writ petition to the High Court met the same fate on the ground that the respondent is not 'other authority' comprehended in the expression 'State' within the meaning of the expression in article 12 of the Constitution. In an appeal under article 136 of the Constitution, it was not disputed that the respondent is 'other authority' but a novel contention was put forth. It was urged on behalf of the public sector undertaking that even if the respondent is comprehended in the expression 'other authority', it would still not be governed by Part XIV of the Constitution because an employee of such public sector underatking does not hold a civil post and, therefore, his removal from service is beyond the reach of the court. Negativing this contention, it was pointed out by the court that not only the inquiry was on a charge which can be styled as frivolous because the entire recovery was made from the salary which was a mode of recovery prescribed in the agreement granting advance but more appropriately under the rules prescribing misconduct, the action of the officer would not constitute a misconduct and, therefore, he inquiry was *ab initio* void. The Supreme Court then observed that even if Part XIV of the Constitution is not attracted, the respondent, being 'other authority', would have to act within the four corners of Part III of the Constitution which includes, amongst others, article 14, which guarantees equality before law and equal protection of laws. The action for holding an inquiry on an alleged misconduct which was *non est* would be a grossly arbitrary act violative of article 14 of the Constitution. The Court observed that :—

> "Failure to adjust the antenna to the operative channel and dipping the head like a proverbial ostrich in the sand so as not to view the changing kaleidoscope of the law can alone be said to be responsible for this trivial matter to be brought to this Court."[26]

Another improper tendency accepted by litigation undertaken by public sector undertakings/Government may now be noticed. Assuming that the Government/public sector undertaking honestly believes that its action is legally justified and, therefore, either initiates or invites litigation, surprisingly once an adverse decision is given, pursuit of litigation vertically through hierarchy of courts is relentless. This tendency clearly exhibits that initially the view was not to vindicate a right or a stand but either it was vengeance or superiority complex. A case may be referred to here to justify this statement. An officer of the level of a head constable in Police Department was dismissed from service in 1955 for an alleged misconduct of hunting a bull in Government forest. The head constable contended that he was not afforded a reasonable opportunity to defend himself. His suit having been dismissed by the trial court, the first appellate court held that not only the inquiry did not give a fair hearing but even the charges in the notice to the delinquent of his misconduct were very vague. The first appellate court directed reinstatement. The State was afflicted by a disease called 'appealititis' and the State of U.P. preferred an appeal to the High Court and then took the matter to the Supreme

Court, in both of which the State failed. The litigation covered a period of 27 years whereafter the head constable was reinstated with back wages. But in the process, he had parted from the world.[27]

2.22. Digressing from the line of cases hereinabove discussed, it may now be profitable to turn to litigation where a public sector undertaking refuses to honour its commitment and invites litigation. Gujarat State Finance Corporation agreed to finance a project by giving a loan and later on, for extraneous and irrelevant reasons, backed out. When the loanee approached the High Court for a writ of *mandamus*, Gujarat State Finance Corporation adopted a curious stand by commenting that contractive obligations cannot be enforced by a writ of *mandamus* and if the Corporation has committed a breach of the contract, the other side may sue it for damages. Rejecting this contention, the court pointed out 'how the public sector corporation set up to give impetus to industrial development of the country, the promise of planned economy aimed at job expansion to liquidate the curse of unemployment, achieve larger production and help in price stabilisation, acts in a manner contrary to its *raison d'etre* and becomes counter-productive.'[28]

2.23. Compensation for victims of accidents is a measure of social justice inasmuch as the bread-winner may have been killed and the family may have become destitute. And yet, these compensation cases are almost fought with vengeance, more so by State Governments whose fleet of buses are exempt from the liability of third party risk insurance. A bus belonging to Rajasthan State Road Transport Corporation was involved in an accident which resulted in the death of a person. His dependants initiated an action for compensation before a Motor Accidents Claims Tribunal. The public sector undertaking, namely, the Rajasthan Road Transport Corporation, resisted the claim putting forth frivolous objections. The Tribunal awarded compensation. The matter was brought to the Supreme Court where the Court was constrained to observe that :—

> "One should have thought that nationalisation of road transport would have produced a better sense of social responsibility on the part of the management and the drivers. In fact, one of the major purposes of socialisation of transport is to inject a sense of safety, accountability and operational responsibility which may be absent in the case of private undertakings, whose motivation is profit-making regardless of risk to life ; but common experience....discloses callousness and blunted consciousness on the part of public corporations which acquire a monopoly under the Motor Vehicles Act in plying buses".

The Judges proceeded to observe that :—

> "In the present case, it would have been more humane and just if instead of indulging in wasteful litigation, the Corporation had hastened compassionately to settle the claims so that goodwill and public credibility could be improved.... It was improper of the Corporation to have tenaciously resisted the claim".[29]

2.24. There are many instances of litigation between the Central Government and State Government agencies. In one case, the Income Tax Department took the view that the income of the respondent Corporation was liable to income-tax and assessed the respondent Corporation to income-tax for the assessment years 1958-60. The respondent Corporation filed a writ petition in the High Court contending that since the property owned by it and the income earned by it were the property and the income of the State, it was exempted from the Union taxation under article 289(1) of the Constitution of India. The High Court dismissed the petition. The appeal filed by the respondent Corporation in the Supreme Court was also dismissed. The respondent Corporation filed its returns in respect of the assessment years 1960-63 showing its income as NIL. In respect of the assessment of the said period, it claimed exemption under section 11 of the Income Tax Act, 1961. The respondent Corporation's claim for exemption was rejected by the I.T.O. and in appeal respondent Corporation's claims were allowed by the Appellate Assistant Commissioner of Income Tax. But the appeal filed by the Department before the Income Tax Tribunal Bench was allowed and at the instance of the respondent Corporation, the Tribunal by a common order referred it

to the High Court. The High Court held in favour of the respondent Corporation and also granted certificate of fitness for appeal to the Supreme Court. The Supreme Court held that the respondent Corporation was entitled to the exemption claimed by it both under the Road Transport Corporation Act, 1922 and the Income Tax Act, 1961. This is another patent case of unnecessary litigation showing that there is no internal agency/authority constituted to resolve the dispute between the Government and its agency.

2.25. Is there a lesson and message to be drawn from this extensive discussion of viewing the litigation undertaken by public sector undertakings/ Government from the vantage point of courts? The decisions herein discussed, and they can be multiplied manifold, are merely symptomatic of the litigious culture recklessly cultivated by bodies such as public sector undertakings/Government who, under the Constitution, are under an obligation to manifest constitutional culture in their dealings and conduct. They have undertaken litigation at the drop of a hat and having tasted blood, the litigation has been pursued right up to the apex cour. In their case, the public pays the court fees; litigation costs as the expenses come out from the coffers of the State which expression includes public sector undertaking. The officer who either initiates or defends litigation and then prefers appeals after appeals is never personally responsible for the outcome. There is no social audit of his behaviour. Not a single case has been brought to the notice of the court or the public or even the Public Accounts Committee of the Parliament where an officer who frivolously pursued litigation was hauled up for his improper behaviour inconsistent with the duties of his office. Their wrath was visited upon poor employees or officers and consumers of product are victims of their oppression. Why? As pointed out earlier, the individual has to fight litigation; compared as between Goliath and dwarf, the one enjoys the benefit of litigating at somebody's cost and the individual pays from his own pocket. The picture becomes devastatingly cruel where a dismissed employee has been fought up to the Supreme Court. The employee has lost his livelihood; he cannot procure alternative employment; he has to maintain family; he has to procure funds for litigation and wait for the date of resurrection. The corporation which fights him is economically better placed to tire him and the courts' dockets get more and more congested, heaping indirectly greater financial liability on the exchequer. The depressing feature of such litigation becomes more manifest when an individual on one side and public sector Corporation on the other is replaced by Government on one side and public sector undertaking on the other side or between two public sector undertakings.

2.26. It appears, specially in public sector undertakings, accountability generally is of what an officer does and what he does not do. This had been brought out in an interview on 5th April, 1987 on the Television, by certain public and private sector executives. Consequently, the managerial executives prefer not to take responsibility in resolving the disputes. Because of such lack of responsibility on the part of the managerial executives, the disputes between the public sector undertaking vis-a-vis the other parties, which could have been ironed out with little more endeavour, are allowed to continue pending in the courts. Even where the cases are decided against the Government or the public sector undertakings by the court at the lowest level, the overenthusiastic Department of the Government as well as the public sector undertakings choose to prefer appeals to the highest forum with the hope that their stand may be stamped in their favour by the highest court, irrespective of the cost and time involved therein. This approach betrays a lack of understanding of cost benefit ratio.

2.27. One of the major disadvantages which ensues from the redundant litigation by and against the public sector undertakings is that the expenditure required for meeting the litigation expenses add to the cost of the products manufactured by the public sector undertakings and consequently, the cost of the products soars high and the profit dips low. The capital output ratio is, therefore, directly affected because of mounting expenses required to be incurred by the public sector undertakings on litigation. One Corporation in its letter pin-points the main impact of the litigation and delays in cases of public

sector undertakings. It mentions that there has been an enormous increase of investment in public sector undertakings in the recent past. As on 31-3-1986, the number has gone up to 225 with an investment of Rs. 50,341 crores. During execution of projects cost-over-run due to time-over-run has become a serious concern for the Government. Profitability of Public sector undertakings is yet another serious issue to the Government. Litigation and delays in hearing of cases have also contributed to a great extent leading to a time-over-run and cost-over-run of the projects as also to the low profile of profitability. The money in the coffers of the exchequer is the main source to meet the expenditure required to be incurred on the litigation by and against the public sector undertakings. It is nothing but wastage of precious exchequer's funds collected through the hard-earned money of the public, utilised merely for the whims and fancies of certain over-enthusiastic Departments of the Government and certain public sector undertakings to keep on litigating for frivolous reasons such as a matter of prestige etc. This also heavily congests the dockets of the court and its graph of arrears rises upward.

CHAPTER III

WELFARE STATE, WIDE DISCRETIONARY POWERS AND THE ERA OF ADMINISTRATORS

3.1. The constitution of India seeks to set up a welfare State. 'If the State is to care for its citizens from the cradle to the grave, to protect their environment, to educate them at all stages, to provide them with employment, training, houses, medical services, pensions and, in the last resort, food, clothing and shelter, it needs a huge administrative apparatus, Relatively, little can be done merely by passing Acts of Parliament and leaving it to the courts to enforce them. There are far too many problems of detail, and far too many matters which can be decided in advance..........There must be discretionary power. If discretionary power is to be tolerable, it must be kept under two kinds of control ; political control through Parliament and legal control through courts'.[1] The legal aspects of all such matters are the concern of administrative law.

3.2. The *laissez faire* doctrine implied that Government governs the best which governs the least. Welfare State to a considerable extent is an anti-thesis of *laissez faire* State. The State permeates every activity. Under the *laissez faire* doctrine, in England it was believed that until August 1914, a sensible law-abiding Englishman could pass through life and hardly notice the existence of the State, beyond the post office and the policeman.[2] From *laissez faire* to welfare State, one has to catch the proliferation of the State activities. And once the State proliferates its activities and touches the citizen at every point of his life, the administrator acquires a high visibility profile. Dean Roscoe Pound observed that 'as the 18th and the fore-part of the 19th century relied upon the Legislature and the last half of the19th century relied upon the courts, the 20th century is no less clearly relying upon the administration'.[3] The situation portends its further projection into 21st century and many more centuries to come. Expanding activities of a welfare State brought in agencies and instrumentalities of the State, called public sector undertakings. Their presence 'indicate a likely increase in the incidence of encounter between private individuals and public officials and consequentially, a greater need for an official authority or authorities to which the former can resort to for the redress of non-legal wrongs'.[4]

3.3. Existence of wide discretionary power opens up a potential area either of its likely abuse or misuse. In either view of the matter, the one who feels injustice at the hands of administration is likely to seek redress of his wrong, genuine or assumed, by resort to proceedings before the court or tribunal. If there is a tribunal, we can grant him relief. Since the independence, the docket explosion can be largely attributed to the expanding State activities in the field of industry, commerce, trade, education, medicare, old age pensions and several others. These activities of the State confer benefits and occasionally State largesse. The proliferation of governmental activities as well as the activities of its instrumentalities directly contributing to the ever-rising graph of litigation at all levels attracted the attention of those concerned with law reforms. It was noticed that the pattern of litigation in the last few years revealed that parties think fit and proper to approach the higher courts : (i) not only for redress regarding governmental acts which constitute an infingement of legal rights ; (ii) but also for redress regarding governmental acts which, while they may or may not amount to infringement of a legal right, constitute instances of maladministration. To illustrate, preventive detention laws confer power to detain without trial and ordinarily every order of detention is questioned by a petition for writ of *habeas corpus* complaining that the detenu has ben deprived of his personal liberty by orders illegal and invalid or entirely unjustified. This type of litigation raises issue of infringement of legal and constitutional rights. The power of the State to arrange equitable distribution of scarce resources and orderly development and growth of the country confers power of regulatory nature by granting

licences. Refusal to give licence or preferring one amongst many for a licence gives rise to numerous litigation complaining of official apathy, oppression, unimaginativeness, lethargy or misunderstanding—these and similar factors are legitimately responsible for the parties seeking redress in courts.[5]

3.4. It is impossible to envisage an ideal situation where discretionary power is utilised in such an ideal manner that the exercise of power would not give rise to some kind of litigation. In fact, the classical constitutional doctrine was that wide discretionary power was incompatible with the rule of law.[6] Even today, law frowns upon absolute discretion but conferment of wide discretionary power is inevitable. The only limitation sought is that its exercise can be controlled by available legal remedies. Even if an effective regulatory and control machinery is devised, yet use of discretionary power is bound to give rise to disputes and controversies. Under the Constitution, articles 32 and 226 confer power of judicial review of administrative and legal action. The challenge to exercise of discretionary power is by approaching the court which again multiplies litigation. Therefore, mounting litigation against the Government is interrelated largely with the exercise of executive administrative powers. They provide the causal connection. "One must note that Government agencies do not seem to care to scrupulously comply with the law themselves, while they continually expect the citizen to do so. The present growth, which is phenomenal, in administrative law and adjudication is indicative of the fact that discretionary powers are being abused and courts are continuously embattled with the administration to ensure that they follow certain minimum standards of fairness in the exercise of their statutory, discretionary powers. The standards imposed are indeed minimal. There is the requirement to give fair opportunity to the parties to be heard ; there is the salutary rule that bias, whether personal or pecuniary, should not affect decision-making ; there is the rule that reasons should be given by the authorities making a decision affecting the citizen....the formulation of these requirements by courts has always been crystal clear ; but the underlying message is that every attempt be made by the administration to be scrupulously fair, and to ensure that the rules themselves are tolerably clear. And yet cases in which violations of natural justice occur in decision-making by executive continue to come up before the courts and their number seems to be on the increase rather than declining.... Similarly, for example, government agencies, when they assume the role of management of public sector industries, are themselves unable to comply with the minimum rules of labour legislation."[7]

3.5. Most of the litigation in which a public sector undertaking/Government is a party emanates from an unhealthy attitude on the part of the administrator not to act consistent with principles of natural justice in exercise of the power conferred upon him. But what at best are the principles of natural justice ? Briefly stated, they have been put akin to fairness in action. 'What the requirements of fairness demand when anybody, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness'.[8] If this is the requirement, no administrator can grudge it. Some how or other, there is a visible tendency to disregard it. The worst feature comes in when an administrator does not extend this normal principle of fairness to one working either in the Department or under him and supports the so-called domestic inquiry loaded against the so-called delinquent officer. Board of Trustees of the port of Bombay resolved to hold a departmental inquiry against one of its officers for an alleged misconduct. Before the inquiry opened, the delinquent officer submitted a request seeking permission to engage a legal practitioner for his defence. Even though the Board had appointed an inquiry officer with a legally trained mind to be assisted by a presenting-cum-prosecuting officer who again was a legally trained mind to represent the employer, yet the eminently reasonable request of the delinquent officer was turned down and then proceeded with the inquiry, at the conclusion of which the officer was dismissed from service. The victim of such

an inquiry questioned the correctness, validity and fairness of the inquiry by filing a writ petition in the High Court of Bombay. The learned single Judge of the High Court, by his judgment and order, quashed and set aside the order of dismissal, *inter alia,* holding that while appointing two presenting officers, both legally trained, the Chairman of the public sector undertaking failed to afford a reasonable opportunity to the delinquent officer to defend himself by refusing him permission to appear through a legal practitioner and thereby the principles of natural justice are violated. Not satisfied with this eminently judicial and judicious decision, the public sector undertaking, disclosing crass wooden-headed approach of a type of legalism not tenable in the developing notions of fairplay action, preferred an appeal to the Division Bench of the High Court, which was rightly rejected *in limini.* The climax was reached when a public sector undertaking reached the Supreme Court by way of an appeal under article 136 of the Constitution. Commenting upon the unfair attitude of the public sector undertaking, the Court pointed out that where an inquiry is likely to affect livelihood or attach a stigma to the person inquired against, the inquiry must be heard according to the principles of natural justice and one of the requirements would be that if an employer is assisted by legally trained mind in presenting the case, denial of that opportunity to the other side would vitiate the inquiry.[9] Every public servant every time he is teased and threatened or eased out and eliminated on oblique grounds cannot start a litigation, especially these days when man lives in the short run and litigation lives in the long run...... It has been rightly said that access to justice is the most human right and in this sense, processual jurisprudence relating to public sector servants must be designed with an eye on modernised judicial management. Traditionalism and obscurantism restrict writ jurisdictions so much, so many public sector employees suffer silently while audacious adventurists fight and win.[10]

3.6. The activities of the Government and public sector undertakings cover a vast area and proliferate in many directions. threatened action may not come to its notice till it is initiated. It was assumed that Government would not indulge in frivolous litigation or would not litigate for extraneous or irrelevant reasons. In order to give an opportunity to the Government/ public sector undertakings, it was statutorily decided to serve it with a notice of the intended cause of action so that if the Government/public sector undertaking desires to remedy the wrong or to reconsider its decision, it has full opportunity before it is dragged to the court. That was the *raison d'etre* of the provisions like section 80 of the Code of Civil Procedure or an insistence by court before issuance of writs like the writs of *mandamus* to make a demand for justice and only thereafter come to the court. Over years it is found that the notice under section 80 of the Code of Civil Procedure, rather than serving the cause of justice by redressal of the wrong, sometimes hastens an action on the part of the Government to such extent as to force the other side to resort to litigation for with. An unsavoury practice started from this by first filing the suit without notice and as soon as the Government appears and raises the contention, withdraw the suit and file a fresh one, the interregnum being used for purpose of serving the notice but during which period some interim relief is already obtained.

