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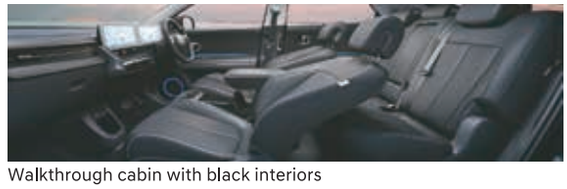

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Shailendra Kumar

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ECONOMICS OF JUSTICE DELIVERY: FAUCET OF SUPPLY NEEDS TO BE PLUGGED

As India marches toward the vision of 'Vikshit Bharat by 2047,' two pressing legal concerns demand immediate attention. The first is the ambitious drafting of a new National Litigation Policy—a promise etched in the BJP's election manifesto. The second, equally crucial, involves codifying the rights of businesses during investigations

By SHAILENDRA KUMAR

Founding Editor

THE zeitgeist for this year's special print edition of TIOL is two-fold. After a few bouts of jaw-jaw, our editorial team latched on to what was promised in the election manifesto of the Bhartiya Janata Party - drafting of a New National Litigation Policy. The idea was to invite legal eggheads from a wider spectrum and provide some meaty content for a seminal change to the overall halo of the New National Litigation Policy-in-the-making. Even as we attained unanimity on the broader theme, bubbles of another idea descended on the horizon, originating from all kinds of raids and searches conducted by various law enforcement agencies. And it was the glaringly missing chapter on codified rights of businesses under investigation. Indeed, a large bucket of such rights may be compiled from legions of court orders but our Parliament has overlooked the urgent need to codify such rights in furtherance of a fair and justiciable business environment, friendly enough to woo FDI!

A Legal Call to Action

No matter how efficiently dedicated Judges a nation may have, or even the presence of their large numbers at various levels of the forum, pendency of cases keeps piling up because the disease unfailingly escapes untreated! What ails our justice delivery system is the unplugged faucet of new cases being filed in a humdrum fashion. There is no curb or filter on the supply side of the economics of justice delivery. Since the Centre, the States and their financially-backed agencies have themselves fallen prey to a chronic and unaccountable habit of filing appeals in all cases, backlogs of total cases have skyrocketed beyond 51 million as of 2024! This also includes 1.8 lakhs cases festering for over three decades! Sacré bleu! The spinal cord of district courts have developed ruptures under the burden of 4.5 Crore cases! A travesty of justice for an equity-promoting constitution tailored by our forefathers!

Against the tall silhouette of such mountains of court cases, the Central Government is stitching a new National Litigation Policy. A few words of caution - first, it should not be a hurried job; second, the Ministry of Law should cull out as much inputs from legal savants and the ordinary citizens too as it can; and third, bring all the States on the same page to work together towards a minimum litigation goal! To top it all, the new policy should come up with simple and practical solutions - preferably, beyond the realm of the court system. ADR (Alternative Dispute Resolution) can be a soothing and efficacious option, whose credentials are well-supported by a runaway success of the Lok Adalat system.

Merely replacing the colonial legislations with an artful tampering of a few provisions would not afford a whiff of freshness in dealing with the 'grizzly' problem confronting the nation! Many domain experts invited by us have indeed chipped in sharp and pertinent ideas for a surgical approach to the pendency of cases. Secondly, the government will have to work on multiple workshops to effect behavioural change in the attitude of litigants in the government departments. Ideally, the Ministry of Law should choose top three litigious departments such as revenue, construction & procurement and work with their officers in a holistic manner - focus on drafting of contracts and tax laws. Leave minimum room for interpretations which spawn litigations. Just plug the holes at the root of the problem!