3.7. Today it is almost a universally accepted view that notice under section 80 has become a trap for the unwary.[11] The constitutional validity of section 80 was upheld on the ground that Government is a class by itself. But the criticism against the misuse of section 80 had become so pungent at the hands of court that an amendment was introduced to section 80 in the year 1976 to the effect that a suit to obtain an urgent or immediate relief against the Government or any public officer in respect of any act purporting to be done by such upblic officer in his official capacity may be instituted with the leave of the court without serving any notice as required by sub-section (1) of section 80. This amendment was necessitated by the unsavoury practice hereinabove referred to. To what ridiculous length the defence based on section 80 can be carried can be illustrated by pointing out that a suitor served notice under section 80 CPC for the intended suit but on the last day of the expiry of the notice he died and his heirs and legal representatives brought the suit basing the claim on the same notice The Union of India contended that as the plaintiff and legal representatives themselves had not served the notice under section 80, the suit is not maintainable. And unfortunately, this contention

found favour with the High Court. Reversing the decision, the Supreme Court pointed out that the whole object of the notice contemplated by section 80 is to give to the concerned Government and public officers opporunity to reconsider the legal position and to make amends or settle the claim, if so advised, without litigation. The legislative intention behind that section is that public money and time should not be wasted on unnecessary litigation and the Government and the public officer should be given a reasonable opportunity to examine the claim made against them lest they should be drawn into avoidable litigation The purpose of law is advancement of justice.[12] In spite of this, this contention is vigorously pursued. The court was compelled to point out that as far as possible no proceedings in a court of law should be allowed to be defeated on mere technicalities.[13] The court, after referring to the recommendation of the Law Commission[14] for deletion of section 80 on the ground that it has practically outlived its utility and, instead of advancing justice, has become a trap for the unwary, reiterated the view that the section requires to be deleted.[15] Having reviewed all this case law, the Law Commission again recalled and reiterated its earlier recommendation to delete section 80.[16]

3.8. It appears that this recommendation of the Law Commission and the comments of the Court on the utter futility of a provision like section 80 of the Code of Civil Procedure have not found favour with the Government because at the time of making the amendment of Code of Civil Procedure in 1976, section 80 was not deleted; only a provision was added to avoid repetition of the unsavoury practice referred to hereinbefore. It is, therefore, appropriate to surmise that from the point of view of the Government, the provision has some use and its retention on the statute book is considered necessary in public interest. If that is the view, it would be futile at this stage to examine the question of deletion of section 80 which adds one more limb to the armoury of unsustainable defences advanced on behalf of the Government. Assuming that its retention from the point of view of the Government has some utility, still it is necessary to denude it of some of its ugly features which can be dealt with here.

3.9. Before dealing with these features, a review of the steps taken by the Government for improving the existing system of handling complaints and grievances may be briefly referred to. Somewhere in June 1964, detailed instructions were issued to Central Ministries and Departments for initiating review of the prevalent system in vogue of handling complaints and grievances of people vis-a-vis the Departments and Ministries of the Government. Part of it may be extracted :—

> "It is the basic proposition that the prime responsibility of dealing with the complaints from the public lies with the Government organisation whose activity, or lack of activity, gives rise to the complaint. Thus, the higher levels of hierarchical structure of an organisation are expected to look into complaints against the lower levels. If the internal arrangements within each organisation are effective enough, there should be no need for special 'outside' machinery to deal with the complaints. The fact that there has been growing demand for special machinery indicates that the present arrangements within the Departments are not good enough from the point of view of giving satisfaction to the public. It is, therefore, necessary to devise measures that will give substantial satisfaction to the public in the matter of grievances against the administration.".

3.10. The instructions have the flavour of a policy statement for avoiding conflict which carries the germ of litigation. The approach appears to be not to raise untenable and improper defences merely with a view to perpetuate litigation. The policy ought to be to avoid taking decisions which have the in-built tendency to force the outsider dealing with Government/public sector undertaking to litigation. When the Government/public sector undertaking indulges into litigation which can be styled as frivolous, the litigation can be traced back to either irresponsible decision or improper motivation for the decision which is likely to be stigmatised as governmental lawlessness. 'Every day governmental lawlessness has to be checked by proper mechanisms and procedures at the governmental level. For example, an official whose action has been invalidated on the ground of violation of natural justice may be sanctioned through many processes inclusive of some kind of disciplinary action. Other procedures, with incentives rather than sanctions, may also be thought of.

The point is that such procedures will decrease the incidence of governmental lawlessness : it is important to do this both in terms of expedition and equity. In terms of expedition, surveillance by State over its agencies for their compliance with law, will tend to increase officials' responsiveness to law and decrease citizens' grievances, and thereby judicial workload'.[17]

3.11. If section 80 of CPC is still to retain its place in the statute book, the approach to the notice on behalf of the Government, public officer or public sector undertaking has to undergo a total and basic change. On the receipt of the notice, the party serving the notice must forthwith be informed that the point raised by him is under consideration and a decision will be taken as early as possible. This should be done keeping in view the injunction of the Supreme Court that : 'the legislative intention behind that section, in our opinion, is that public money and time should not be wasted on unnecessary litigation and the Government and the public officer should be given a reasonable opportunity to examine the claim made against them lest they should be drawn into avoidable litigation. The purpose of law is advancement of justice. The provisions in section 80, Civil Procedure Code, are not intended to be used as booby traps against the ignorant and illiterate persons.[18] If this warning is not heeded, the fate that might befall section 80 is not in doubt. For the time being, as the previous recommendation that the section deserves to be deleted appears not to have met with the approval of the Government as deducted from its continued retention on the statute book, it would be better to denude it of some of its undesirable features.

3.12. Those in favour of deletion of the section were actuated by the belief that section 80, instead of providing Government an opportunity to avoid avoidable litigation, has become a trap for the unwary when it is insisted that the suit should be dismissed for want of notice. The approach requires to undergo a total change.

3.13. When a defence is taken that the statutory notice is not served or that the notice is defective in form, the court should inquire into the conduct of the concerned Department and the concerned officer to ascertain what steps they took before the initiation of the legal action to avoid the litigation. If it is contended that the suit is bad for want of notice, which comprehends that the notice given is invalid, before non-suiting the suitor by upholding the defence, a detailed inquiry be made that if the defective notice was shown to have been served, what steps were taken by the Government to remedy them. If no notice was given, a further inquiry should be made as to whether absence of notice has worked any hardship to the Government. This can be easily deduced from the conduct of the Government/public sector undertaking/public servant in the litigation itself. What sort of defences have been taken? Whether the action was defendable at all? Ordinarily, the party should not be non-suited on the ground of absence or defective notice but the best that could be done is to award costs to the Government or public sector undertaking irrespective of the decision of the suit. Such discretion should only be extended if the conduct of the Government/public sector undertaking/public officer is fair and just in the prosecution of the litigation.

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CHAPTER IV

INQUIRY, DATA AND INFERENCES

4.1. Competition in trade or commerce has the inbuilt potentiality to eliminate litigation. Monopolies, on the other hand, have a tendency to litigate because for the service or goods produced by it, no alternative source is available and they are in a position to dictate their terms. Accordingly, the inquiry to collect data on the litigation, litigious tendencies and litigious culture must of necessity start with monpolies in public sector. Life Insurance Corporation, Employees State Insurance Corporation, Oil and Natural Gas Commission, Employees Provident Funds Organisation, General Insurance Corporation of India, Steel Authority of India, Coal and Gas Authorities, are but few of the monopolies operating in public sector and are free from the tentacles of competition. The goods and the services produced by them are of such nature and variety that people from all strata of society have to come in contact with them and be subject to their monopolistic overtones. They are unquestionably the agencies and instrumentalities of the State and are comprehended in the expression 'State' in article 12 of the Constitution. This position is established by a catena of decisions. If the Government should avoid all avoidable litigation, *ipso facto* these instrumentalities of the State must inhere the same culture. The trend being in the opposite direction, the Law Commission approached them both for furnishing reliable statistical information as also their approach to litigation and the litigation policies and strategies. The Law Commission addressed detailed queries to these monopolistic undertakings and sought their co-operation both for furnishing reliable data and for understanding their approach to litigation and whether they have any policy norm for either initiating or avoiding litigation. The query and the responses furnish a peep into the working of these Corporations.

4.2. The Law Commission approached Life Insurance Corporation, a monopoly which came into existence in 1956, set up under the Life Insurance Corporation Act, 1956. A copy of the letter is annexed to this report at *Annexure I.* Section 6 of the Act confers a monopolistic status on the Corporation by transferring all life insurance business to a Corporation set up under the Act to the exclusion of anyone else. Keeping in view that policy of insurance represents a contract, described as contract of insurance, and being aware of the fact that the Corporation can unilaterally repudiate the contract by declining to honour its obligations under the contract of insurance, the query centred round : (a) number of claims repudiated yearwise from 1980 onwards; (b) number of suits filed by the party whose contract of insurance was repudiated yearwise; (c) the stake involved in each case; (d) the decision of the first court of orignal jurisdiction in each suit; (e) if the decision was adverse to the Corporation, the number of appeals preferred by it; (f) whether second appeals were preferred by the Corporation; (g) number of appeals preferred by the Corporation to the Supreme Court of India; (h) cost of litigation in each case related to the stake involved. A further query was whether Life Insurance Corporation had maintained an establishment for legal advice and, if so, expenses of the establishment, payments made to lawyers not on the establishment and the ratio of such expenses to the total expenditure of the Corporation. The Corporation was further requested to state whether, and, if so, in how many cases, the view of the Legal Department was overruled with a view to pursuing litigation. The Corporation was specifically asked to state the number of cases whether the attitude of the Corporation in pursuing litigation found disfavour with the court and the matter had to be withdrawn if it was within the competence of the Corporation.

4.3. The Corporation conceded that it does repudiate claim by refusing to honour the claim made under the policy of insurance when it has reasons to believe that the contract of insurance was entered into by supplying incorrect, inadequate or insufficient materials and if correct facts were stated,

it would induce the Corporation not to enter into the contract. The information supplied by the Corporations tabulated and set out at *Annexure II*. The Corporation was at pains to point out that between the period 1979-80 to 1987, hardly 1% of the claims were repudiated by it. This figure of 1% should not provide a blind-fold because it has to be correlated to the huge volume of insurance work undertaken by the Corporation as a monopoly.

4.4. The General Insurance Corporation of India, which deals with insurance other than life insurance, submitted inconclusive and insufficient information. It may be recalled that the General Insurance Corporation works through four subsidiary companies and it pointed out as in interim feed back that out of a total of 11,60,871 claims preferred against its subsidiaries during the year 1985 and disposed of by it, only 3,012 claims were repudiated. This was done after obtaining the surveyor's report as required by section 64 : UM(2) of the Insurance Act, 1938 which is mandatory in character. The surveyor is one who is licensed by the Government of India and the repudiation is based on his report, common grounds being that the loss was outside the scope of the policy or the genuineness of the contract being in question. It specifically pointed out that except the marine policies, in two other policies there is a term of arbitration to settle the dispute relating to the quantum of the claim. This term excludes approach to court and the parties generally resort to arbitration. The Corporation pointed out that out of a total of 1,31,673 claims accumulated over the years against only one of its subsidiaries, namely, New India Assurance Company Ltd., as on December 31, 1986, only 7,448 claims were pending in court apart from third party motor accident claims pending with tribunal, called Motor Accidents Claims Tribunal, which are 17,768.

4.5. The Corporation points out that with proliferating surface transport, as a consequence of inducement for expanding tourist trade, coupled with statutory requirement of third party insurance in respect of any motor vehicle, numerous claims are preferred by the victims of accidents by motor vehicles. It appears that almost at every district headquarter, a tribunal, called the Motor Accidents Claims Tribunal, has been set up. As on December 1986, New India Assurance Company Ltd., a subsidiary of the Corporation, was sued for recovering compensation and the unadjudicated petitions were 17,768. A plea was raised that Lok Adalats are helping to reduce the litigation but there is much to be said for that method of settlement of disputes. There is very little or practically no effort on the part of the Corporation to pay compensation whenever the claim is made and this forces the victims of accidents or their dependants to approach the Tribunal. Third party risk insurance was devised as a social justice measure. In a motor accident, either the bread winner dies or is so injured as to be incapicitated from earning and the dependants suffer so much that sometimes they are reduced to destitution or penury, yet the Corporation hardly settles the claim and litigation piles up. The delay in disposing of claims for compensation ranges over three years during which period the dependants of the victims of accidents suffer untold hardship. In the capital of Delhi alone, there are numerous cases involving claim for compensation pending for over three years. An employee of Ashoka Hotel, a hotel managed by Indian Tourist Development Corporation, died in an accident. His widow and children have preferred claim for compensation and it is pending over three years. The widow and the children are maintained by relations. There is not the slightest effort to relieve the misery.

4.6. The Corporation is absolutely impervious to the provision contained in section 92A of the Motor Vehicles Act, 1939, by virtue of which an amount of Rs. 15,000 has to be paid to the victim of a motor accident irrespective of fault liability. In other words, an amount of Rs. 15,000 has to be paid as a social security measure on the principle of no fault liability. As a rule, unless the Tribunal compels, the Corporation never pays the same and the Tribunal hardly gives priority to such application. This bespeaks volumes about the litigious culture of the Corporation.

4.7. It is hardly necessary to recall the earlier effort of the Law Commission in this behalf. Section 45 of the Insurance Act, 1938, provides that the validity of policy shall not be called in question on the ground of misstatement in the personal statement two years after the issuance of the policy.

But there is a rider that if the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policyholder and that the policyholder knew at the time of making it that the statement was false or that he suppressed fact which it was material to disclose, it can repudiate the policy beyond the period of two years. The attention of the Law Commission was drawn to certain difficulties experienced in the working of section 45 and it proceeded to examine the implications of section 45 as part of its function of revising the laws of the country. Life Insurance Corporation expressed an opinion that the period of two years is insufficient to make necessary investigation for repudiating the claim. After having examined the problem, the Law Commission recommended that a period of two years should be extended to three years.[1] It is difficult to give credence to the view of Life Insurance Corporation a monopoly. One case will illustrate the point. One man got himself insured for Rs. 5,000 possibly on getting a job. After a period of three years, he took out another policy of insurance and the amount was Rs. 10,000. A few years thereafter, he took out a policy for Rs. 50,000. He died within a period of one year after the third policy was issued but under which risk had commenced running. The insured died in a hospital and the case record showed cause of death as *renal failure. Life Insurance Corporation satisfied* the claim under the first two policies and repudiated the third one on the ground that renal failure on expert opinion is attributable to hypertension and the insured in his personal statement has stated that his blood pressure is normal and within limits. The legal representatives of the deceased insured brought an action against Life Insurance Corporation and the Life Insurance Corporation defended it on an utterly unsustainable defence—supressing material evidence in his possession which, if disclosed, would have turned the tables against the Corporation—and succeeded in non-suiting the legal heirs of the deceased till the matter landed in the Supreme Court. When the matters was called out in the Supreme Court, the Bench asked Additional Solicitor *General who was appearing for the Corporation as to whether before* issuing a policy of Rs. 50,000, the Corporation insists on the examination of the insured by two experts if the value of the policy is over Rs. 25,000. Of the two medical experts, one is a general practitioner but the other is a specialist. And admittedly, these reports form part of the decision-making process of the Life Insurance Corporation whether to enter into a contract or not. In the suit filed by the legal heirs of the deceased, the Corporation, while defending the action and its stand of repudiating the policy on the ground of suppression of a material fact which would have affected the decision of the Corporation whether to enter into the contract or not, did not produce the report of the two medical experts who had examined the insured before the issuance of the policy. The Court called upon the Corporation to produce the documents and the fact therein stated fully justified the personal statement of the insured. The whole case of the Life Insurance Corporation was in fact out from the bottom. The net outcome of this type of litigious tendency was that the Corporation had to pay for a policy of Rs. 50,000, Rs.1,74,000 and odd amount, being the interest and costs. Does it behove the Corporation to adopt this attitude? Does it behove a public sector undertaking to resort to *suppressio veri suggestio falsi* and drag the dependants of the deceased insured from court to court? And having not been satisfied with this utterly indefensible conduct, the Corporation insisted before the Law Commission on an earlier occasion to extend the time in the name of so-called investigation so as to be able to repudiate the contract.

4.8. Coming to the statistical side of the performance of the Corporation, it appears that 1,122 claimants out of 6,558 claims repudiated between 1979-80 to 1986-87 filed suits/writ petitions in the court. The information tabulated in *Annexure II* would reveal at a glance that for most of the years, except for *1980-81 and 1983-84, most of the cases were decided against the LIC* compared to those decided in its favour. Even in the aforementioned years, the ratio of cases decided in favour of the Corporation and against it were 50:50. It, however, appears that once the case was decided against the Corporation by the court of first instance, ordinarily temptation to prefer appeal was resisted, implying that the decision of the court of first instance was accepted as correct. The Corporation also pointed out that of the 1,122 claims filed against it between 1979 and 1987, it conceded the claims of 441 suitors. It would immediately appear that at least these 441 suitors should not have been forced to go to the court. The dispute appears to have been raised where

the claim on an average is of Rs. 40,000, meaning thereby that the claim is put forward by persons belonging to the middle class. The question, however, has to be posed in a different manner. Should a monopoly by its litigation policy force the people belonging to lower middle class, economically lower class and persons belonging to that group who take life insurance policy with utmost difficulty because they have little cushion and saving is a luxury, to go in for litigation as the last resort at a time when the benefit is needed the most? Because of this manifest treatment on the part of the Corporation, the courts have been constrained to observe that such monopolistic concern should not stand on technicalities and the obligation on the part of the State or its instrumentalities to act fairly can never be over-emphasised.

4.9. The next monopolistic concern is the State Insurance Corporation set up under the Employees State Insurance Act, 1948. As the long title of the Act shows that it was an Act to provide for certain benefit to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto, such as industrial sickness, industrial injury, *et al.* The Act appears to have been enacted in pursuance of the directive principles set out in articles 38, 41, 42, 43 and 46. The scheme of the Act briefly stated is that a Corporation would be set up, known as Employees State Insurance Corporation, for the administration of the scheme of Employees State Insurance in accordance with the provisions of the Act. The funding programme was a contribution by the employees covered by the Act and their employers. Section 28 sets out the purposes for which the fund may be expended. In short, if the employees covered by the Act contribute in return for certain benefits, it would be a travesty of the Act if the contribution of the workmen are used to defeat the claims of the workmen themselves. The Act provides for setting up a court, called the Employees State Insurance Court, for adjudication of disputes arising under the Act. The Corporation has set up hospitals and medical dispensaries in numerous towns for the benefit of the workmen. Any employee entitled to the benefit under the Act can approach the authority and the benefit has to be granted to him if he is otherwise qualified for the same. In the event of a refusal, he can resort to the court. Against the decision of the court, an appeal can lie to the High Court on a substantial question of law.

4.10. A query similar to the one addressed to the Life Insurance Corporation was also addressed to the ESI Corporation. The Corporation informed the Commission that the litigation cost was 57.72 lakhs during the period of seven years. It came to light that the Corporation pursued an employer for reimbursement of Rs. 531 paid to the employee which, according to the Corporation, was reimbursible for the default of the employer. The approach of the Corporation appeared to be bordering on ludicrous. No point of law was involved and when the court pointed out the obligations of the Corporation, later on it came to know that there were numerous such appeals which were subsequently withdrawn. Occasionally, the litigation is pursued on a specious plea that a point of law is involved which, if not correctly decided, would expose Corporation to unjust claims. This is more a facade and camouflage. If any such issue arises, Corporation being a public sector undertaking can certainly obtain the opinion of the Attorney General or litigate the matter before the first court and if the interpretation of law is against it, be done away with further litigation. ESI Court dockets are equally clogged and the energies of the employees are fruitlessly wasted in litigation forced upon them by the Corporation.

4.11. The next public sector undertaking which deserves the notice for discussion is the one set up under the Employees Provident Funds and Miscellaneous Provisions Act, 1952. As the preamble of the Act shows, it was enacted to provide for the institution of provident funds, family pension fund and deposit linked insurance fund for employees in factories and other establishments. Obviously, it was for providing social security in old age and in case of undeserved want. The Central Government was to set up a Board of Trustees to administer the fund, called Provident Fund, to be set up under a scheme to be called the Employees Provident Funds Scheme. The funding programme was to consist of contribution of the employees and the employer. Why does one contribute to provident fund, especially the one who hardly is in a position to make his both ends meet? The answer obviously is to provide

for a rainy day and if this compulsory saving is not available when the need has arisen, the scheme itself comes into disrepute. A case can be cited to convince the same.[2] It need not be recapitulated here. It is a truism that the payment under the provident fund scheme which has become due and payable is hardly received in time. The litigation on this account is galore. The information supplied by the organisation has been set up in a tabulated form (See *Annexure III*).

4.12. It may be true, as pointed out by the Commissioners of the Scheme, that most of the litigation is attributable to the deliberate failure on the part of the employers to remit their contributions and a two-pronged litigation has to be started : (1) for recovery; and (2) by way of a prosecution. It is, therefore, said by the organisation that litigation becomes inevitable on account of the recalcitrant conduct of the employers. Whatever that may be, way has to be found by the organisation for avoiding litigation, if need be by a radical amendment in the Act. Otherwise the courts' dockets get murkier and murkier.

4.13. Assuming that litigation as a whole is unavoidable, an alternative method for resolution of dispute has to be found. An alternative method could be of a standing committee representing the employers, employees and the organisation to which every case can be taken wherever the dispute arises and the result of it must be binding. Today most of the countries are in search of non-court forums for resolution of disputes. It is, therefore, necessary for such an organisation, which is devoting itself to expanding social justice benefits to the employees working in industries, to organise such a forum for resolution of disputes and which must as well as satisfy the employers. The organisation is triangular in character and all the affected interests must have confidence in a forum for resolution of disputes arising amongst them. The Law Commission would certainly devise such a forum for their consideration.

CHAPTER V

CONTEMPORARY SITUATION AND SUGGESTED REMEDIES BY INTERESTED GROUPS

5.1. Public sector undertakings, in response to the queries of the Law Commission, have bemoaned the mounting litigation to which they are subjected and feel the pinch of the same. Apart from the costs and expenses of litigation, the time of some of their officers is occupied in dealing with litigation, leaving them little time to concentrate on the goals for which public sector undertakings have been set up. This has led to a re-thinking of their litigative strategies and the panacea which, according to them, would relieve them from the burden and boredom of litigation.

5.2. The most illustrative case to which the attention of the Law Commission has been drawn is highlighted by the Election Commission of India. The Election Commission complains that to some extent by their indifference the courts have contributed to exposing a constitutional body like the Election Commission of India to mounting litigation. The grievance is that the courts are either unaware or sometimes ignore strategic legal formulations and constitutional provisions which, if properly perused and applied, would help in throwing out litigation at the threshold. To illustrate, election to the Legislative Assembly of West Bengal was due in June 1982. Eight persons filed a writ petition against Union of India and the Election Commission and other respondents directing them not to issue a notification under section 15(2) of the Representation of the People Act, 1951, calling for election to the Legislative Assembly until the rolls were duly revised. The petitioners challenged almost all the provisions of the Representation of the People Act, 1951 under which seven general elections were held by the time petition was filed and prayed for interim stay which was granted and subsequently confirmed. The matter was heard by a Constitution Bench of the Supreme Court which pointed out that 'the fundamental error from which the writ petition suffers is this : the fact that revision of electoral rolls, either intensive or summary, is undertaken by the Election Commission does not have the effect of putting the electoral roll last published in cold storage. The revision of electoral rolls is a continuous process which has to go on, elections or no elections'[1] The Judge in the High Court who granted interim injunction and confirmed the same, failed to take note of the most obvious legal position that 'if an electoral roll is not revised, its validity and continued operation remained unaffected' and granted and confirmed interim injunction on a very nebulous yet wholly untenable ground throwing the entire electoral process out of gear. The case had to be withdrawn to the Supreme Court and disposed of so that the electoral process may not be interfered with. Earlier, the Court had vacated the interim injunction pointing out that 'it takes years to build up public confidence in the functioning of constitutional institutions, and a single court hearing, perhaps, to sully their image by casting aspersions upon them. It is the duty of the courts to protect and preserve the integrity of all constitutional institutions which are devised to faster democracy. And when the method of their functioning is questioned, which it is open to the citizen to do, courts must examine the allegations with more than ordinary care. The presumption, be it remembered, is always of the existence of *bonafides* in the discharge of constitutional and statutory functions. . . . The petition is dressed up in constitutional attire but, before us, no counsel tried even to have the feel of it, except Shri Bhola Nath Sen. We will have occasion to demonstrate how, in a petition of this nature, no interim relief was permissible, especially in terms of prayer clause (f), by which the entire election process was brought to a standstill'[2] It is in such a situation that one can appropriately utter a warning that 'wiser counsel would prevail' with court before exercising power of granting interim relief in such manner as would throw out of gear the entire election process on which the democracy is not only founded but nursed.

5.3. Though there are numerous such instances, one more should suffice to bring home the point under discussion. On January 12, 1983, election to

all the 126 seats of the Assam Legislative Assembly was notified to be held in February 1983. A set of writ petitions was filed in the Guwahati High Court seeking, amongst others, a *mandamus* not to hold elections on the basis of the defective rolls and to defer holding of elections on account of prevailing disturbed situation in the State. The writ petition was entertained, though interim relief was not granted. The cases were transferred to the Supreme Court of India. The Court disposing of the petition pointed out specifically that the validity of an election can only be challenged in the manner prescribed by the Representation of the People Act, 1951, and not by way of a writ petition under article 226 of the Constitution implying that the matter should have been thrown out at the threshold.[3]

5.4. The Election Commission also pinpointed the failure of the court while issuing notice to consider whether everyone impleaded as respondent should be served with a notice even though the parties joined may be neither necessary nor, even remotely saying, proper parties. Questioning the election of the returned candidate, the petitioner in Calcutta High Court impleaded in his election petition not only the returned candidates but also other unsuccessful candidates. Over and above them, the Chief Minister of West Bengal, the Minister of the Transport Branch of Home Department, Minister of Legislative and Judicial Department, District Magistrate and Returning Officer and Electoral Registration Officer, were impleaded alleging that they were proper parties. Notice of the petition was served upon all the respondents. The Chief Minister and the Ministers claimed in the written statement that the election petitioner was not entitled to implead them as parties to the election petition because they were not candidates at the election and, therefore, they could not be impleaded as parties to an election petition. The Ministers moved a separate application before the High Court to strike out their names before the array of parties in the election petition. Even after the correct legal position was pointed out, the court declined to strike out the names of these persons holding that they were proper parties to the election petition. These Ministers approached the Supreme Court. The Supreme Court, after a review of the provisions of the Representation of the People Act and the relevant provisions of the Constitution, pointed out that a right to elect or to be elected or to dispute an election are neither fundamental rights nor common law rights. These rights are created by the Representation of the People Act and the rules made thereunder and being statutory in character, the remedies are limited to those provided by relevant statutory provisions. The Court held that the concept of proper parties is foreign to an election petition and the necessary parties who must be pleaded have been set out in the relevant provisions of the 1951 Act. The Court concluded that no one may be joined as a party to an election petition otherwise than as provided by section 82 and 86(4) of the 1951 Act. Accordingly, the appeal was allowed and the names of all those Ministers and others who were not necessary parties to the petition under the relevant provisions of the Act were struck out from the array of parties to the election petition.[4]

5.5. The Election Commission accordingly vigorously canvassed for a proposition that the court dealing with election petitions must, while exercising its power to admit a petition, not look at it merely mechanically at the threshold but should reject petition against those who are not necessary parties to the petition. The grievance is made on account of the fact that the Election Commission goes on receiving notice after notice from the High Courts where it is unnecessarily being dragged to the court exposing it to unnecessary litigation and avoidable costs. The Election Commission, therefore, stated that in a socialist welfare State, courts have to assume and should be ever vigilant to achieving the goals of curbing litigious tendency as also frivolous litigation.

5.6. Another remedy suggested by various public sector undertakings is that the court should freely exercise the power to compel the parties to resort to arbitration. The suggestion is that where agreement between a public sector undertaking and a private litigant incorporates an arbitration agreement, the court should by its action hold the parties to the contract and force the recalcitrant parties to arbitration. A second string to the bow was that it is now necessary to radically amend the Arbitration Act, 1940, to incorporate a provision therein where, even if the parties to the litigation did not have among themselves an arbitration agreement, the court should be empowered to force the parties in appropriate cases to go to arbitration. This suggestion has

practically the support of a large number of public sector undertakings who have responded to the queries of the Law Commission. In this connection, the Ministry of Communication brought to the notice of the Law Commission a provision for arbitration in cases involving telephone/telex subscribers and the Department as incorporated in the Indian Telegraph Act, 1885. The Department complains that despite this wholesome provision, subscribers tend to rush to the courts initiating action against the Department and the Courts, oblivious to the statutory provision, tend to take cognizance of the dispute. The Ministry asserts that a standing panel of arbitrators must be appointed and no subscriber should be allowed to invoke the jurisdiction of the court before seeking intervention of the arbitrator.

5.7. The National Thermal Power Corporation, a public sector undertaking, lends its weight to this suggestion for compulsory arbitration. It has pointed out that the Corporation has incorporated appropriate provisions in general conditions of contracts awarded/to be awarded to various contractors for settlement of disputes, if any, arising out of, or relating to, the contracts between them and the Corporation. It then proceeded to point out that the Corporation always insists on arbitration but even then it is exposed to unnecessary litigation because the parties dissatisfied by the award of the arbitrator question the same in a court of law on frivolus grounds and the litigation not only perpetuates but multiplies. Accordingly, it is of the opinion that a time has come for radically amending the Arbitration Act, 1940.

5.8. It is unquestionable that interminable, time consuming, complex, exasperating and atrociously expensive court procedures impelled jurists to search for an alternative forum, less formal, more effective and speedy for resolution of disputes avoiding procedural claptrap. The search led them to the dictum : 'arbitrate-do not litigate'. However, the way in which the proceedings under the Arbitration Act, 1940, are conducted and without an exception challenged in courts has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceedings under the Act have become highly technical, accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Informal forum of parties' choice for expeditious disposal of the disputes has, by the decision of the courts, been clothed with legalese of unforeseeable complexity which led Edmund Davies, J., in *Price v. Milner*[5] to utter a warning 'that these may be disastrous proceedings'. A petty labour contractor in search of his labour charges against a multinational was told that, in view of the subsisting arbitration agreement between the parties, the suit filed by the labour contractor must be stayed and the labour contractor must be forced to resort to arbitration by the International Chamber of Commerce in Paris with application to Yugoslav Materials and Economical Law. On a request of the multi-national, the suit was stayed with the effect that the labour contractor will have to resort to arbitration by the International Chamber of Commerce at Paris. The Supreme Court vacated the stay pointing out that enforcement of the arbitration agreement in the circumstances of the case itself would lead to miscarriage of justice.[6] In another case, pursuant to an arbitration agreement, an arbitrator was appointed who gave his award. But before the award could be given, an application was made for removal of the arbitrator to the High Court but which ultimately came to be rejected. Against that order, a petition was moved under article 136 of the Constitution to the Supreme Court of India. The Court, by consent of parties, removed the first-named arbitrator and appointed another person as arbitrator. As the new arbitrator directed fresh pleadings to be filed, a petition was moved in the Supreme Court which had made the appointment of the arbitrator, seeking a direction that the new arbitrator should commence the arbitration proceedings from the stage where it was left by the earlier arbitrator. The Court gave necessary directions. When the proceedings were still pending, one of the parties made an application in the High Court seeking a direction that the arbitrator may be asked to consider its counter-claim. The jurisdiction of the High Court was challenged to entertain the application. After some time, parties agreed to request the arbitrator to consider the counter-claim as well. Thereafter the arbitrator made the award. One of the parties, the beneficiaries of the award, directed the arbitrator to file the award in the Supreme Court so as to make it a rule of the court. This again led to a dispute about the jurisdiction of the Supreme Court to entertain the application. A petition

was also moved in the High Court. Ultimately, the Supreme Court, after hearing the parties, made the award a rule of the court.[7] Would not the normal litigation have ended earlier than the arbitration proceedings? It is not for a moment suggested that the arbitration agreement should not be enforced and parties must be held to their bargain.

5.9. Cochin Shipyard Ltd., invited tenders for construction of building dock at Cochin. Tarapore and Company were the tenderers. Ultimately, the contract was awarded. One of the terms of contract was that a credit in yen would be made available to the contractor for importing piling plant and machinery, spares, technical knowhow and hiring of experts necessary for the work, amounting to about Rs. 2 crores. The credit was not forthcoming. Accordingly, the contractor requested the Government of India to give necessary clearance to import equipment from other countries where it is available. Ultimately the contractor made an extra claim consequent upon increase in the cost of pile driving equipment and technical knowhow fees. The parties agreed to refer the dispute to arbitration. The points of difference between the parties were drawn up by the Cochin Shipyard itself. The arbitrator made an award directing Cochin Shipyard Ltd. to pay Rs. 99 lakhs with interest at nine and a half per cent per annum on account of the increase in the cost of imported pile driving equipment and technical knowhow fees. The Cochin Shipyard challenged the award on a technical ground that the arbitrator cannot decide its own jurisdiction and the dispute was not covered by the arbitration agreement. The arbitrator entered upon the reference on June 2, 1976, and the dispute finally ended by a decision of the Supreme Court on March 6, 1984. And all technical objections were taken by the Cochin Shipyard Ltd., one of them being that the arbitrator had no jurisdiction to decide its own jurisdiction, even though the point as to jurisdiction was agreed to be referred to the arbitrator.[8]

5.10. Even where parties have a subsisting arbitration agreement, yet when one party in breach of the agreement resorts to a court proceeding and the opposite party appears and seeks enforcement of the arbitration agreement by seeking a stay of the suit under section 34 of the Arbitration Act, 1940, highly technical contentions are raised in this behalf and the matter has repeatedly surfaced in the Supreme Court of India. Food Corporation of India, a public sector undertaking, faces numerous litigation and as soon as a writ of summons of the suit is received, it appears through one of its officers and seeks adjournment of a day or two. A contention is raised that as Food Corporation of India has taken a step in the proceeding, it has waived its right under the Arbitration Act.[9] In this case, the Supreme Court had to overrule four judgments of different High Courts.

5.11. Therefore, the votaries of arbitration as alternative to court proceedings must also be influenced by the culture of arbitration. Public sector undertakings have not exhibited a different culture than the one a private individual manifests when in breach of agreement court proceedings are started and stay of the suit is resisted. The Law Commission would, therefore, keep in view this oft-repeated suggestion but would like to indicate changes in the approach while insisting upon arbitration.

5.12. Further, there are numerous dispute prone situations where the arbitration agreement may not be subsisting between disputants. Also, between two public sector undertakings, between instrumentalities of the Government and the Government, and between the Union Government and the State Government, there is generally no arbitration agreement. What litigation policy must be formulated in the absence of arbitration agreement?