Uncharted Territory

Our second theme is about the obscure territory of rights of businesses under investigation. Since such rights are not codified and investigating agencies themselves are not under obligation to explain the rights to the searched, businesses tend to fret and panic during raids. The lack of knowledge about their rights often leads to excesses being committed by the investigating agency which works with the sole motive to fix the raided and prove their charges. Doing it fairly or justiciably is certainly not their demeanour! In a slew of cases, the raiding officials end up ignoring the settled laws and procedures and tend to put the arrested persons on tenterhooks for hours, late into the evening, and weirdly, record their statements in the wee hours! It is simply unnatural and unfair to nudge a person to give statements during slumberous hours! Likewise, most businesses are ignorant about their rights when a search is conducted on their premises. Though our courts have stated certain rights of businesses but only in scattered decisions and such rulings are the only reservoir to talk about fairness and justice. A time has come for the government and the legislature to debate the issues and codify such rights in order to enrich a friendly business ecosystem in the country. If optimism is a potent opium, I am confident that seminal changes are definitely in the pipeline if the dream of a 'Vikshit Bharat by 2047' is to be escorted on the ground! Amen!

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SECTION A

NLP - NATIONAL LITIGATION POLICY

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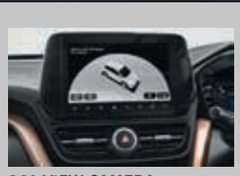
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RESHAPING LITIGATION POLICY & CHALLENGES

A reformed NLP must go beyond mere guidelines and ensure a holistic approach, focusing on reducing the government's litigation footprint. This includes embracing alternative dispute resolution mechanisms, refining the decision-making process, and leveraging technology to streamline legal procedures

By RAMA MATHEW
Member, CAT

ONE of the realities of litigation in India that we reluctantly, but wryly recognise is that the Government and its various branches contribute in a large way to the clogging of the courts. For some extraordinary reason, we are compulsively unwilling to concede any point not decided in favour of the government, and are prepared to fight to the finish to prove that the government and its minions are in the right. The reluctant recognition of the government's contribution to the swamping of judicial fora, egged on by caustic observations made by the likes of Justice VR Krishna Iyer, and repeated on multiple occasions; and the observations of the 126th Report on "government and public sector undertaking Litigation Policy and Strategies" where the Law Commission expressed the need to have a Litigation Policy to avoid litigation in government related issues or at the very least reduce it; and the need to address this in a logical and constructive fashion led to the recognition of the need to provide a clear litigation framework which would determine what could and could not be pursued in the courts of law and what stage litigation would attain finality.

Backlog of Court Cases

If we refer to statistics tabled in both houses of Parliament, we find that government litigation constitutes nearly half of all litigation in the Indian judiciary. Based on the information gathered in 2016, the number of government litigation cases pending in the supreme court was around 60,750. High courts were weighed down with approximately 40 lakh cases of government litigations. The number of cases pending in district and subordinate courts was 2.74 million. The Railway Department has 66,685 cases, of which 10,464 are pending for over 10 years. The Ministry of Panchayati Raj has the lowest number of cases.

It is not the intention here to list out the numbers of the cases which the government has filed, nor the exact limits set out at each

stage or even the exclusion clauses, these are matters of public record which are easily verified. We are not even going to list the number of cases withdrawn due to policy changes since 2010 as a measure of impact analysis, these are numbers which are put out in the public domain at regular intervals, any numbers put out here would be a point in a dynamic position which would in essence communicate very little of consequence to the subject matter. What we will instead be looking at are the underlying thought processes and the principles which form the underpinning of the litigation policy.

Origin of the National Litigation Policy

To understand this we need to go back in time to the year 1974, when Justice VR Krishna Iyer articulated very clearly the principles articulated earlier. Even more clarity emerges from the 1978 decision of the Supreme Court in the case of the State of Punjab v Geeta Iron & Brass Works and here I quote, "We like to emphasise that Governments must be made accountable by Parliamentary Social Audit for wasteful litigative expenditure inflicted on the community by inaction ... An opportunity for settling the dispute through arbitration was thrown away by sheer inaction. A ligitative policy for the state involves settlement of government 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

SNAPSHOTS

1. If we refer to statistics tabled in both houses of Parliament, we find that government litigation constitutes nearly half of all litigation in the judiciary

2. The Railway Department has 66,685 cases, of which 10,464 are pending for over 10 years. The Ministry of Panchayati Raj has the lowest number of cases.