5.13. Apart from public sector undertakings, some individuals also responded to the queries of the Law Commission. An academe suggested two alternatives to restrict the inflow of litigation from public sector undertakings/ Government. He was of the opinion that numerous specialist tribunals should be set up to deal with the litigation in which public sector undertakings are involved and, in order to put a wholesome restraint on the litigious tendencies disclosed by public sector undertakings/Government, a litigation Ombudsman be appointed with expansive jurisdiction.[10]

5.14. Tribunalisation of justice, even though frowned upon, has been approved by the Supreme Court of India.[11] There is a feeling among some vocal sections that tribunalisation of justice to the exclusion of the High Court diminishes the value of justice compared to one rendered by courts. However, the belief that specialist tribunal has the advantage of rendering speedy and effective justice compared to the generalist court is gaining ground. There are as many as 2,000 tribunals operating in various fields in U.K. alone subject, of course, to the supervision of the Council on Tribunals which was set up under the Tribunals and Inquiries Act, 1958, but which was comprehensively repealed and replaced by Tribunals and Inquiries Act, 1971. The Constitution was amended to incorporate Part XIVA enabling the Parliament by law to provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to matters referred to in clause (2) of article 323B as also with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or any local authority within the territory of India or under the control of the Government of India or any Corporation owned or controlled by the Government. It is interesting to note that this amendment was the outcome of a strong recommendation made by the Supreme Court which may be extracted :

> "There are few other litigative areas than disputes between members of various services *inter se,* where the principle that public policy requires that all litigation must have an end can apply with greater force. Public servants ought not to be driven or required to dissipate their time and energy in court room battles. Thereby their attention is diverted from public to private affairs and their *inter se* disputes affect their sense of oneness without which no institution can function effectively. The constitution of service Tribunals by State Governments with an apex Tribunal at the Centre, which, in the generality of cases, should be the final arbiter of controversies relating to conditions of service, including the vexed question of seniority, may save the courts from the avalanche of writ petitions and appeals in service matters. The proceedings of such tribunals can have the merit of informality and if they will not be tied down to strict rules of evidence, they might be able to produce solutions which will satisfy many and displease only a few."[12]

This view was reiterated by the Supreme Court in which it observed :

> "In these appeals we have once again to consider career conscious competing claims to seniority which appear so much to dominate the lives and careers of our civil servants that a large bulk of the cases in this court relate to the resolution of problems arising out of such claims. So much of our time is taken up in discovering the precise facts of these intricate problems that we wonder whether the constitution of a fact finding administrative tribunal who should invariably be approached in the first instance will not better serve the cause of successful administration."[13]

However,the cases relatable to the service conditions of civil servants continued to flood the court. Ordinarily, the dispute was with regard to claim to *inter se* seniority when recruitment to a cadre was from more than one source and these cases consumed considerable time of the Court. The Court by its decisions also compounded the confusion. The Court had, therefore, to point out that in order to put service jurisprudence on fair and rational basis, it would be necessary to reconsider some of the decisions of the Court.[14] The Court reiterated this view.[15] And yet the cases came in quick succession. Chief Justice Chandrachud (as he then was) was constrained to open his judgment observing : "Once again, we are back to the irksome question of *inter se* seniority between promotees and direct recruits".[16] And the irony of situation was that the contestants before the Court were judicial officers of Delhi. Reversing the view taken by the Delhi High Court taken on its administrative side, the Chief Justice, after referring to the decision in the case of A. Janardhan, concluded that even though no two cases are alike, yet the observations from A. Janardhan extracted by the Chief Justic were not without relevance to the decision of the case before him. Shorn of legal or judicial jargon, it meant that even though the law was settled, the disputes rolled in unhindered. To conclude on this point, even though a view of law was repeatedly reiterated by the Supreme Court, yet the matter was again put in the lap of the Court almost raising identical contentions.[17] What is the lesson? Indubitably, the absence of courier between court and administrative Departments multiplies litigation. The Courier by itself may not solve the problem but if the attention

is focussed on the latest pronouncements and a grievance resolution machinery is set up, the Government can successfully avoid litigation. And yet, if some recalcitrant party persists in doing it, the court can throw him out at the threshold without allowing him to impinge upon the valuable time of the court.

5.15. Ultimately, this led to the enactment of the Administrative Tribunals Act, 1985. Sub-section (2) of section 14 confers power on the Central Government to apply, with effect from the dates to be specified in the notification, the provisions of sub-section (3) of section 14 to local or other authorities within the territory of India or under the control of the Government of India and to corporation or society owned or controlled by Government of India excluding those controlled and owned by State. It appears that the relevant notification has still not been issued with the result that the employees of the public sector undertakings are not brought within the purview of Central Administrative Tribunal. *It thus appears that tribunalisation of justice has* come to stay. The Supreme Court rejected the contention that the Administrative Tribunals Act, 1985, contravenes the basic structure of the Constitution. It accepted the administrative tribunal set up under the Act as providing another alternative institutional mechanism or arrangement for judicial review and it was held to be equally efficacious as the High Court whose jurisdiction was excluded by the Act.

5.16. Following this line of thinking, the terms of reference relevant to judicial reforms on which the Law Commission was invited to work, *inter alia,* provided to ascertain the matters for which Tribunals (excluding services Tribunals) as envisaged by Part XIVA of the Constitution need to be established expeditiously and various aspects related to their establishment and working.

5.17. The Law Commission accordingly proceeded to identify various specialist jurisdictional areas, such as, labour disputes, disputes in the field of education and disputes in the field of taxation of laws and recommended setting up of national court, as well as various different Tribunals.[18]

5.18. The Law Commission also took note of the attempts by the specialist Tribunals for disputes arising under the Customs Act, 1962, Central Excises and Salt Act, 1944, and Gold (Control) Act, 1968. Under the aforementioned three Acts, Government of India constituted the Customs, Excise and Gold Control (Appellate) Tribunal in the year 1982, having exclusive jurisdiction to deal with decisions of the administrative officers functioning under the various services. However, it should not be forgotton that the decisions of the aforementioned Tribunals can be questioned before the High Court under article 226 of the Constitution or by way of reference procedure which merely adds one more stage rather than reducing any.

5.19. It would, therefore, be idle parade of familiar knowledge to advance all those supporting reasons for setting up various Tribunals. However, let it not be forgotton that the approach paper relevant to the present report invited suggestions not for setting up different forum to the exclusion of courts for resolution of disputes involving public sector undertakings/Government. In fact, the search is for litigation policy and strategy to be followed by public sector undertakings and Government, with a view to, as far as possible, avoiding litigation or resort to courts and to devise a machinery to settle the disputes amongst contending parties. That cannot be ascertained with certainty by recommending tribunals involving litigation by or against public sector undertakings as well as Government.

5.20. The alternative suggestion was that an Ombudsman, by whatever name called, be appointed to whom all disputes involving public sector undertakings *inter se,* or between public sector undertakings and Government, or such undertakings and citizens at large be referred to whose decision should be final. The suggestion is not a novel one in the sense that the Law Commission has already dealt with this aspect and suggested constitution of an Ombudsman at the Centre as well as State level for various Ministries empowering him to entertain grievance from any member of public against public sector undertakings/Government and pleading for appropriate relief. This was to be an opening to the public having grievances against the Government/public sector undertakings with no legal sanction behind it. The suggestion

was improved upon by saying that the Ombudsman, either on a complaint or *suo motu,* may examine administrative lapses which the court may be disinclined to cure. It was believed that the Ombudsman undertaking investigation of the complaint would, in a large number of cases, be able to set right the matter by persuading the Ministry concerned to redress the wrong.[19] It must not be overlooked that the institution of Ombudsman has been operating in various countries and the institution is not free from pungent criticism. "May we not be in danger of establishing more red-tape, more bureaucracy—a Parliamentary Commissioner and staff, special sections within Government Departments to deal with the Parliamentary Commissioner and his staff and perhaps eventually a Parliamentary Commissioner to watch the Parliamentary Commissioner and all for the doubtful advantage of adding to the existing machinery yet another watchdog which can bark but cannot bite?"[20]

5.21. In public responses to the approach paper circulated by the Law Commission, a suggestion recommending setting up of Lok Adalats for resolving disputes between public sector undertakings *inter se,* and between Government and public sector undertakings as well as local authorities and other authorities was put forth. Institution of Lok Adalats started as a voluntary organisation modulated by the courts for informal resolution of disputes but mostly manned by members of judicial fraternity. Now it has received a statutory recognition in Chapter VI of the Legal Services Authorities Act, 1987. Lok Adalat can cater to the resolution of simple disputes between individuals such as partition of property, Family disputes, maintenance cases, compensation for victims of motor accidents, *et el.* These are disputes where an approach of give and take may result in resolution of disputes. The more and more Lok Adalats are being convened, its limitations and infirmities are becoming visible. 'At times, in view of the lack of supervision over its function by any higher authority, it leads to degeneration in the quality of justice because advertently or inadvertently many unfair practices creep in'.[21] Therefore, institution of Lok Adalats will have limited utility in resolving disputes between Government and citizen, between public sector undertakings *inter se,* and between local authorities and other instrumentalities of the State.

5.22. The last suggestion was that a tribunal on the lines of Railway Claims Tribunal being set up under the Railway Claims Tribunal Act, 1987, for inquiring into and determining claims against the Railway Administration for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to be carried by railway or for the refund of fares or freight to it, for compensation for death or injury to passengers occurring as a result of railway accident and for matters connected therewith or incidental thereto, may be set up in respect of public sector undertakings. That again assumes one more tribunal being set up but does not answer the query of the Law Commission as to what litigation policy should be adopted by Government/ public sector undertakings who have maximum litigation in the court to avoid avoidable litigation in the larger interest of the nation and to eschew litigious culture and incidentally to relieve unbearable burden on court system. The search is for policy and strategy of litigation by Government/public sector undertakings.

5.23. The public debate, though well participated, has not been able to throw up any one solution helpful in this behalf. The search must continue.

CHAPTER VI

EVALUATION OF THE ARRANGEMENTS ARRIVED AT FOR SETTLING DISPUTES WITHOUT RESORT TO COURT

6.1. It cannot be gainsaid that the mounting litigation to which Government and public sector undertakings are exposed has not evoked any response from them. The attempts so far made to resolve disputes without reference to courts may now be noticed. Since the public sector undertakings proliferated, Government of India has set up, what is called, a Bureau of Public Enterprises. The Bureau seems to be something like a co-ordinating body. The Bureau has sent copies of various circulars issued from time to time specifying the methodology for settlement of disputes involving a public sector undertaking. The emerging scenario from various circulars focusses upon arbitration as a method of amicably resolving disputes involving public sector undertakings and avoiding recourse to litigation. To make this suggestion operational, the circular recommended that public sector enterprises undertaking commercial activities should in their agreements provide for arbitration by and arbitrator to be nominated in the manner prescribed in the circular. One method suggested is to draw up a panel of standing arbitrators under which a designated officer acts as the sole arbitrator. An enquiry revealed that the system appears to be in vogue in the Department of Director General of Supplies and Disposals and Central Public Works Department. It was assumed that the circular will be implemented in letter and spirit. However, a social audit by the Public Accounts Committee of the Parliament on the effect of the circular has been summed up as under :—

> "The Committee cannot understand why it has not been possible to resolve a dispute between two Governmental organisations by mutual consultation. Instead the parties have had to resort to litigation, thus incurring avoidable expenditure. The Committee desire that the existing instructions for settlement of disputes between Government Departments and public sector undertakings should be reviewed thoroughly and a suitable machinery evolved for the resolution of interdepartmental and intergovernmental disputes."[1]

In the light of the Audit Note of the Public Accounts Committee, a review was undertaken about the litigation policy in the matter of inter-departmental disputes or where in the case of public sector undertaking and Government there is a nodal Ministry, an attempt should be made at the Ministers' level to resolve the dispute, failing which the matter should be referred to Cabinet for final decision which must be binding. The litigation in the court has to be eschewed. Pointing out the nature of disputes involving public sector undertakings and Government, it was emphasised that regardless of the type of dispute, the concerned Departments and the undertakings must resolve their disputes amicably by mutual consultation or through the good offices of empowered agencies of Government, failing which through arbitration. Litigation at any cost has to be avoided. The suggestions include the manner of selecting the arbitrator and the tilt is in favour of bureaucrats. The Law Commission would not be able to subscribe to this suggestion because a charge of bias against a Government officer is easily entertained and now the Supreme Court is examining whether such appointment, to be unilaterally made by the Department, assures principles of natural justice, one of which is that no one shall be a judge in one's own cause. The policy statement also frowns upon appointment of a lawyer as an arbitrator. Being aware of the fact that mere resort to arbitration proceeding is not an end of litigation, the policy statement desires a directive to be issued that the award of the arbitrator should ordinarily be accepted as final unless there is an error apparent on the face of the record and it is of such a gross nature that a challenge becomes inevitable. But before doing this, the Secretary, Ministry of Law may be consulted.

6.2. In the matter of disputes between the Income Tax Department and public sector undertakings, it was suggested in the circular issued in consultation with the Central Board of Direct Taxes that in the event of a difference of opinion between public sector undertaking and the Income Tax Department, the procedure therein prescribed must be followed. But the procedure prescribed is hardly conducive to reducing or eliminating litigation. A further suggestions was that the machinery for settlement of direct tax disputes outside the court may be devised consisting of representatives of Central Board of Direct Taxes, Bureau of Public Enterprises and the Ministry of Law. To that a caveat was entered that if Revenue is represented, the concerned public sector undertaking must also have representation in the machinery.

6.3. A fresh attempt was made as late as 1981 to tackle this problem by issuing a circular that public sector undertakings and Departments of the Government in the event of a dispute between them should refer it to the sole arbitration of an arbitrator to be appointed by the Department of Legal Affairs. And to facilitate the appointment of arbitrator, a standard form of agreement was also prescribed and circulated. A suggestion was made that on the arbitrator giving the award, ordinarily it should be accepted. The Law Secretary is free to nominate a suitable officer as arbitrator, superseding the ealier directive that the arbitrator should be a serving law officer of the rank of Joint Secretary from amongst the Joint Secretaries in the Department of Legal Affairs.

6.4. Even with this elaborate procedure prescribed by competent authority to bring disputes between public sector undertakings and Departments of the Government to arbitration, the situation has hardly improved because there is a loophole in the arrangement, namely, that if the dispute involves a question of law not hitherto decided by the Supreme Court, the matter should be taken to the court. What is a question of law has defied any scientific definition. Therefore, anything can be twisted into a question of law. This report would keep in view all these past attempts and considerably improve upon them to achieve the desired result.

CHAPTER VII

CONTRIBUTORY CAUSES FOR MULTIPLICATION OF LITIGATION

7.1. Experience shows, and analysis of reported cases clearly lead to one conclusion, that the lack of accountability in the officer in whom the power vests to determine whether to initiate litigation or perpetuate the same by preferring appeals, is largely responsible for mounting litigation. This attitude is referable in service matters to eccentric approach of officers siting in vertical command position and utter non-compassionate attitude towards subordinates. In the matter of litigation with public, cases are not unknown where corrupt motives have been at the root of the tendency to continue litigation so as to exhaust the other side in the fond hope that he/she/it may, out of exasperation, be willing to grease the palms. There is a third independent cause generating this tendency to initiate or perpetuate litigation and that is to avoid taking decisions which, in the current culture, may lead to doubting the *bona fides* of the officer who has to take decision. There are other multiple causes which contribute to the malaise. It is not possible to explore the hidden tendencies behind this attitude but which are solely responsible for multiplication of litigation involving public sector undertakings and Government.

7.2. One more cause may be independently examined in this behalf. The Indian Constitution inheres a social philosophy and is founded upon certain fundamental values. It has goals and objectives. One of the well-recognised objective of the Constitution is to impart social justice, the guiding spirit behind Part IV of the Constitution. This value system and social philosophy of the Constitution can be clubbed together in one expression—the culture of the Constitution. All limbs of Executive must be imbued with this constitutional culture. Every action of theirs must be judged and examined and evaluated by the yardstick of constitutional culture. Social justice is one of the prime facets of constitutional culture. Social justice is imparted not only by means of an organised movement or by way of any party politics but many administrators, executives, can also possibly reveal their sense of social justice at the decision making level while formulating policy on vital issues, they accomplish a profound change in outlook and thus silently revolutionize 'authoritative allocation of values'.[1] As in the case of Executive, the Judiciary, an important limb of our political society, has to evolve an activist role. For years it was not even visible is not an unfortunate reality. However, since last about two decades, judicial activism has come to the forefront. This activism must be reflected in the scale of values of Judges evinced by their treatment of the weak, the poor, the downtrodden and against the giants, the unequals. The test of the moral quality of a civilization is its treatment of the weak and powerless.[2] This moral quality of the constitutional civilization must inform all limbs of the Government. 'In public law we have to evolve an activist administrative branch with correctional and directional, protective and pre-emptive, capabilities. Law becomes functional only if it can meet the challenges of change. So it is that I plead for a constructive public sector jurisprudence founded upon socio-political realities and geared to the fulfilment of larger objectives.'[3] This constitutional culture abhores futile and indefensible litigation, especially at the hands of Government/public sector undertakings. Therefore, it is imperative that policies and strategies should be so devised by public sector undertakings/Government as to reduce litigation to the minimum, if not eschew it wholly.

7.3. How much urgent this task is can be revealed by the fact that during last five years, lakhs and lakhs of cases involving Government Departments were instituted in various courts of the country and colossal amount has been invested in this unproductive exercise[4] (for figures see *Annexure IV*). From amongst public sector undertakings, nationalised banks and financial institutions have been responsible for a large amount of litigation[5] (for figures see

Annexure V). Every such diversion of funds to unproductive areas like litigation reduces the capability of these public sector undertakings to spend on socially beneficent activities. The loss is to the poor and the underprivileged and by their litigating policy, the gain is to lawyers and the disadvantage is of the court system on which an unduly heavy burden is cast.

7.4. There is, what is called a Department of Personnel, Public Grievances and pensions, which has the nodal responsibility to redress the grievances which are remediable without intervention of courts. The Department has a full-fledged Division, headed by a Director under the overall charge of the Additional Secretary. This Department confesses that on an average it receives about 3,000 grievances per quarter from the public. They are processed with the aid of a computer. After the grievance is diagnosed, which itself may suggest a remedial measure, they are forwarded for final disposal to the concerned Ministry under intimation to the man who had made the grievance. In some cases, a follow up action is taken directly by the Department depending upon its belief it can be handled by the Department itself.

7.5. The Law Commission has come to note that the Government has resolved to set up a Directorate in the Cabinet Secretariat itself to strengthen the machinery for redressal of public grievances. Presumably, an official in the rank of a Secretary to the Government of India would head the Directorate. In the first instance, the new Directorate would deal with grievances relating to railways, posts and tele-communications and banking if the concerned Department has turned deaf ear to the complainant. The details are yet to be worked out but the format appears to be of a three-tier set up : one in the Department itself, a monitoring cell and a Directorate at the level of Cabinet Secretary. The experiment may be evaluated when it is made fully operational. For the present, the Law Commission can only take note of the wholesome attempt in this behalf. What would be required would be a total and radical change in the attitude towards those coming forward with grievances. Experience shows that generally one who can set right the grievance turns deaf ear to the complainant and he is not subject to any social audit. In the absence of social audit, the doctrine of accountability suffers and wide yawning chasm develops between the maker of the grievance and the one who has power to redress the same. While suggesting effective measures, this aspect will have to be kept in central focus.

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CHAPTER VIII

STRATEGIES AND POLICIES FOR LITIGATION FOR PUBLIC SECTOR UNDERTAKINGS AND GOVERNMENT

8.1. There is a marked difference between the litigation involving public sector undertakings and the Government. The policy and strategy in respect of them may have to be planned and devised keeping in view this basic difference. But the goal of the policy and strategy in both the cases must aim at reduction and, if possible, elimination of litigation involving them. This Chapter, therefore, deals with public sector undertakings and Government in two separate and independent parts. In the third part a body for overview and general approach would be recommended.

PART I

8.2. Public sector undertakings are of heterogeneous character because they are set up with specific goals to be achieved. Commercial banks were nationalised with a view to ensuring better banking facilities in all parts of the country, to make banking services available to a wider public especially the neglected segments of society treated non creditworthy, and allied objects. Nationalised Banks, financial institutions like Industrial Development Bank of India, Industrial Credit and Investment Corporation of India, *et el*, are under the overall supervision of the Reserve Bank of India. However, in its supervisory role, the Reserve Bank of India hardly maintains effective check or control over the litigious culture developed by these public sector undertakings. The litigation which the banks either face or initiate arises from their commercial transactions and their administrative policy decisions dealng *inter alia* with their employers.

8.3. Manufacture of steel requires coking coal. Coal and steel industries are in public sector except a body like Tata Iron and Steel Company Ltd. and mini steel plants. The Coal India Limited and the authorities in charge of nationalised collieries have also to supply coal to private consumers and industries. The type of litigation they face is slightly different from what the banks face. In brief, public sector undertakings rendering service or consumers' goods face different type of litigation. Different approaches and methodologies have to be worked out to avoid litigation on behalf of such public sector undertakings.

8.4. Let it be made distinctly clear that in a constitutional democracy, litigation cannot be wholly eschewed. Attempts must be to minimise, restrain, reduce or control the same by vigorous approach disclosing enlightened self-interest to avoid puerile and futile litigation.

8.5. It is undoubtedly true that with all its limitations, arbitration is a desirable alternative to court litigation. But there are certain inbuilt limitations hindering the access to this alternative forum. To compel arbitration, the parties must be having amongst themselves a subsisting valid arbitration agreement. Now the public sector undertakings have disputes *inter se* or with the taxing authorities. There would be no subsisting arbitration agreement to cover such disputes. At best they can expand the scope of arbitration when dealing with their contractors and consumers, suppliers of goods and services to them, by entering into an arbitration agreement before dealing with them. However that would at best marginalise litigation but would not avoid it.

8.6. Therefore, the first thing that is required to be done is that the Government of India must issue a compulsory directive binding on public sector undertakings that in the event of a dispute between any one or more public sector undertakings or between two or more public sector undertakings on one hand and Government on the other, the parties shall refer the dispute to arbitration. It shall be presumed by a legal device, if the parties to a dispute are two or more public sector undertakings or public sector undertakings on one

hand and Government on the other, excluding the tax authorities, that a valid arbitration agreement subsists.

8.7. In order to provide teeth and effectiveness to this suggestion, the Government of India should set up an arbitration panel composed of retired Supreme Court Judges and High Court Judges from which the parties can agree to the selection of one or more arbitrators and failing agreement, the appointment will be made by the Minister of Law from the panel. There must be a fairly good number of panelists so that the work can be distributed amongst them. The fees to be paid to the panelists shall be fixed by executive order in advance and those who agree to accept the fees so prescribed may be empanelled. There is no dearth of retired Supreme Court and High Court Judges willing to put to constructive use their experience and expertise for the national good.

8.8. If necessary, an amendment to the Arbitration Act, 1940, should be made which would empower the court before which any public sector undertaking has initiated litigation without resorting to arbitration to compel the undertaking to go to arbitration and not merely stay the suit but dismiss the same.

8.9. The award of the arbitrator shall be final and unless the Minister of Law permits the challenge of the award on a valid and rational ground, the same shall not be challengeable before any court.

8.10. In the matter of tax disputes between public sector undertaking on one hand and taxing authorities on the other, ordinarily the dispute would arise before an Income Tax Officer or Inspecting Assistant Commissioner or a Commissioner of Income Tax or the lowest grade tax officer functioning under statutes levying indirect taxes. So far, the law should be allowed to take its own course. Once the Commissioner decides the dispute, the aggrieved undertaking may approach the nodal Ministry under which it is functioning seeking permission whether the matter should be litigated further at all. If need be, an opinion from one of the panelists in the arbitration panel may be obtained and that should become binding. If, however, the recommendation of the Law Commission for setting up Tax Courts[1] is accepted and implemented, the matter may be litigated up to the Central Tax Court and must end there.

8.11. Dealing with the disputes between the public sector undertaking and its employees, every public sector undertaking must set up a Grievance Cell composed of management and workmen's representatives not exceeding three on either side and presided over by a retired Judge who has functioned as a Judge of the Supreme Court or High Court or Chairman of the Industrial Court/Tribunal. Every dispute involving individual employee must be brought, if need be by amending the standing orders or service rules, before the Grievance Cell. The decision of the Grievance Cell shall be binding. If the dispute involves more than one employee but not all the employees of the undertaking, same procedure has to be followed. Even the disputes as to seniority, promotion and allied issues must be brought before this Cell. Promotion has long since ceased to be a management function.[2] Therefore, the Grievance Cell would be competent to deal with the same. In the first instance, the promotion may be decided by the management but the dispute arising out of promotions granted or refused may be brought before the Grievance Cell. The decisions of the Grievance Cell will be binding and if any one, despite this arrangement and effective implementation, takes the matter to the court, the court must decline to entertain the dispute.

8.12. Some suggestions have come from the All-India Law Officers Association but the overall view of the letter leaves an impression that they are self-serving suggestions in which Law Commission is not interested.

8.13. In the matter of selection of a lawyer for appearing on behalf of the public sector undertaking, a panel should be drawn up with fixed fees case-wise and only those should be empanelled who are prepared to accept it on these terms.

8.14. Any officer sanctioning or initiating litigation contrary to the policy herein indicated and if implemented, must be subject to disciplinary proceedings.

PART II

8.15. The Government, as far as the litigation is concerned, is in a class by itself. It is the biggest litigant in this country. And one is constrained to say that for such unmanageable litigation, it has neither policy nor plan nor direction nor effective method of management. Its policy of selecting law officers leaves much to be desired because the area of discretion enjoyed by it in this respect is unmanageably wide. The Department of Legal Affairs, the Law Commission is informed, handles the litigation on behalf of Union of India in the Supreme Court, High Courts and subordinate courts also. Attorney General is a constitutional functionary and he is the topmost law officer of the Government of India with a right of audience in every court as also has a right to address the Parliament under certain circumstances. But by and large information shows that he has little or no voice in selecting his colleagues. Similarly, at the State level, Advocate General is the topmost law officer but he has no voice in selecting a Government pleader or a public prosecutor attached to the High Court. Some streamlining in this behalf is necessary and wide discretionary power in the matter of selection of law officers requires to be restricted and controlled. Judges have more often voiced dissatisfaction with legal representation of the Government of India in the court and the Law Commission was left with the same impression while talking with some Judges. In any event, this report is not concerned with manner and method of appointing law officers of the Government of India.

8.16. Government of India has one distinct advantage that no litigation can be started against it, except where constitutional power under article 32 or 226 is invoked, without a notice in writing served two months in advance specifying various things set out in section 80 of the Code of Civil Procedure. There are divergent views strongly held on the utility and efficacy of this statutory notice. Law Commission recommended the deletion of the provision contained in section 80, CPC.[3] It appears that this recommendation pending with the Government of India since 8th May, 1984, has not met with its approval. It is, therefore, safe to assume that Government of India is of the opinion that statutory notice has some utility despite some strident and pungent criticism of the court. This Law Commission would, therefore, refrain from expressing any opinion about it. It would formulate its recommendations on the assumption that the requirement of statutory notice continues to exist.

8.17. It is, however, said that nobody is bound to serve a notice while invoking the courts' constitutional power conferred by articles 226 and 32. This statement does not adequately state the correct legal position. By numerous decisions, the courts have held that when a petition is for a writ of *mandamus,* the Court would insist upon the party making a demand for justice which, for all practical purposes, would tantamount to notice. *Certiorari* lies not only against inferior courts but also against quasi-judicial tribunals and against all bodies which have a duty to act judicially or fairly. Challenge could be to a holding of such tribunal. The absence of notice would be hardly relevant. The writ of *habeas corpus* is of such a special nature that to insist upon a notice is to defeat the writ and disputes involving writ of *habeas corpus* are not negotiable before an arbitrator. Let the courts deal with the same. In the matter of writ of *quo warranto* where the legality of occupying an office is questioned, there is enough advance information to Government. Therefore, no consideration should be given to a submission that in large areas of litigation, the Government of India does not receive notice.

8.18. Now if Government is served with a notice of demand for justice or is aware with regard to other writs for reasons herein indicated, two expectations from the Government are wholly legitimate. What action should the Government of India or the concerned Department take on a receipt of the notice or demand for justice or allied method of information? And, secondly, did the concerned officer enjoying the power to take a decision on behalf of the Government of India in the matter involved in the notice make up his mind and determine whether the litigation is inevitable or there is a way out? At any rate, no action should be taken by the Department after the receipt of the notice to alter the situation to the disadvantage of the one giving notice. That would not only be unfair and unjust but would also be clearly violative of the principle on which Government is accorded

a special status in its own class of not being sued unless a notice is served. Assuming that the demand in the notice is the one that the Government of India cannot concede as it is unjust, unfair or untenable or contrary to the position adopted by the Government of India in the matter, it should be made obligatory on the officer concerned, on the expiry of two weeks from the receipt of the notice, to formally write to the person giving notice to agree to refer the dispute for arbitration to one of the persons on the panel of arbitrators. On his agreeing to refer the dispute to arbitration, the terms of reference will be drawn up and the person giving the notice must be called upon to choose an arbitrator from the panel or arbitrators drawn up by the Government of India. The arbitrator, on his willingness to accept the same, shall proceed to dispose of the dispute. This will put a positive check on the inflow of unnecessary litigation. Assuming that the person giving notice, to whom the Government of India through its concerned officer makes an offer of referring the dispute to arbitration, declines to accept the same, then, on the suit being filed, the Government of India must appear and make the same offer again and, by a proper amendment of the Arbitration Act, the courts must be empowered to compel persons to go to arbitration. This would be an effective check on the inflow of litigation.

8.19. Could the same procedure be followed when constitutional power of the court is invoked against the Government of India? The answer is obviously in the negative. On a notice of the court in respect of a writ petition which is admitted being received by the concerned Department of the Government of India, it should again apply its mind within fifteen days to decide whether there is any legitimacy in the demand made against the Government of India. If the demand is legitimate, it must be conceded in the court. If, on the other hand, the demand appears to be illegitimate or is one which the Government of India cannot afford to concede or is contrary to national interest, the Government of India must appear and thereafter, it must agree to an informal conciliation in the matter by a Judge of the same High Court or, if the petition is initiated in the Supreme Court, by a Judge of the Supreme Court other than the one who issued notice, to see whether the area of dispute is narrowed down. If during this process the dispute can be resolved, nothing like it. If, on the other hand, there remains a grey area, the decision of the court should be taken. Ordinarily, the decision must be treated by the Government of India as binding.

8.20. Turning to the complaints by the employees of the Government of India vis-a-vis the departmental bosses, the procedure indicated in para 8.11 must be effectively followed. Effective Grievance Cell should be set up which must remain active and must be in a position to dispose of the problems raised by the staff. Where a point of legal formulation without a precedent is involved and if the Grievance Cell is unable to deal with that point effectively, the concerned Department and the employees involved in the dispute must agree to abide by the opinion of a member of the panel of arbitrators to whom a reference on a point of law be made and his opinion invited. The disputes must be disposed of in consonance with his opinion.

PART III

8.21. It is equally necessary in the larger national interest of reducing litigation and curbing litigative culture that a central body should be devised for having a continuous overview of the different bodies recommended herein. The role of this central body would be of a co-ordinating nature, of devising ways and means of reducing *inter se* litigations between Union and States, between States and States, between public sector undertakings *inter se*, between public sector undertakings and taxing authorities, and lastly between Government and public sector undertakings on one hand and citizens on the other. This needs planning, strategy and effective implementation of policy decisions. It must be a body which can effectively curb the tendency to rush to the court or to rush to higher courts by preferring appeals. In fact, this body can effectively lay down ground rules which, when effectively followed, would make a direct dent on litigious tendencies. Such a body can be appropriately described as Federal Legal Cell composed of retired Judges, retired law officers, both Central and State, and senior executives who have worked in public sector undertakings. The function and duties of the Federal Legal Cell can be extensively drawn up centering round policy and strategy

planning with a view to reducing frequent resort to litigation. It can also work as a courier between the Executive and the Judiciary. The link till today is missing and is responsible for many ills which are otherwise curable. The Government of India should set up such Federal Legal Cell with appropriate terms of reference.

8.22. The multiplicity of litigation is not a matter of concern merely for Judiciary and Executive. That would be a narrow view of the matter. It is the concern of the Judiciary because its dockets have become unmanageable. It is equally the concern of the Executive because wasteful expenditure and avoidable misuse of the time of the officers coupled with the tendency to avoid taking decisions deserves to be curbed. But the third limb of the constitutional democracy, namely, the Legislature, must have equal say in this matter. Therefore, like the Public Accounts Committee, there should be a Parliamentary Committee on Litigation with power to inquire into every litigation taken by or on behalf of the Government to question the correctness of the decision with a view to pointing out that care should be taken in future not to resort to such litigation. Parliamentary Committee can every year seek detailed information on expenses incurred on litigation by Government, public sector undertakings, and Departments and instrumentalities of the Government, and take upon itself the inquisition of any particular litigation which was avoidable and yet resorted to. It can inquire whether appeals are merely being preferred for extraneous and irrelevant considerations. This will introduce sufficient accountability of the officers in whom the decision-making power for initiating and continuing litigation vests. The composition of the Committee must be a matter of concern of the Parliament itself.

8.23. The Law Commission is of the firm view that if the various suggestions made in this Chapter are followed in letter and spirit, mass of litigation in which public sector undertakings and Government are involved can be successfully avoided, thereby reducing considerably the load on courts and on the justice system.

8.24. We recommend accordingly.

(D. A. DESAI)
Chairman

(V. S. RAMA DEVI)
Member Secretary

NEW DELHI,
May 12, 1988.

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ANNEXURE-I

Telephone No. 384475

See Para 4.2

विधि आयोग
LAW COMMISSION
भारत सरकार
GOVERNMENT OF INDIA
शास्त्री भवन,
SHASTRI BHAWAN,
नई दिल्ली
NEW DELHI

December 14, 1987

D. A. DESAI
Chairman

To

Subject: Formulation of the norms by the public sector undertakings in the matter of settlement of disputes; Term No. 7 of proposed Judicial Reforms Commission assigned to the Law Commission of India.

Sir,

The Government of India deeply distressed by the malaise in the judicial system of this country decided to set up a Judicial Reforms Commission around the year 1985-86. Later on it was resolved to assign the task to the present Law Commission. To pin-point the issues which must engage the attention of the proposed Judicial Reforms Commission, the Government of India had drawn up detailed terms of reference in this behalf. The entire work was assigned to the Law Commission of India. Term No. 7 of the work taken over by the Law Commission reads as under :—

"7. The desirability of formulation of the norms which the Government and the public sector undertakings should follow in the settlement of disputes including a review of the present system for conduct of litigation on behalf of the Government and such undertakings".

The aforequoted term has its genesis in terms No. 1 and 2 which deal with the multi-pronged drive for reducing the volume of work in the courts generally and Supreme Court and High Courts in particular.

As you are aware that the dockets of the High Courts and Supreme Court are crowded largely by litigation related to public sector undertakings. It is therefore pertinent for the Law Commission before formulating the norms, to get detailed information on the situation as at present it exists. This letter raises queries of an urgent nature with a view to equiping the Law Commission of relevant material which would enter the formulation of norms.

Amongst public sector undertakings : (1) Life Insurance Corporation of India, (2) Employees State Insurance Corporation, (3) Commissioner for Enforcing and Implementing Employees Provident Funds Act, (4) General Insurance Corporation, (5) Steel Authority of India Ltd., (6) Oil and Natural Gas Commission, (7) Bharat Petroleum and (8) Hindustan Petroleum, to name a few are leading Corporations. Even among those set out above, LIC, GIC, ESI and PF have direct contact with large masses of citizens of this country for the reason that they are State monopolies. These are the bodies therefore, which should model public sector undertakings. Avoiding litigation is a primary norm of being an ideal public sector corporation. The trend it has to be reversed and the Law Commission is going to strive in that direction.

The Law Commission needs therefore your active and participatory corporation without which the Law Commission would be handicapped in formulating its norm though it would in no case escape its responsibility of doing it. The Law Commission needs information of a basic nature which can be supplied by you and you alone.

As you are aware the Law Commission has a tenure existence. It has a time bound programme. It cannot wait indefinitely. It must pursue its task expeditiuosly and relentlessly. Therefore before setting out the queries, this is a personal request to you to give top priority to this letter and to send the information by *17th January*, **1988** *by the latest.*

The information that the Law Commission needs is in your records and therefore can be immediately and easily furnished.

Whenever the statute under which the body is created like LIC, it has power to repudiate the contract unilaterally. That is the starting point of litigation because the

moment the claim is repudiated, the other party is forced to go to the courts for vindication of its rights. This is equally true of ESI Corporation, Commissioners for the Provident Fund, General Insurance Corporation and more or less all public sector undertakings.

Please therefore let us have information on queries set out hereunder :—

(a) Give the number of claims which were repudiated yearwise from 1980 onwards.

(b) On the repudiation being communicated, the number of suits filed by the party year to year.

(c) The stake involved in each case.

(d) The decision of the first or the court of original jurisdiction in each suit.

(e) If the decision was adverse to the corporation, in how many matters appeals were preferred.

(f) In how many matters second appeals were preferred.

(g) How many matters were taken to the Supreme Court of India.

(h) The total cost of litigation should be stated in relation to the state involved.