3. A fresh attempt is being made to frame a comprehensive NLP which would have universal applicability and cover all branches and levels of government.

public money and promote expeditious work in courts of cases which deserve to be attended to."

The foundation of a formal litigation policy was laid in a series of policy notes by the Ministry of Law and Justice from 2009 onwards, culminating in the formulation of the National Litigation Policy on 23rd June 2010, where an attempt was made to make the Government an Efficient and Responsible litigant. The underlying principle behind this policy was the recognition of the fact that it is the responsibility of the government to protect the rights of its citizens, and to respect fundamental rights. This policy, however, was never implemented for the government as a whole.

If we can briefly summarise the National Litigation Policy (here I quote):

• It is based on the recognition that the government and its various agencies are the predominant litigants in courts and tribunals in the country.
• Its aim is to transform the government into an efficient and responsible litigant.
• Efficient litigant means: A litigant who -
• Is represented by competent and sensitive legal persons.
• Focus on the core issues involved in the litigation and address them squarely.
• Manage and conduct litigation in a cohesive, coordinated and time-bound manner.
• Ensure that good cases are won and bad cases are not unnecessarily pursued.
• Responsible litigant means:
• That false pleas and technical points will not be taken and shall be discouraged.
• Ensuring that the correct facts and all relevant documents will be placed before the court.
• That nothing will be concealed from the court and there will be no attempt to mislead any court or Tribunal.
• Prioritisation in litigation has to be achieved with particular emphasis on welfare legislation, social reform, weaker sections.
• The policy suggests that the pending cases with the government as party to be reviewed on priority basis to enable quick disposal.
• It also proposed a monitoring and review mechanism to sensitise government in important cases and avoid delay and neglect of the same.

Why Did NLP 2010 Fail?

To understand why did NLP 2010 fail, let's look at the following factors:

Legal proceedings involve a large amount of money, which grows with the length of time. For government-related litigation, the expenses are funded by the public funds (taxpayer's money). In the end, prolonged government litigation amounts to the waste of taxpayers' funds.

A high volume of government litigation burdens the courts in India with an unnecessary workload hindering the efficiency of the courts and slowing the process of delivering justice to all citizens of the country.

When different agencies of government file lawsuits against each other, the efficiency of these departments suffers. Departments have to halt the discussion on the development of different policies that will ultimately impact the country's people.The amendments in 2015 addressed the flaws in the National Litigation Policy (NLP), 2010. Various states have their own government litigation policy. In 2015, the national litigation policy was revised to put in place clear guidelines on

1. who would take the decision on pursuing litigation at each stage
2. what would be the criteria applicable in pursuing such

Based on the information gathered in 2016, the number of government litigation cases pending in the supreme court was around 60,750. High courts were weighed down with approximately 40 lakh cases of government litigations. The number of cases pending in district and subordinate courts was 2.74 million

litigation
3. what would be the timelines to be followed in each stage of the process

In 2017 the government introduced the "Action Plan to Reduce Government Litigation". Although whether this Action Plan is achieving its aim is unclear.

The Way Forward

As we've noted earlier, the proclamation of the National Litigation Policy (NLP), 2010 failed due to a lack of implementation along with other reasons. The necessity for the country to adopt a robust policy is essential.

Essentially, any effective National Litigation Policy should methodically address the three stages of a dispute: pre-litigation, litigation, and post-litigation, enabling reduction of the case backlog. With the higher courts coming down heavily on what was perceived as unnecessary and thoughtless litigation, late filings, anything seen as delaying tactics and wasting of the court's time. This included imposing costs on errant officers, the stage was set was much more stringent scrutiny of the issues being pursued and matters involving the rights of citizens at the filing stage itself. This being the underlying intent of the framing of the National Litigation Policy, the stage has been set for a much more conscious litigation by government, rather than the compulsive argumentativeness which characterised earlier filings.

The National Litigation Policy should enable reduction of government-related litigation by offering multiple channels of dispute resolution while addressing government concerns. For example, the National Litigation Policy should support the design and implementation of Alternative Disagreement Resolution by the government, reducing the inclination of both government and litigants to utilize the courts in every dispute. An outstanding example of this would be an effective Settlement Commission. Creating dispute resolution mechanisms like tribunals might help in reducing the number of active cases.