(i) The yearwise expenditure on establishment for legal advice maintained by the corporation including the number of personnel manning the corporation. Please state the percentage legal expense bears to total expenses of the Corporation.

(j) Please state the number of cases in which the opinion of the legal department was overruled with a view to pursuing litigation. Also state the number of matters withdrawn when court showed its displeasure.

(k) Any other information correlated to any of the queries raised hereinabove.

Your cooperation and urgent response will be highly appreciated.

Yours faithfully,

Sd/-

(D. A. Desai)

ANNEXURE II

Tabulation of Infomation of certain organisation supplied in reply to the Law Commission of India, No. Chairman/TR-7/LC-87 dated 19-12-1987.

QUERIES SET OUT	1979-80				1980-81				1981-82			
	LIC	ESI Corpn.	EPF Orgn.	GIC	LIC	ESI Corpn.	EPF Orgn.	GIC	LIC	ESI Corpn.	EPF Orgn.	GIC
(a) Number of claims which were repudiated yearwise from 1980 onwards.	812				623				726			
(b) On the repudiation being communicated, the number of suits filed by the party year to year.	121		Not applicable		125		Not applicable		161		Not applicable	
(c) The stake involved in each case	Rs. 32,355 (Average) sum assured of a policy of insurance.)		Not applicable		Rs. 32,839 (Average sum assured of a policy)		Not applicable		Rs. 39,870 (Average sum assured of a policy)		Not applicable	
(d) The decision of the first or the court of original jurisdiction in each suit.	21 (in favour) 35 (against)		Not applicable		56 (in favour) 45 (against)		Not applicable		40 (in favour) 48 (against)		Not applicable	
(e) If the decision was adverse to the Corporation, in how many matters appeals were preferred.	Out of adversely decided 33		Not applicable		Out of adversly decided 19		Not applicable		Out of adversely decided 26		Not applicable	
(f) In how many matters second appeals were preferred.	By LIC 3		Not applicable		By LIC 1		Not applicable		By LIC 2		Not applticable	
(g) How many matters were taken to the Supreme Court of India.						By 2 Against 11			By LIC 2			

(h) The total cost of litigation in relation to the stake involved.		Not applicable			Not applicable		Not applicable
(i) The yearwise expenditure on establishment for legal advice maintained by the Corporation including the number of personnel manning the Coprn. Please state the percentage legal expense bears to total expense of the Corporation.	Legal expenses of cases (except South zone) Rs. 1,59,236	Not made available	Legal expenses of cases (except South Zone) Rs. 1,53,831	Legal expenses of Rs. 5·53 lakhs No.=10,695 % of legal expenses to Admn. expenditure =0·39%	Not made available	Legal expenses of cases (except South Zone) Rs. 1,83,928	Not applicable
(j) Please state the number of cases in which the opinion of the legal department was overruled with a view to pursuing litigation. Also state the number of matters withdrawn when court showed its displeasure.	Withdrawn by LIC 16	Not made available	Withdrawn by LIC 14		Not made available	Withdrawn by LIC 14	
(k) Any other information correlated to any of the queries raised hereinabove.		Nil			Nil		Nil

LIC—Life Insurance Corporation of India.
ESI Corpn.—Employees' State Insurance Corporation.
EPF Orgn.—Employees' Provident Fund Coporation.
GIC—General Insurance Corporation.

ANNEXURE II—Contd.

Traulation of Information of certain organisation supplied in reply to the Law Commission of India. No. Chairman/TR-7 LC-87 dated 19-12-1987.

QUERIES SET OUT	1982-83				1983-84				1984-85			
	LIC	ESI Corpn	EPF Orgn	GIC	LIC	ESI Corpn	EPF Orgn	GIC	LIC	ESI Corpn	EFF Orgn	GIC
(a) Number of claims which were repudiated yearwise from 1980 onwards.	835				812				903	—		
(b) On the repudiation being communicated, the number of suits filed by the party year to year.	137		Not applicable		149		Not applicable		138		Not applicable	
(c) The stake involved in each case.	Rs. 39,965 (Average sum assured of a policy.)		Not applicable		Rs. 42,290 (Average sum assured of a policy.)		Not applicable		Rs. 39,229 (Average sum assured of a policy)		Not applicable	
(d) The decision of the first or the court of original jurisdiction in each suit.	38 (in favour) 40 (against)		Not applicable		34 (in favour) 31 (against)		Not applicable		29 (in favour) 45 (against)		Not applicable	
(e) If the decision was adverse to the Corporation, in how many matters appeals were preferred.	Out of adversely decided 26		Not applicable		Out of adversely decided 11		Not applicable		Out of adversely decided 19		Not applicable	
(f) In how many matters second appeal were preferred.	By LIC 3		Not applicable		By LIC 1		Not applicable		By LIC 2		Not applicable	
(g) How many matters were taken to the Supreme court of India.	By LIC 1	By 26 Against 16				By 36 Against 13			By LIC By claimant	By 9 Against 5		
(h) The total cost of litigation in relation to the stake involved.			Not applicable				Not applicable				Not applicable	

(i) The yearwise expenditure on establishment for legal advice maintained by the Corporation including the number of personnel manning the Corpn. Please state the percentage legal expense bears to total expense of the Corporation	Legal expenses of cases (except South Zone) Rs 1,74,655	Legal expenses Rs. 7·76 lakhs Nos.- 12,762 % of legal expenses to Admn. expenditure =0·38%	Not made available	Legal expenses of cases) (except south zone) Rs. 1,81,143	Legal expenses Rs. 11·47 lakhs Nos. 12,815 % of legal expenses to Admn expenditure =0·50%	Not made available	Legal expenses of cases (except South Zone) Rs. 1,94,366	Legal expenses Rs. 8·05 lakhs Nos- 12,854 % of legal expenses to Admn. expenditure =0·32%	Not made available
(j) Please state the numbers of cases in which the opinion of the legal department was overruled with a view to pursuing litigation.				No. made available		Not made available			
Also state the number of matters withdrawn when court showed its displeasure.		Withdrawn by LIC 7		Withdrawn by LIC 12		Withdrawn by LIC 19			
(k) Any other information correlated to any of the queries raised hereinabove.		—		—			—		

ANNEXURE II—Contd.

Queries Set Out	1985-86				1986-87				1987-88			
	LIC	ESI Corpn.	EPF Organ.	GIC	LIC	ESI Corpn.	EPF Organ.	GIC	LIC	ESI Corpn.	EPF Organ.	GIC
(a) Number of claims which were repudiated yearwise from 1980 onwards.	923			3012	924			1,31,673*				
(b) On the repudiation being communicated the number of suits filed by the party year to year.	169		Not applicable	—	122		Not applicable	25,216			Not applicable	
(c) The stake involved in each case	Rs. 50,425 (Average sum assured of a policy)		Not applicable	—	Rs. 52,599 (Average sum assured of a policy)		Not applicable	—			Not applicable	
(d) The decision of the first or the court of original jurisdiction in each suit.	30 (in favour) 53 (against)		Not applicable	—	27 (in favour) 34 (against)		Not applicable	—			Not applicable	
(e) If the decision was adverse to the Corporation in how many matters appeals were preferred.	Out of adversely decided 15		Not applicable	—	Out of adversely decided 17		Not applicable	—			Not applicable	
(f) In how many matters second appeal were preferred.			Not applicable	—	By LIC 2		Not applicable	—			Not applicable	
(g) How many matters were taken to the Supreme Court of India	By LIC 1 By claimant 1	By 14 Against 1	Not Applicable	—	By LIC 1	By 16 Against 7	—	—		By 17 Against 6	By 41 Against 228	

*Claims accumulated over the year and pending with one of the companies viz. New India Assurance Co. Ltd. as on 31-12-1986. Out of a total of Rs. 1,31,673 only 7448 claims were pending in courts and 17708 were pending with Motor Accidents claims Tabural.

(h) How many matters were taken to Supreme Court of India.	—	—	Not applicable	—	—	Not applicable	—	—	Not applicable
(i) The yearwise expenditure on establishment for legal advice maintained by the Corporation including the number of personnel manning the Corpn.	Legal expenses of cases (except south zone) Rs. 1,81,638	Legal expenses Rs. 8.80 lakhs No. 12,728	Not made available	Legal expenses of cases (except south zone) Rs. 2,40,674	Legal expenses Rs. 9·78 lakhs No. 12,737	Not made available			Not made available
Please state the percentage to legal expense bears to total expense of the Corporation.		% of legal expenses to Admn expenditure= 0·30%			% of legal expenses to Admn expenditure 0·28%				
(j) Please state the number of cases in which the opinion of the legal department was over ruled with a view to pursuing litigation.		—	Not made available	—	—	Not made available	—		Not made available
Also state the number of matters withdrawn when court showed its displeasure.	Withdrawn By LIC 8			Withdrawn By LIC 20					
(k) Any other information correlated to any of the queries raised hereinabove.		—	Nil	1% claims are repudiated.	NIl	Nil	—		Nil

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ANNEXURE—III

Tabulation of intimation supplied by the office of the Central Provident Fund Commissioner

Subject	1980-81							1981-82							1982-83		
	No. of cases on 31-12-77	Filed during the year	Total	Cases decided			Pending	No. of cases on 31-12-80	Filed during the year	Total	Cases decided			Pending	No. of cases on 31-12-81	Filed during the year	Total
				Against the Orgn.	In favour of Orgn.	Total					Against the Orgn.	In favour of Orgn.	Total				
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Writ Petitions against the Organisation.	1106	370	1476	28	198	228	1248	1248	514	1762	34	279	313	1449	1449	64	2113
Prosecution cases launched u/s 14 of the E.P.F. & Misc. Provisions Act, 1952 under E.P.F. Scheme.		6229				3786	28295		7161				4022	31434		5069	
Prosecution cases filed u/s 406/409 I.P.C. against un-exempted establishments*		281				13	1109		449				20	1538		634	
Prosecution cases u/s 14 of the Act under F.P. Scheme.		2304				1496	7077		3453				1696	8834		2215	
Prosecution cases u/s 14 of the Act under E.D.L.I. Scheme, 1976		2218				596	2656		2709				576	4789		1641	
From 1980-81 to 1985-86 the data relate to FIRS filed with the police and prosecution launched by police in courts. For 1986-87 the figure represent only prosecution launched by police in Courts.																	

ANNEXURE III—Contd.

Tabulation of intimation supplied by the office of the Central Provident Fund Commissioner

Subject	1982-83							1983-84							1984-85		
	Cases decided			Pending	No. of cases on 31-12-82	Filed during the year	Total	Cases decided			Pend-ing	No. of cases on 31-12-83	Filed during the year	Total	Cases decided		
	Against the Orgn.	In favour of Orgn.	Total					Against the Orgn.	In favour of Orgn.	Total					Against the Orgn.	In favour of Orgn.	Total
1	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35
Writ Petitions against the Organisation.	35	161	196	1917	1917	608	2525	20	163	183	2342	2342	601	2943	61	170	231
Prosecution cases launched u/s 14 of the E.P.F. & Misc. Provisions Act, 1952 under E.P.F. Scheme.			4203	32300		6291				2496	35728		5446				26826
Prosecution cases filed u/s 406/409 I.P.C. against un-exempted establishments*			30	2142		613				6	2749		832				6
Prosecution cases u/s 14 of the Act under F.P. Scheme.			1604	9482		3236				1215	12196		2391				1017
Prosecution cases u/s 14 of the Act under E.D.L. & Scheme, 1976.			539	5891		2416				713	7599		2196				1639

*From1980-81 to 1985-86 the data relate to filed cases with the police and prosecution launched by police in court for 1986-87 the figures represent only prosecutions launched by police in courts.

ANNEXURE III—Contd.

Tabulation of intimation supplied by the office of the Central Provident Fund Commissioner

Subject	1985-86									1986-87						
	Cases decided	Pending	No. of cases on 31-12-84	Filed during the year	Total	Cases decided			Pending	No. of cases on 31-12-85	Filed during the year	Total	Cases decided			Pending
						Against the Orgn.	In favour of Orgn.	Total					Against the Orgn.	In favour of Orgn.	Total	
1		36	37	38	39	40	41	42	43	44	45	46	47	48	49	50
Writ Petitions against the Organisation.		2712	2712	506	3218	37	297	334	2884	2885	559	3444	36	490	526	2918
Prosecution cases launched u/s 14 of the E.P.F. & Misc. Provisions Act, 1952 under E.P.F. Scheme.		38492		5155				2434	39990		6350				1754	43956
Prosecution cases filed u/s 406/409 I.P.C. against un-exempted establishments*		3575		514				17	3081		191				14	326
Prosecution cases u/s 14 of the Act under F.P. Scheme.		13570		2213				804	13423		2311				599	14089
Prosecution cases u/s 14 of the Act under E.D.L. 1 Scheme, 1976.		8659		2471				765	8708		2470				587	10525

*From 1980-81 to 1985-86 the data relate to filed cases with the police and prosecution launched by police in court for 1986-87 the figures represent only prosecutions launched by police in courts.

ANNEXURE IV

(See Paragraph 7.3.1)

Tabular statement of quantum of cases filed by or against Govt. of India and expenditure involved during the last five years

Sl. No.	Name of the Deptt/Ministry of Govt. of India	No. of cases filed in courts by or against the Deptt/Ministry of Govt. of India during the last five years	Expenditure incurred	Any other details regarding lawyers engaged etc.
1	2	3	4	5
1.	Deptt. of Food, Ministry of Foods Civil Supplies, Krishi Bhavan, New Delhi.	4705	Rs. 2,36,24,990	Except in two cases in which private lawyers were engaged, in remaining cases Govt. Counsel or Private lawyers on Govt. Panels of Counsel were engaged.
2.	Ministry of Commerce New Delhi.	4303	Rs. 18,94,394	Private lawyers were also engaged in some cases but in other cases Govt. Counsels from the panel were engaged.
3.	Deptt. of Health, Ministry of Health and Family Welfare Nirman Bhavan, New Delhi.	302	Rs. 2,20,524·00 (excluding the fee paid to the Advocate. (Central Govt. Standing Counsel by the Branch Office Section.)	Nil.
4.	Deptt. of Woman & Child Development Ministry of Human Resources, Development.	By-7	Rs. 1,78,440	A Legal Adviser as retainer Private Lawyer was engaged by State Social Welfare Board.
5.	Deptt. of Atomic Energy, Chhatrapati Shivaji Maharaj Marg-Bombay.	By-one Against-22.	Rs. 1,00,000	Panel Lawyer/CGSC engaged.
6.	Ministry of Tourism, New Delhi.	In India-65, abroad-10	Rs. 2,77,158	Thirteen Private lawyers engaged.
7.	Ministry of Information and Broadcasting, New Delhi.	Approx. 500	Rs. 4·00 lakhs approx	Generally Govt. Counsel engaged.
8.	Office of Development Commissioner for Iron & Steel & Pay & Accounts Office, Deptt. of Steel, Ministry of Steel and Mines, Udyog Bhavan, New Delhi.	60	Rs. 1,37,809	Government Lawyers engaged.
9.	Ministry of Petroleum and Natural Gas.	28	Rs. 2239	Government Advocates are engaged.
10.	Ministry of Water Resources.	145	Rs. 2,33,802·65 approx.	Govt. Advocates.
11.	Deptt. of Statistics, Ministry of Planning, Sardar Patel Bhavan, New Delhi.	99	Rs. 1,39,224	Lawyers out of the Govt. Panel engaged.
12.	Ministry of Surface Transport	306	Rs. 5,12,978	No. private lawyers are engaged
13.	Deptt. of Mines, Ministry of Steel & Mines, New Delhi.	913	Rs. 4,54,841	Standing Counsels of Govt. are engaged.
14.	Deptt. of Industrial Development Ministry of Industry, New Delhi.	720	Rs. 7,75,549	Engaged private lawyers and Govt. pleaders.

1	2	3	4	5
15.	Deptt. of Coal, Ministry of Energy, Office of the Coal Mines Provident Fund Commissioner, Office of the Commissioner of payments.	117	Rs. 1,19,638	Engaged Govt. Counsel.
16.	Deptt. of Defence Ministry of Defence, New Delhi.	21406	Rs. 1, 32,67,208 (Expenditure in respect of 158 cases is not included).	Nil.
17.	Ministry of Environment and Forests, Paryavaran Bhavan, Lodi Road, New Delhi.	342	Rs. 3,21,614	Private lawyer was engaged in only one case.
18.	Ministry of Home Affairs, New Delhi.	916	Rs. 7,59,029·00	Only five private lawyers were engaged.
19.	SCD-protection of civil rights Cell Ministry of Welfare, New Delhi.	7	Rs. 2150·80	—
20.	Deptt. of Expenditure Ministry of Finance, New Delhi.	1193	Rs. 5,59,874·92	Central Government Standing Counsel engaged.
21.	Central Board of Direct Taxes, Central Board of Excise & Customs, Deptt. of Revenue Ministry of Finance.	43921	Rs. 85·49 lakhs (only in respect of Central Board of Excise & Customs)	Only in important cases the Department engages private lawyers from outside the Government panel otherwise the Department is generally represented before High Courts and the Surpeme Court by Standing Counsels and panel Advocates. Generally Law Officers (Additional Solicitor General, Solicitor General and Attorney General) or the panel advocates appear but private lawyers as Special Counsels are engaged before High Courts because it is not always possible for the Senior Law Officers based at Delhi to appear before the High Courts. In the year, 1986, 28 Special Counsels were engaged by the Deptt. before different High Courts.
22.	Department of Economic Affairs, Ministry of Finance.	470	Rs. 33,205	Generally Government Counsel engaged.
23.	Indian Council of Agricultural Research, Krishi Bhavan, New Delhi.	670	Rs. 4,45,520	Government/Private lawyers engaged.
24.	Planning Commission, New Delhi.	21	Rs. 2,650	—
25.	Public Sector Banks and Financial Institutions, Department of Economic Affairs, (Banking Division), Ministry of Finance.	4,66,716 (One Bank has not given figures).	Rs. 5439·05 (In lakhs) approx. (two banks have not furnished details).	From the panel maintained by the bank.
26.	Deptt. of Space, Cauvery Bhavan Kempagowda Road, Bangalore.	215	Rs. 1·34 lakh.	No private lawyer was engaged.
27.	Pollachi Postal Division, Department of Posts.	10	Rs. 5000·00	No private lawyers were engaged. Only Govt. pleaders and public prosecutor were engaged.