Towards a More Effective NLP

Surprisingly, however, the Indirect tax department of the centre, moved ahead of the curve. Even prior to the framing of this

Legal proceedings involve a large amount of money, which grows with the length of time. For government-related litigation, the expenses are funded by the public funds (taxpayer's money). In the end, prolonged government litigation amounts to the waste of taxpayers' funds

policy, the formalisation of handling litigation between government departments and government and the public sector by putting in a framework of consultation between the concerned Secretaries (commonly referred to as the committee of secretaries) to determine the need for continuing litigation had already minimised intra government litigation.

Immediately after the issuance of the National Litigation Policy, in 2011, directives setting out the de minimis for pursuing litigation in terms of revenue involved and the exclusion principles where this would not apply were put in place. In fact, this directive went ahead and withdrew all pending litigation which was not in conformity with the contours set out. These figures have been revised upward on a regular basis in line with the rest of government policy.

A fresh attempt is being made to frame a comprehensive National Litigation Policy which would have universal applicability and cover all branches and levels of government.

If we approach litigation in government in the spirit of the observations made by the Hon'ble Supreme Court, much has been done systematically to achieve this objective. This starts right from the initiation of the litigation process itself, where a consultative mechanism has been mandated prior to issue of any notice, the emphasis on following the principles of jurisprudence from the start of the adjudication process itself (even if that is a quasi judicial and not a judicial process), fairly stringent timelines which are to be followed at each stage of the process, separation of the review from the adjudication process in order to maintain neutrality in examining any order for legal and factual correctness, increasing levels of stringency in the decision making process for approaching higher judicial fora. The bones are already there. The problem, as always, is how we flesh it out.

This will help the judiciary to achieve the goal in the National Mission for Justice Delivery & Legal Reforms to reduce average pendency time from 15 years to 3 years.

Those in charge of the conduct of government litigation should never forget these basic principles.

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URGENT NEED FOR NATIONAL LITIGATION POLICY

India's judicial system grapples with an overwhelming burden of pending cases. According to the National Judicial Data Grid, a staggering 5.05 crore cases are currently pending across various courts

By PRATAP SINGH

Principal Commissioner of Income Tax

As per the National Judicial Data Grid, 4,44,37,465 cases are pending before various courts, the District Courts, 60,80,318 before the High Courts, and 80,568 before the Supreme Court, totalling a massive 5.05 crore cases. Unnecessary litigation involving the government has been an age-old problem in India, increasing the load on the judicial system and the exchequer. As far back as 1974, a distinguished Supreme Court judge Justice Krishna Iyer in the Dilbag Rai case emphasised the need for government departments and agencies to avoid filing frivolous or avoidable legal cases. In the verdict, Justice Iyer commented upon a "callous" resistance by the Railways against an action by its own employee, which was pursued right up to the summit court and negatived in the judgement. More recently, the Supreme Court Bench led by Justice B.R. Gavai in May 23 said, "At least 40% of litigation by the Centre and States is frivolous. Filing to deny 700 rupees per month to someone and spending 7 lakhs of taxpayer money." In the World Bank's ease of doing business, India fared very poorly, on its component of contract enforcement i.e., adjudication. In this context, the judiciary has called out the Government's dichotomous approach in blaming the courts for restricting " ease of doing business" despite being the biggest litigant itself and seeking needless adjournments repeatedly.

There is no litigation policy formulated by the Government, while discussions have been going on for over 13 years. If Viksit Bharat is our goal, we need to get our act together. This includes the government reducing unnecessary litigation.

In many quarters there is a feeling that the issues which ideally be decided by the central and state governments, are not being addressed and are being passed on to the courts to decide. These

also include the suits filed by one government agency against the other.

High Scale of Wasteful Litigation

The 2020-21 Economic Survey, highlighted the sheer scale of 'wasteful litigation' being fought by the Government of India. To be sure, this was not the first time that a government report underlined this issue. In its chapter related to taxation-related litigation, the survey noted with a sense of concern that even though the Government loses 73% of all its cases in the Supreme Court of India, and a staggering extent of nearly 87% of cases in the High Courts, it does not prevent the policymakers from appealing it's cases as a matter of routine.

Notably, drawing on such reports, the Government of India circulated a note proposing a National Litigation Policy (hereinafter NLP) in 2011 to streamline the conduct of Government litigation. After due deliberations and even after secretarial approval of the same, the Government decided not to bring it into force. The resultant effect is that India lacks a sound National Litigation Policy while different State Governments have brought litigation policies and rules that govern the conduct of their Government litigation.

Overview of Government Litigation

On 23rd July 2023, the Union Law Minister informed the Lok Sabha that although the Union Government is a major party in courts, it does not collect data regarding the percentage of cases where it is a party. Further, in the same reply, the minister also clarified that expenditure on such cases and department-specific data to check the concentration of cases at a specific level and court is also not collected. Instead, he cited the data uploaded on the LIMBS portal,

SNAPSHOTS

1. Recently the provisions of ADR, Alternate Dispute Resolution, has also been introduced, a detailed scheme of which is yet to be announced.

2. At the union government level, it is not clear whether any cohesive policy is followed by the Government to manage cases in the absence of a uniform National Litigation Policy.

3. For the purpose of monitoring of litigation of the Union of India, a web-platform namely, Legal Information Management & Briefing System (LIMBS) was created in the year 2016.

which shows some interesting patterns. The ministries of Finance, Railways and Labour contribute more than half of the total caseload (Nearly 3,70,000 cases out of a total of 6,36,000 cases) as reported by the portal. Moreover, the data retrieved from the portal shows an irregular trend in terms of expenditure incurred by the Union Government. While the expenditure in 2018-19 was nearly ₹51 crore, it stood at ₹54 core in 2022-23. Further, it went as high as ₹60 crores in 2019-20. Additionally, it is also not clear whether this data includes the litigation that involves PSUs. It probably does not because of the Union Government's response in the Lok Sabha in 2012 which says that the Department of Public Enterprises does not maintain the data on litigation-related expenditure of PSUs. It is worth noting that the LIMBS portal contains the data of only the Union Government and solely relies on user inputs given by ministries and their advocates. Genuine concerns have been flagged about its reliability due to late and incomplete updation of data which is mainly done by the advocates engaged in cases.

The Bureaucratic Challenge

In 2009, the Supreme Court in the Urban Improvement Trust, Bikaner Vs Mohan Lal case noted that unwarranted litigation by governments and statutory authorities is attributable to some officers who are responsible for making decisions and/or officers in charge of litigation. There is a reluctance to make decisions, or a tendency to challenge all orders against the government. "Their reluctance arises from an instinctive tendency to protect themselves against any future accusations of wrong decision making, or worse, of improper motives for any decision making," the top court had said. Justice A.P. Shah, former Chief Justice of the Delhi High Court and former Chairperson of Law Commission of India, observed that an atmosphere must be created where decisions can be made without apprehension of subsequent action against the officer making the decision.

Delay in Rolling Out National Litigation Policy

In October 2009, the Ministry of Law and Justice convened a national consultation specifically aimed at mitigating judicial delay and reducing the backlog of cases. This led to the formulation of the National Litigation Policy, 2010, with the underlying purpose of reducing government litigation in courts so that valuable court time would be spent in resolving other pending cases. The policy

> For facilitating quick disposal of disputes outside the court systems by way of alternate dispute redressal mechanism of mediation, the Mediation Act, 2023, was passed in the Parliament

went into cold storage for five years, when in 2015, the Law Ministry again envisaged the National Litigation Policy, 2015. In June 2017, it came up with the 'Action Plan to Reduce Government Litigation', which emphasised that appeals should only be filed in cases that touch upon significant policy matters. In July 2023, Law Minister Arjun Ram Meghwal, while responding to an un-starred question in the Lok Sabha, stated that "the National Litigation Policy is yet to be finalised".