1	2	3	4	5
28.	Department of Company Affairs Ministry of Industry, New Delhi.	Prosecutions filed under the Companies Act/MRTP Act By—in Distt Courts —60,867 By or against in High Courts/Supreme Court —259	• Rs. 1,37,130·00	Except in some cases, Officers of the Department and Law Ministry handle cases.
29.	Ministry of Rural Development Block No. 11, 6 & 7 Floor, CGO Complex, Lodi Road, New Delhi.	Figures not available of land cases in which U.O.I is made a party 15 Writ Pettions in HCs/SC.	Does not maintain detailed account. Rs. 482·60	
30.	Ministry of External Affairs, New Delhi-1	35	Rs. 8681·00	Except in two cases where services of a lawyer from the Govt. panel were utilised, no private lawyer was engaged.
31.	Legislative Department, Ministry of Law & Justice.	6	Rs. 1722·00	—
32.	Cabinet Secretariat (Main) Rashtrapati Bhavan, New Delhi.	Nil	Nil	—
33.	Deptt. of Non-conventional Energy Sources, Ministry of Energy, CGO Complex, Lodi Road, New Delhi.	1	550	No private lawyer has been engaged.
34.	Deptt. of Parliamentary Affairs, Ministry of Parlimantary Affairs & Tourism, New Delhi.	18	Rs. 3,254·50	Govt. Standing Counsel engaged.
35.	Deptt. of Biotechnology, Ministry of Science & Technology, Tecnology Bhavan, New Mehrauli Road, New Delhi.	6	Rs. 11,600·00	National Institute of Immunology has engaged Legal Adviser.
36.	Election Commission of India, New Delhi.	-324	Rs. 2,91,833	Some senior Advocates engaged.
37.	Council of Scientific & Industrial Research, Rafi Marg, New Delhi.	389	Rs. 16,912 lakhs	Private Advocates are engaged as it is an autonomous body.
38.	Ministry of Programme Implementation, Sardar Patel Bhavan, New Delhi.	Nil	Nil	Nil
39.	Deptt. of Arts, Indira Gandhi National Centre for Arts, Central Vista Mess, Janpath, New Delhi.	Nil.	Nil.	Nil
40.	Deptt. of Ocean Development CGO Complex, Lodi Road, New Delhi.	Negligible	Nil.	—
41.	U.P.S.C.	783	Rs. 85,201	17 lawyers from out of the panel of Govt. Lawyers were engaed in 17 cases. In two cases, one private lawyer, each was engaged. In other cases UPSC did not make a separate appearances as unnecessarily impleaded.

1	2	3	4	5
42.	Deptt. of Electronics Vigilance Unit, Lok Nayak Bhavan, New Delhi.	4	Rs. 8,700·00	Lawyer out of the Government panel engaged.
43.	Deptt. of Fertilizers Ministry of Agriculture.	Nil.	Nil.	Nil.
44.	Deptt. of Power, Ministry of Energy, New Delhi.	110	Rs. 74,489·00	Nil.
45.	Deptt. of Railways (Railway Board) Ministry of Transport	1,66,898	Rs. 3,46,52,844	Railways engage empanelled advocates only, but engage private lawyers in exceptional cases.
46.	Deptt. of Telecommunications, Ministry of Communications.	9,806	Rs. 39,38,000	Engaged private lawyers in 68 cases.

ANNEXURE V

(See Paragraph 7.3)

Tabular Statement of Quantum of cases filed by or against the Public Sector Undertakings under the Central Government and expenditure involved during the five years

Sl. No.	Name of the Public Sector Undertakings under the Central Government during the 5 years 1981/1982/1983-1985/1986/1987	No. of cases filed in Courts by or against the Public Sector Undertakings during the five yrs.	Expenditure incurred	Details regarding lawyer engaged and other details
1	2	3	4	5
1.	Burn Standard Co. Ltd., 10-C, Hungerford Street, Calcutta.	199	Rs. 24 lakhs	Private lawyers engaged.
2.	H.M.T. Ltd., 36 Cunningham Road, Bangalore and its other Units.	467	Rs. 18,47,379·86	Private lawyers engaged·
3.	National Airports Authority East Blocks II & III, R. K. Puram, New Delhi.	209	Rs. 1,19,185·50	Nil.
4.	H. M. T. (International) Ltd., 36. Cunningham Road, Bangalore.	By 3 Against 1	By (Rs. 6000) Against (Rs. 1000) in lakhs	Private lawyers engaged.
5.	Food Corporation of India, Head Qrs., New Delhi.	1982-1986(1982 figures not completely available) by 921 Against 1293.	(1982-83) Rs. 33·11 (1983-84) Rs. 36·31 (1984-85) Rs. 48·56 (1985-86) Rs. 41·99	Framed guidelines for empanelment of lawyers to meet the litigation. As such do not engage Private lawyers.
6.	Hindustan Fertilizers Corpn. Ltd., 55, Nehru Place, New Delhi and its units.	464	Rs. 21,05,167	Nil.
7.	National Textile Corpn. Ltd., Kasturba Gandhi Marg, New Delhi.	14332	Rs. 150·13 (lakhs)	Private lawyers engaged.
8.	Mazagon Dock Ltd., Dockyard Road, Mazagon, Bombay	(1982-86) By 31 Against 20	Rs. 21·97 lakhs	Private lawyers engaged.
9.	Hindustan Cables Ltd., 9, Elgin Road, Calcutta.	By 23 Against 84	Rs. 2,07,399	Private lawyers engaged.
10.	Weighbird (India) Ltd., 4, Netaji Subhas Road, Calcutta.	By 3 Against 15	Rs. 1,35,263·00	Private lawyers engaged.
11.	North Eastern Electric Power Corporation Ltd., Khankhetil, Shillong-1.	12 (which incldues 5 arbitration cases) plus one criminal case.	Rs. 3.37 lakhs	Distt. Council & Advocate-General and private lawyers engaged.
12.	Oil & Naturals Commission, Tel Bhavan, Dehradun.	(1982 to 1987) 662	Rs. 1,44,71,300 for four years.	Nil.
13.	Bharat Cooking Coal Ltd., Koyla Nagar, Dhanbad.	(By 186 (including 26 writ-petitions,) 46 Misc. appeals, Against 649 approx.	Rs. 36,02,714·90 approx.	Panel Advocates, Central Govt. Standing Counsel, Sr. Advocates engaged.
14.	Neyveli Lignite Corpn. Ltd. P.O. Neyveli, Tamil Nadu.	150	Rs. 6·38 lakhs	Sr. Advocates and experts engaged.
16.	Hindustan Teleprinters Ltd., G.S.T. Road., Guindy, Madras.	By 20 Against 30	Rs. 1,04,000	Mainly reputed Private lawyers engaged.
16.	Bharat Heavy Electricals Ltd., 18-20 Kasturba Gandhi Marg, New Delhi in respect of its 13 units.	1243	Rs. 24,69,207·97	Nil.

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1	2	3	4	5
17.	Tyre Corpn. of India Ltd., 19 Jawahar Lal Nehru Road, Calcutta. (Incorporated on 14-2-84 carrying rights & liabilities of two sick (industries.)	For 11 Against 29	Rs. 90,000	Private Lawyers engaged.
18.	National Research Development Corporation, Zamrudpur Community Centre, Kailash Colony Extn. New Delhi.	Total No. of cases (1985-86-87)	Rs. 5,26,867	14 Advocates engaged.
19	Pyrities, Phosphates & Chemicals Ltd., 5, Community Centre, East of Kailash, New Delhi.	By 79 Against 78	Rs. 2,43,452	Nil.
20.	Central Inland Water Transport Corpn. Ltd., 4, Fairlie Place, Calutta.	59	Rs. 4.00 lakhs	Private lawyers engaged.
21.	Metallurgical & Engineering Consultants (India) Ltd., Ranchi.	53	Rs. 7.45 lakhs	Senior Govt. Standing Counsel engaged but in case of emergency private lawyers are engaged.
22.	Central Electronics Ltd., 4, Industrial Area, Sahibabad (U.P.)	12	Rs. 50,545	Private lawyers engaged.
23.	Oil India Ltd., 17, Parliament Street, New Delhi.	By 13 Against 15	Rs. 16,40,658·41	Private lawyers engaged.
24.	TISCO Ujjain Pipe & Foundry Co. Ltd., Devas Road, Ujjain, (M.P.)	78 Labour cases.	Rs. 1,700 per quarter & Rs. 150 for Travelling charges & Rs. 250 per hearing paid to lawyer.	Private lawyers engated.
25.	Instrumentation Ltd., Kota	144	Rs. 3,64,847·16	Private lawyers engaged.
26.	Uranium Corpn. of India Ltd., Jodhguda Mines, Singhbhum, Bihar.	By 13 Against 3 including G.R. Cases filed by Police	Rs. 97,680	Private lawyers engaged to meet litigation and retainer is engaged.
27.	Indian Road Construction Corpn. Ltd., Rajahouse, Nehru Place, New Delhi.	Against 12 (including 6 arbitration cases).	Rs. 78,550·10	Private lawyers engaged.
28.	Cochin Shipyard Ltd., P. O. Bag No. 1653, Cochin.	Nil	Nil	Nil
29.	Indian Dairy Corpn., Suraj Plaza II Sayaji Gunj, Baroda.	(1982)-10-11-86 By 10 Against 109 Labour cases Total 29.	Rs. 1,19,443	Private lawyers are engaged.
30.	Hindustan Photo Films Manufacturing Co. Ltd., Indu Nagar, Udhagamandalam -643005.	85	Rs. 3.61 lakhs	Legal Consultant engaged.
31.	Bharat Earth Movers Ltd., Unity Buildings, J. C. Road, Bangalore.	About 110	Rs. 9,96,530	Private lawyers are generally engaged.
32.	The State Trading Corpn. of India Ltd., 36, Janpath, New Delhi.	186 (These figures do not include cases before arbitrators in India & abroad).	Rs. 169·03 lakhs	Private lawyers engaged.
33.	Mining and Allied Machinery Corpn. Ltd., Durgapur, (W.B.)	128	Rs. 8,50,393·00	Private lawyers engaged.
34.	Hindustan Antibiotics Ltd. Pimpri, Pune.	By 45 including 25 labour disputes Against 102 including 96 labour disputes.	Rs. 2,41,359	Private lawyers engaged.
35.	Bharat Pumps & Compressors Ltd., Naini, Allahabad.	About 55	Rs. 4.71 lakhs	Private lawyers engaged.
36.	Hindustan Copper Ltd., Industry House, 10, Caeure St., Calcutta.	439	Rs. 39,04,000·00	Private lawyers enngaged.

1	2	3	4	5
37.	Rural Electrification Corpn. Ltd., D.D.A. Bldg. Nehru Place, New Delhi.	Against 15	Rs. 1,47,803 ·00 for two years	Private Lawyers engaged. The Corpn. is unnecessarily dragged to courts by other parties.
38	Projects & Development India. Ltd., P. O. Sindri Dhanbad, Bihar.	11 (Includes some of labour cases).	77,716.00	Nil
39.	Vijayanagar Steel Ltd.	904 (cases for enhanced-Compensation by land owners whose land has been acquired for the Corpn.)	Rs. 59,583.87	Mentions that in addition to the higher rate of compensation fixed by courts, the interest on compensation exceeds even the amount of compensaiton.
40.	Steel Authority of India Ltd., Ispat Bhavan, Lodi Road, P.B. No. 3049, New Delhi & its units namely Indian Iron & Steel Co. Ltd., (IISCO) and Central Marketing Organisation (CMO)	1497	In respect of IISCO Rs. 38,09,000.00 In respect of CMO Rs. 72,36,000.00	
	In respect of its other plants.	5597	*Rs.69,19,664.88. During the last 5 years, SAIL has also conducted 15 international cases and spent foreign exchange as follows £54,142.86 $24,292.40	Cases before the Arbitrators, Industrial Tribunals, Labour Courts and Estate Officers & conducted by law officers of respective plant. For other cases Counsels from panel of SAIL Govt. lawyers/counsels are engaged CLA appears before Arbitrators. Govt. Law Officers are also engaged.
41.	Rashtriya Chemicals & Fertilisers Ltd., Eastern Express Highway, Bombay.	80	Rs. 5 lakhs	Private lawyers on panel engaged.
42.	The Fertilizers Corpon. of India Ltd., 55, Nehru Place, New Delhi.	561	Upto 31-3-86 Rs. 29,05,371.53	Has panel of lawyers.
43.	Cochin Refineries Ltd., Post Bag 2, Ambalamugal, Nerala.	By CRI 22 Against CRI 65	Rs. 2,70,108	Private lawyers engaged.
44.	Hindustan Prefab Ltd., Jangpura, New Delhi.	By 19 Against 16	Rs. 2,51,850	Sr. Govt. counsel as retainer Advocates engaged for labour cases.
45.	Heavy Engineering Corpn. Ltd., Plant Roza Road, P.O. Dhurwa Ranchi.	632 and 14 arbitrators proceedings.	Rs. 7,50,669	lawyers engaged.
46.	Central Mine Planning & Dessigns Institute Ltd., Gondwana Place, Ranchi.	48	Rs. 3,34,000	Advocates engaged.
47.	Coal India Ltd., 10, Netaji Subhash Road, Calcutta.	760	Rs. 21,44,882.17	Engages Govt. Counsels and in some cases Advocates.
48.	Central Coal Fields Ltd., Darbhanga House, Ranchi.	By 238 Against 368	Rs. 90,187.35 14,181,40·34 1508327.19	Do.
49.	Western Coal fields Ltd., Coal Estate, Civil Lines, Nagpur and South Eastern Coal fields Ltd.	329 (Does not include Income tax, Sales tax, Central Excise case Arbitration cases before Tribunals).	Rs. 45,66,217	Private lawayers engaged.
50.	Hindustan Petroleum Corpn. Ltd., 17, Jamshedji Tata Road, Bombay.	(1982—31-3-86) 2692	Rs. 54,46,490 Includes expenses on court cases and consultation fees on other matters.	Law Officers of Govt. and Advocates are engaged.

1	2	3	4	5
51.	Indian Medicines Pharmaceutical Corpn. Ltd., Mohan Distt. Almora U.P. (Via Ramnagar).	By 1 Income tax matter.	Rs. 8395	Chartered Accountant engaged.
52.	Uttar Pradesh Drugs & Pharmaceuticals Co. Ltd., A/5, Industrial Area, Kanpur Road, Lucknow.	3 and also Income Tax, Salse Tax matters.	Rs. 43,536	Senior Advocate engaged in one case to whom Rs. 35,000 has been given by way of fee and another Rs. 15 to 20000 as incidental expenses.
53.	National Aluminium Company Ltd., IDCO Tower, Janpath, Bhubneshwar.	125	Rs. 18.87—lakhs	The comapany has engaged. private lawyers and Govt's Counsels. Also made certain Suggestions.
54.	Bharat Dynamic Ltd., Ianchanbagh, Hyderabad.	One plus three pending cases. 10 appeals on Income Tax/Sales Tax matters filed.	Rs. 50824/-(Includes the payment of Rs. 500/- p.m. retainership fee paid to the legal Adviser).	Advocates engaged.
55.	The Mica Trading Corpn. of India Ltd., 137, Patliputra Colony, Patna.	Nil	Rs. 3000/- incurred on earlier pending cases.	Advocates engaged.
56.	The Cotton Corpn. of India Ltd. AIR Bldg 12th Floor, Nariman Point, Bombay.	By 324 (includes 114 arbitration cases) Against 100.	Rs. 10,07,962	Advocates engaged.
57.	Scooter India Ltd., Post Bag No. 1, Sarojini Nagar, Lucknow.	By 53 Against 235	Rs. 8,47,539	Advocates engaged.
58.	The Fertilizers and Chemicals Travancore Ltd., Udyogamandal, Cochin.	170	Rs. 12,20,000	Advocates engaged.
59.	Goa Antibiotics & Pharmaceuticals Ltd., E 2, Ramakant Apartments, Mahatma Gandhi Road, Panaji, Goa.	2	Rs. 500/-	Private lawyer engaged.
60.	Sponge Iron India Ltd., Khanij Bhawan, 6th Floor, 10-3-311/A, Castle Hills, Masab Tank, Hyderabad.	By 2 Against	Rs. 1,03,007·00	Private lawyers engaged.
61.	Metal Scrap Trade Corpn. Ltd., 225-F, Acharya Jagdish Bose Road, Calcutta.	By 29 Against 117	Rs. 10,70,825	Private lawyer engaged.
62.	National Fertilisers Ltd., 20, Community Centre, East of Kailash, New Delhi and its Units.	364	Rs. 14·84 lakhs	Private lawyers engaged.
63.	Kudremukh, 11, Block, Koramangala, Bangalore.	(1981-Oct. 1986) By 45 Against 54	Rs. 29·220 175·018 Rs. 2,04,236	Private lawyers and Govt. Pleaders engaged.
64.	Hindustan Aeronautics Ltd., Indian Express Building Dr. Ambedkar Veedhi P.B. No. 5150, Bangalore and its Factory.	1238	Rs. 17,50,825	Private lawyers engaged.
65.	Madras Fertilizers Ltd., Manali, Madras.	By 11 Against 15	Rs. 8,41,448	Private lawyers engaged.
66.	R.I.C. 29, Mirza Ghalib Street, Calcutta.	By 4 Against 38	Rs. 1,98,454	Private lawyers engaged.
67.	Hindustan Salts Ltd., Lal Niwas, 21, Ram Singh Road, P.B. No. 146, Jaipur.	45	Rs. 62,162	Private lawyers engaged.
68.	Export Credit Guarantee Corpn. of India Ltd., Express Towers, 10th Floor, Nariman Point, Bombay-400021.	30	Rs. 3·59 lakhs	Private lawyers engaged.
69.	Neelachal Ispat Nigam Ltd., IPICOL House (4th Fl.) Bhubaneshwar.	By 1 Against 1	Rs. 10,205·50	Private lawyers engaged.