At the union government level, it is not clear whether any cohesive policy is followed by the Government to manage cases in the absence of a uniform National Litigation Policy. The response of the Government in the Parliament suggests that the current approach is to deal with the issue on a departmental level according to their specific needs. For instance, departments such as the Central Board of Direct Taxes have increased the monetary threshold for filing cases before various forums. Likewise, the Central Board of Indirect Taxes and Customs also increased monetary limits to file appeals at higher forums like CESTAT, High Courts and Supreme Court. Similarly, the Railways Ministry relies on departmental meetings and circulars for better monitoring of cases. While there seems to be some merit in these measures, they fall far short of achieving the goal of streamlined government litigation.

As far as the NLP is concerned, the government so far has not put any timeline for its formulation. In 2017, in a statement by the Ministry of Law and Justice, it was stated that the Law Commission's report is being examined by the Ministry to chalk out the NLP. Since then, the matter appears to be standing still. Over 13 years after the National Litigation Policy (NLP) was conceived in 2010 to bring down the overwhelming number of cases involving either the Central government, State governments, or public sector undertakings (PSUs) that are clogging the judicial system, this policy remains in draft stage. Former Chief Justice of India N.V. Ramana recently remarked that government litigation accounted for nearly 50% of all pending cases. However, the government does not maintain data on cases that involve it as a party, making it hard to gauge the exact figure.

From the discussion and trends hereinabove, it can be assumed that in substance, such policies would be nothing more than a broad set of guidelines that would lack an accountability mechanism or a robust workflow mechanism.

Government Initiative to Reduce Tax Litigation

With a view to avoid unwarranted litigation and consequent burden on the judicial system and on the public exchequer, a draft National Litigation Policy has been formulated by the Government. The report of the Law Commission on the draft National Litigation Policy has been received and recommendations in the report are under examination. Also, letters have been written by the Minister for Law & Justice to all the Ministries/Departments to chalk out an action plan for special arrears clearance drives to reduce the number of court cases and to send a quarterly report on reduction in total number of Court cases withdrawn/settled/disposed as well as containing information about the total number of court cases, the number of court cases that have been reduced and the number of court cases that have been withdrawn after executive order or following ADR methods. The Law Commission in its 100th Report on "Litigation by and against the Government" has made some recommendations for reform. In its 126th Report on 'Government and Public Sector Undertaking Litigation Policy and Strategies', Law Commission has discussed the contributory causes for multiplication of the Government litigation and has, inter alia, described that the Government and Public Sector Undertakings must have their own litigation policy as well as strategies to reduce Litigation.

Ministries and Departments like the Railways and Department of Revenue, involved in a high

CBDT

For filing appeals	Monetary Limits
Before Income Tax Appellate Tribunal	**Rs 50 lakhs**
Before High Court	**Rs 1 crore**
Before Supreme Court	**Rs 2 Crore**

CBIC

Monetary limits for filing appeals in cases relating to Central Excise and Service Tax	
Before CESTAT	**Rs 50 lakhs**
Before High Court	**Rs 1 crore**
Before Supreme Court	**Rs 2 Crore**

Monetary limits for filing appeals in cases relating to Customs	
Before CESTAT	**Rs 5 Lakhs**
Before High Court	**Rs 10 Lakhs**
Before Supreme Court	**Rs 25 Lakhs**

number of litigations have been taking several measures for reducing the number of Court cases. The Ministry of Railways have issued instructions for effective monitoring of Court cases at all levels. Zonal Railways and Production Units have been asked to take effective steps to reduce the number of cases in which the Government is a party and reduce the burden of courts, expedite finalisation of all the cases in all courts at the earliest and to cut down the expenditure in contesting court cases. For achieving this, emphasis has been laid on effective monitoring of cases by having regular meetings with empanelled advocates, for briefing and necessary directions to be given at the highest level, besides ensuring timely submission of replies, Counter replies and necessary documents to the advocate.

Litigation Policy of Tax Department

The Central Board of Direct Taxes (CBDT) and the Central Board of Indirect Taxes and Customs (CBIC) under the Department of Revenue, have issued a slew of instructions and brought in several measures, for reducing litigations and the resultant burden on Courts. While the CBDT has issued circulars directing the field Officers that pending appeals before Income Tax Appellate Tribunals/High Courts/Supreme Court with tax effect below the specified limits may be withdrawn/not pressed, and in the process facilitating a better and concerted focus on high demand litigations.

Consequently several thousand appeals were withdrawn by the CBDT, which were pending before various courts. CBDT has also clarified to the field officers that appeals should not be filed merely because the tax effect in a particular case exceeds the prescribed monetary limits and the filing of an appeal should be decided strictly on the merits of the case.

Further with a view to ensure that repetitive appeals are not filed, legislative amendment was brought in the Income Tax Act in the form of section 158AB, with Finance Act 2022, w.e.f. 2023, as per which if a similar matter is pending before the High court or the Supreme Court, a tax officer need not file appeals in the subsequent year, till the matter in earlier year is finally decided. It may be stated that the success rate of departmental appeals before the ITAT and the Supreme Court is only 27% and that before the High Court is only 13%. To address this issue further provisions of Dispute Resolution Committees were introduced in the Finance Act 2022, which will decide the cases involving additions up to Rs. ten lakhs and in cases having income up to Rs. fifty lakhs. Prior to that

provisions of Dispute Resolution Panels u/s 144C were brought in with a view to address disputes relating to international tax and transfer pricing provisions.

Recently the provisions of ADR, Alternate Dispute Resolution, has also been introduced, a detailed scheme of which is yet to be announced. During the covid period the Government brought in Vivad Se Vishwas Scheme 2020, with a view to settle old tax disputes and over 1,10,00 cases were settled there in 2020. Similar scheme was brought in under GST as well recently. As a result of the above efforts the appeals pending before the ITAT have come down to about 23,000 and a little lower number is pending before the High Courts. In the Supreme Court only about 800 tax disputes are pending.

Similarly, the field formations under the CBIC was instructed to withdraw appeals pending in High Courts/Customs Excise and Service Tax Appellate Tribunal, where the Supreme Court has decided on identical matters. Besides, CBIC has also instructed its field formations not to contest further in appeal where the issue has been lost in two stages of appeals. It has been decided, however, that in cases where it is felt that the issue is fit for further appeal, then on proper justification and approval of the Zonal Chief Commissioner, an appeal can be filed for the third time. Also, the field formation has been instructed to forward only those SLP proposals where in the issue involves substantial question of law or gross perversity or illegality in the appreciation of evidence.

In this direction, both the CBDT and the CBIC have also enhanced the threshold monetary limit for filing appeals, the details of which are in the previous page.

Legal Information Management & Briefing System

For the purpose of monitoring of litigation of Union of India, a web-platform namely, Legal Information Management & Briefing System (LIMBS) was created in the year 2016. LIMBS Ver.2 has been launched in the year 2019 to overcome the then existing technological gaps in the application. The vision of LIMBS Ver.2 is 'to be a single platform for Litigation of GoI along with establishment of a synchronized regime for monitoring of Litigation' across all Ministries / Departments of Government of India. Presently, there are 7.78 lacs cases (including archive cases) including 5.78 lacs live/ pending cases entered by 57 Ministries/Departments. It has a single database of 15881 officials/ users and more than 20000 advocates. All the High Courts, except High Court of Delhi, have been integrated with LIMBS Ver.2 to facilitate monitoring of cases pending in these High Courts. In addition, the linkage of database with the Hon'ble Supreme Court is envisaged as part of LIMBS implementation. Law Secretary, vide DO letter dated 20.11.2020, followed by reminders dated 16.03.2021 and 09.07.2021 has taken up the case for grant permission for data of various Tribunals and with LIMBS Ver.2 through API with the Chairperson/President of the Tribunals and Secretaries of the respective Ministries/ Departments. At present, Central Administrative Tribunal, The Telecom Dispute Settlement & Appellate Tribunal and Appellate Tribunal for Electricity have provided API linkage to their database with LIMBS Ver.2. Further, the fast track integration of databases of cases of Railway Claims Tribunal, Income Tax Appellate Tribunal, National Green Tribunal, National

In its 126th Report on 'Government and Public Sector Undertaking Litigation Policy and Strategies', Law Commission has discussed the contributory causes for multiplication of the Government litigation and has, inter alia, described that the Government and Public Sector Undertakings must have their own litigation policy as well as strategies to reduce Litigation

Company Law Tribunal and National Company Law Appellate Tribunal with LIMBS is envisioned.