1	2	3	4	5
70.	Indian Petro-Chemicals Corpn. Ltd., P.O. Petro Chemicals, Distt. Vadodara.	By 13 Against 126	Rs. [illegible] ·7 lakhs	Private lawyers engaged.
71.	Bharat Brakes & Valves Ltd., 22, Qobra Road, Calcutta.	By 2 Against 15	(1981-upto 20-11-86) Rs. 89,231 ·83	Private lawyers engaged.
72.	Rites, New Delhi House, 27, Barakhamba Road, New Delhi.	9	Rs 18,000	Except in Arbitration Industrial Disputes matters, Private lawyers engaged.
73.	Madras Refineries Ltd., Manali, Madras.	13	Rs. 46,740	Engaged private lawyers.
74.	North-Eastern Regional Agricultural Marketing Corpn., Ltd., Rajgarh Road, Guwahati.	Nil	Nil	Nil
75.	Engineering Projects (India) Ltd., Kailash, Kasturba Gandhi Marg, New Delhi.	140 (This includes 76 case in Labour Courts).	Rs. 2,80,000	Private lawyers engaged
76.	Dredging Corpn of India Ltd., 'Dredge House' Port Area, Visakhapatnam.	By 12 Against 25	Rs. 3 96 lakhs	Do.
77.	Mineral Exploration Corpn. Ltd., Seminary Hills, Nagpur.	66	Rs. 4,18,559 ·85	Do.
78.	Garden Reach Shipbuilders & Engrs. Ltd., 4/46, Garden Reach Road, Calcutta.	By 5 Against 38	Rs. 8 ·77 lakhs	Do.
79.	Maruti Udyog Ltd., 11th Floor Jeevan Prakash 25, Kasturba Gandhi Marg, New Delhi.	246	Rs. 8,69,625	Do.
80.	International Air Ports Authority of India, Yashwant Place Chanakya Puri, New Delhi and all its Units.	506	Rs. 21,40,198 ·27	Do.
81.	Electronics Corpn. of India Ltd., ECIL-Post Office, Hydrabab.	By 25 Against 12	Rs. 84,595	Do.
82.	Telecommunications Consultants India Ltd., Chiranjiv Tower, 43, Nehru Place, New Delhi.	8	Rs. 20,000	Do.
83.	National Hydro-electric Power Corpn. Ltd., 98 Nehru Place, New Delhi.	103	Rs. 12,32,052	Govt./Private Advocates engaged.
84.	Educational Consultants India Ltd., A-1/111, Safdarjang Enclave, New Delhi.	3	Rs. 28,855	Private Lawyers engaged.
85.	Praga Tools Ltd., 6-6-8/32, Kavadiguda, Secunderabad.	(1981 upto Nov. 1986) 101 Plus 81 Labour cases.	Rs. 4,74,923	Do.
86.	Tungabhadra Steel Products Ltd., Tungabhadra Dam, Karnataka.	13 (includes same labour cases).	Rs. 70,968	Do.
87.	Goa Shipyard Ltd., Vasco-De-Gama, Goa.	By 4 Against Nil	Rs. 22,000	Do.
88.	Artificial Limbs Manufacturing Corpn. of India, G. T. Road, Kanpur.	*335*	*Rs. 2,49,710*	*Nil*
89.	Airline Allied Services Ltd., Airlines House, New Delhi.	Nil	Nil	Estd. only in 1983.
90.	Hydrocarbons India Ltd, 26, Kasturba Gandhi Marg, New Delhi.	Nil	Nil	Nil
91.	Hooghly Printing Co. Ltd., 41, Chowringhee Road, Calcutta.	Nil	Nil	Nil

1	2	3	4	5
92.	Rajasthan Drugs Pharmaceutical Ltd., Road No. 12, V.K.I. Area, Jaipur.	12	Rs. 18,725	Private Lawyers engaged.
93.	H.U.D.C.O., Hudco House, Lodhi Road, New Delhi.	16	Rs. 1,51,445	Do.
94.	Water and Power Consultancy Services (India) Ltd., 26, Kasturba Gandhi Marg, New Delhi.	(1982—1986) 8	Rs. 6,779·00	Do.
95.	Indian Railway Construction Co. Ltd., Palika Bhawan, Sector XIII, R. K. Puram, New Delhi.	16	Rs. 1,00,600·00	Do
96.	Semiconductor Complex Ltd., Phase VIII S.A.S. Nagar, Near Chandigarh.	(Includes 4 Labour cases) (Includes 4 Labour cases)	Rs. 17,506/- approx.	Do.
97.	Maharashtra Antibiotics & Pharmaceuticals Ltd., L-1, M.I.D.C. Area, Hingna Road, Nagpur.	Against 7	Rs, 10,000	Private Lawyers engaged.
98.	The Mineral & Metals Trading Corpn. of India Ltd., P.B. 7051, Express Building, Bahadurshah Zafar Marg, New Delhi.	Upto (1983—86) 1196	(1982-1986) (Budget fig.) Rs. 61·63 lakhs	Do.
99.	Hindustan Paper Corpn. Ltd., 75-C, Park Street, Calcutta.	78	Rs. 9·71 lakhs	Solicitors and Private Laywers engaged.
100.	The Handicrafts and Handlooms Exports Corpn. of India Ltd., Lok Kalyan Bhavan, 11-A Rouse Avenue Lane, New Delhi.	By 9 Against 3	Rs. 63,500	Private Lawyers engaged.
101.	Air India Charters Ltd. 5th Floor, Centaur Hotel, Bombay Airport, Bombay.	Nil	Nil	N.A.
102.	Bharat Wagon & Engineering Co. Ltd., 'C' Block, 5th Floor, Mouryalok, Dak Bunglow Road, Patna.	37	Rs. 3·29 lakhs	Private Lawyers engaged.
103.	Helicopter Corpn. of India Ltd., Palika Kendra, Parliament St. New Delhi. Incorporated on 15-10-1985.	Nil	Nil	Legal Consultant as retainer.
104.	Hospital Services Consultancy Corpn. (India) Ltd., 1, Copernicus Marg, New Delhi.	Nil	Nil	Nil
105.	Gas Authority of India Ltd., 4th Floor, Smarat Hotel, Kautilya Marg, Chanakyapuri, New Delhi.	9	Rs. 36,888	A panel of private lawyers have been drawn after proper screening and also consulting Govt. of India Law officers viz. Attorney Gen. Solicitor General etc.
106.	The New India Assurance Co. Ltd., 87, Mahatma Gandhi Rd., P.B. No. 969, Bombay (except in respect of one Regional office).	(I) Insurance claims 72675 (II) Labour Personnel matters 18	4,33,58,845 5,47,660·96	Panel of private Advocates in each divisional offices or Regional offices.
107.	The Cashew Corpn, of India Ltd., P.B. 1019, M.G. Road Ernakulam, Cochin.	By 1 Against 9	13,100	Private Lawyers engaged out of panel of lawyers maintained by STC.
108.	Hoogly Dock & Port Engineers Ltd., Martin Burn House, 12, Mission Row, Calcutta.	By 1 Against 12	1,35000	Soclicitors & Advocates engaged.
109.	Bengal Chemicals & Pharmaceutical Ltd., 6, Ganesh Chunder Avenue, Calcutta.	By 9 Against 21	260063 (only four years)	Nil

1	2	3	4	5
110.	Bharat Yantra Nigam Ltd., 15,1, Thornhill Road, Allahabad, U.P.	Nil	Nil	(Incorporated very recently).
111.	Hindustan Flurocarbons Ltd., 102, Moguls Court, Bashir Bagh, Hyderabad.	Nil	28,500	Govt. Lawyers engaged
112.	National Instruments Ltd., 1/1, Raja S. C. Mullick Road, Calcutta.	By 1 Against 13	2,06,319	Private Lawyers engaged.
113.	Tea Trading Corpn. of India Ltd. 7, Wood Street, Calcutta.	By 12 Against 10	1,86,867 (Approx)	Lawyers are engaged on the advice of the company solicitors.
114.	Triveni Structur Ials Ltd. Naini, Allahabad, U.P.	By 15 Against 32	9·67 lakhs	Private Lawyers retained.
115.	Manganese Ore (India) Ltd., 3, Mount Road, Extn. P.B. 34, Nagpur.	By 29A gainst 55,	2,25,731·85	Nil
116.	Bharat Heavy Plate & Vessels Ltd, Visakhapatam.	15	1,55,616	Nil
117.	Biecco Lawrie Ltd., 6, Mayurbhanj Road, Calcutta.	By 9 Against 10	57,274	—
118.	Engineer India Ltd., Engineers India House, 1, Bhikaji Cama Place New Delhi.	20	50,000 (Approx)	Private Lawyers engaged.
119.	The Indian Council of Arbitration Federation House Tansen Marg, New Delhi.	By nil Against 01	26,990·25	Private Lawyers engaged.
120.	General Insurance Corpn. of India Industrial Assurance Bldg. Churchgate, Bombay.	108	12,64,520·00	Senior Counsels are engaged through reputed firm of Advocates and Solicitors.
121.	Andrew Yule & Co. Ltd., Yule House, 8, Clive Row, Calcutta.	By 29 Against 28	11,67,869·03	Engages Govt. Pleaders in Distt. Courts and Senior Council in High Courts & Supreme Court.
122.	National Jute Manufactures Corpn. Ltd., Chartered Bank Bldg. 2nd Floor, 4 Netaji Subhash Road, Calcutta.	By 39 Against 122 (Figures exclude cases relatable to Labour Court tribunals & appeals before Tax Authorities)	9,31,928·60	Private Lawyers and Firms of Solicitors engaged.
123.	National Film Development Corpn. Ltd., Discovery of India, Nehru Centre, Dr. Basant Rd. Worli, Bombay.	By 2 Against 5	60,550	Private Firms of Solicitors/Advocates engaged.
124.	The National Newsprint & Paper Mills Ltd, Nepanagar.	22	85,918	Retained a standing Counsel.
125.	Bharat Petroleum Corpn. Ltd., Bharat Bhavan, Ballard Estate P.B. No. 688, Bombay.	By 214 Against 455	32 Lakhs	Advocates/Counsels engaged.
126.	Indian Corpn., Indian Bhavan, Janpath New Delhi.	2830 (Does not include foreign litigations)	102·07 Lakhs	Cases are conducted by:— Private Lawyers, their own legal deptt. Govt. Advocates/Pleaders, firms of Solicitors and Advocates.
127.	Electrons Trade & Technical Development Corpn., Akbar Hotel Annexe, Chanakyapuri, New Delhi.	By 3 Against 10	2·71 Lakhs	Nil.

1	2	3	4	5
128.	Hindustan Organic Chemicals Ltd., Rayani Distt. Raigad, Maharashtra.	By 49 Against 6 (Docs not include cases under the Industrial Disputes Act).	11,00912	High Court Advocate on retainership of Rs. 2500 p.m. and also engaged the assistance of Solicitors of Advocates at outstations.
129.	States Farma Corpn. of India Ltd., Farma Bhavan, 14-15, Nehru Place, *New Delhi*.	202	6,41,026	Private Advocates engaged in all cases generally Govt. Advocates were engaged only in two cases.
130.	Indian Drugs & Pharmaceuticals., Ltd. P.B.No. 3816, New Delhi.	268	7,40,615·00	Cases were conducted by Legal Retainers/Private Lawyers. But few cases were handled by Govt. Advocates and Attorney-General of India.
131.	Industrial Finance Cropn. of India, 16, Sansad Marg, P.B.No. 363, New Delhi.	By 29 Against 81 (And intervened in winding up petitions i.e. 26) total 136	62,95,265·90	Private Lawyers engaged.
132.	Indian Oil Blending Ltd. Pir Pau, Trombay, P.B. 8803, Bombay.	By 1 Against 1	17,760	Private Lawyers engaged
133.	Hindustan Zinc Ltd. Yashad Bhavan, Yashadgarh, Udaipur.	By 46 Against 138	1,44,098·50 (Payment made to lawyers was Rs. 2,75,720)	Do.
134.	The Elgin Mills Co. Ltd. 11/6, SMT Parbati Bagla Road, Kanpur.	By 24 Against 27 100 Prosecution cases were filed against company under different Acts.	3,82,000	Do.
135.	Hindustan Vegetable Oils Corpn. Ltd. (Came into existence in 1984) Sabzi Mandi, Delhi).	153	18,38,172	Do.
136.	Eastern Coal Fields Ltd., Sanctoria P. O. Disergarh, Distt. Burdwan.	1375	67,39,783·51	Engaged Solicitors & Senior Advocate. Has a Panel of lawyers for different courts.
137.	Bongaigaon Refinery & Petrochemicals Ltd., P. O. Dahali-Gaon, Distt. Kokra-Jhar; Assam.	93	3,41,214·55	Advocates are engaged on cases to case basis.
138.	The Southern Pesticides Corpn. Ltd., 10-5-3/2/2, Masab Tank, Hyderabad.	32	75,176	Private lawyers engaged.
139.	The Lagan Jute, Machinery Co. Ltd., 24B, Park Street, Calcutta.	By 3 Against 2	Around 15,000	Do.
140.	The National Small Industries Corpn. Ltd., Laghu Udyog Bhavan, Okhla Industrial Estate, New Delhi.	371	33,98,659·81	Has a panel of lawyers.
141.	Bharat Refractories Ltd., P.B. No. 1, Bokaro Steel City.	40	3,08 Lakhs	Normally engages Govt. Advocates. Private Lawyers are also engaged in certain circumstances.
142.	Cardamom Trading Corpn. Ltd., No. 72, Nandidurg Road, Extn. Beson Town Bangalore.	By 1 Against 1	4,200	Private Lawyers engaged. Regarding cases in Supreme Court, Law Officers of Supreme Court engaged.
143.	National Mineral Development Corpn. Ltd. Khanij Bhavan, 10-3-311/A, Castle Mills, Masab Tank, Hyderabad.	About 30	50,000 (Approx.)	..
144.	Indian Airlines, Air Lines House, New Delhi.	97 (Approx)	34,60,789	Engaged Legal Advisers in different Regions on retainership basis. Also engages lawyers.

1	2	3	4	5
145.	Orissa Drugs & Chemicals Ltd. 93, Suryanagar, Bhubaneswar.	By Nil Against 2	11,646	Only one Private Lawyer was engaged to meet the litigation.
146.	Bharat Bhari Udyog Nigam Ltd., 63, Netaji Subhash Road, Calcutta.	Nil	Nil	Incorporated on 17 Sept. 1986 only.
147.	Mahanagar Telephone Nigam Ltd., Kanishka Plaza, 3rd Floor, 19, Ashok Road, New Delhi.	1859	2,53,152	Private Advocates engaged.
148.	Bharat Process & Mechanical Engineers Ltd., Chartered Bank Buildings, Calcutta.	By 3 Against 15	1,35,263	Solicitors and Private Advocates engaged.
149.	Karnataka Antibiotics and Pharmaceuticals Ltd., 174, 6th Cross, Gandhinagar, Bangalore.	5	32,000	Private Lawyers engaged.
150.	Jassop & Co. Ltd. 63, Netaji Subhsh Road, Calcutta.	By 4 Against 21	3·93 lakhs	Solicitors & Private Advocates engaged.
151.	National Handloom Development Corpn. Ltd., 10th-11th Floors, Vissasn Deep 22, Station Road, Lucknow.	1	2,134·50	Advocate General as retainers.
152.	The Projects & Equipment Corpn. of India Ltd. 'Hansalaya' 15, Barakhamba Road, New Delhi.	27	8,74,822	Engages Private Lawyers.
153.	Hindustan Latex Ltd., Latex Bhavan, Mahilamandiram Road, Poojappura, Trivandrum.	46	34975	Engaged private lawyers.
154.	Northern Coalfield Ltd., Singrauli P.O. Singrauli Colliery, Distt. SIDHI (M.P.).	130	Information not furnished	Information not furnisshed.
155.	Indian Institute of Foreign Trade, B-21, Institutional Area, South of IIT, New Delhi.	By Nil Against 5	3550	—
156.	Richardson & Cruddas (1972) Ltd., Byculla Iron Work, Post Box 4503, Sir J. J. Road Bombay.	70	2,50,000/-	Private lawyers engaged.
157.	The Oriental Insurance Co. Ltd., A-25/27, Asif Ali Road, New Delhi.	By 21565 (on an average about 8000-10000 cases are filed annually against the company).	Data is not maintained	Panel of Advocates is drawn up.
158.	Hotel Corporation of India Ltd., 5th floor, The Centaur Hotel, Bombay Airport, Bombay.	31	3,85,000/-	Has two legal retainers.
159.	Balmer Lawrie & Co. Ltd.,	By 8 Against 16	4,89,452/-	Private lawyers are engaged including lawyers from out of the Government panel.
160.	The Jute Corporation of India Ltd., 1 Shakespeare Sarani, Calcutta.	114	7,42,626/-	In most of cases, lawyers in Government panel have been engaged. In certain circumstances private lawyers were also engaged.
161.	Bharat Aluminium Co. Ltd.	By 17 Against 19	40,000·00 1,25,000·00 1,65,000·00	Has made certain suggestions on procedural reforms.
162.	Bharat Gold Mines Ltd.	By 45 Against 42	1,47,339·70	Two local advocates engaged.

1	2	3	4	5
163.	National Projects Construction Corporation Ltd.	38	Rs. 24,50,957	Private Advocates are engaged after negotiating the fees with them.
164.	I.B. Co. Ltd.	139	Rs. 13,66,500·95	Private lawyers are engaged including lawyers from out of the Government panel.
165.	Ferro Scrap Nigam Ltd.	Against 17	7,52,265	None
166.	Hindustan Steel Works	Against 39 By 40	10,41,941·70	Most of lawyers engaged are in Central Government panel. HSCL engages lawyers who are in the panels of SAIL or in the panels of nationalised banks and financial institutions.
167.	Pradeep Phosphates Ltd.	31 cases	Rs. 1,04,855/-	Engagement of lawyers is done depending upon the merit of each case and competency of lawyers to handle such cases by contacting them directly. In one of the cases, the Advocate-General of State was briefed to appear on behalf of the company.
168.	Lubrizol India Ltd.	17	Rs. 40,562/-	Private lawyers engaged·
169.	Damodar Valley Corporation	By 40 Against 145	Rs. 10,21,361/-	Engaged legal Practitioner out of the panel on extreme exigencies.
170.	National Thermal Power Corportion.	469	Rs. 12,23,031·87	The total number of private lawyers engaged (including the lawyers from out of Govt. Panel) to meet the litigation by or against NTPC is 127.
171.	Power Engineers Training Society.	Against 8	Rs. 26,340/-	In some cases, private lawyers of reputed standing were engaged.

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