The alternative mechanism for the resolution of Inter-Ministerial/ Departmental disputes also provides for an institutionalised mechanism for resolution of such disputes, namely, Administrative Mechanism for Resolution of Disputes (AMRD). This was framed by the Department of Legal Affairs and circulated vide O.M. dated 31.03.2020. This mechanism, applicable to disputes other than taxation disputes, will reduce litigations in courts and resolve the cases outside the court system, where both parties are Govt. Department or where one party is Govt. Department and other is its instrumentalities, (CPSEs/ Boards/ Authorities, etc.).

To resolve the commercial disputes between Central Public Sector Enterprises inter-se and Central Public Sector Enterprises and Government Departments/ Organizations in place of the earlier 'Permanent Machinery of Arbitration', a new scheme, namely, "Administrative Mechanism for Resolution of CPSE Disputes (AMRCD)" evolved by Department of Public Enterprises has been brought into effect w.e.f. 22.05.2018. The Commercial Courts Act, 2015 was amended in 2018 to inter-alia provide for Pre-Institution Mediation and Settlement (PIMS) mechanism.

Further for facilitating quick disposal of disputes outside the court systems by way of alternate dispute redressal mechanism of mediation, the Mediation Act, 2023, was passed in the Parliament inter-alia providing for pre-litigation mediation by the parties. Responding to a query in the Parliament the Law Minister stated that "National Litigation Policy was formulated by the Department of Legal Affairs in 2010. The draft Note for the Cabinet was circulated to all the Ministries/Departments for their suggestions and inputs. Subsequently, the National Litigation Policy of 2010 was reformulated and the revised policy, after multiple deliberations at various levels including inter-ministerial, committee of Secretaries, informal team of Ministers and Law Commission, was re-submitted for consideration by the Committee Of Secretaries (CoS). During the meeting on 14.09.2017, the CoS had, inter-alia, recommended that the intent of reducing litigation can be optimally achieved through simplified guidelines rather than formulating a National Litigation Policy. At present, the drafting of the aforementioned guidelines is under consideration."

> The ministries of Finance, Railways and Labour contribute more than half of the total caseload (Nearly 3,70,000 cases out of a total of 6,36,000 cases) as reported by the LIMBS portal

Conclusion

In its National Legal Mission, the Union Government had set the target to bring the average pendency time from 15 years to 3 years. However, with no visible reduction in litigation from the side of the Government itself, it looks a bit difficult to achieve the target in near future. More concerning is the fact that the states apparently do not have any concrete plan other than their overbroad policies to solve this issue and they continue to remain embroiled in a large number of cases. The Law Commission in its 100th Report on "Litigation by and against the Government" has made some recommendations for reform. In its 126th Report on 'Government and Public Sector Undertaking Litigation Policy and Strategies', Law Commission has discussed the contributory causes for multiplication of the Government litigation and has, inter alia, described that the Government and Public Sector Undertakings must have their own litigation policy as well as strategies to reduce Litigation.

Therefore, it is the need of the hour to relook at the development of sound litigation-abating policies by different state Governments that are in tune with the ground realities. Since litigation management is an important area, some guidelines may come in this regard after the formation of a new Government, as has been stated by the Hon'ble PM.

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DECODING INDIA'S LEGAL FUTURE: SLICE OR SPRUCE THE SHAWARMA?

India's litigation policy must evolve, shedding inefficiencies to become a focused, result-driven system. Litigation should be objective, not ego-driven, and avoid creating costly logjams that hinder other priorities

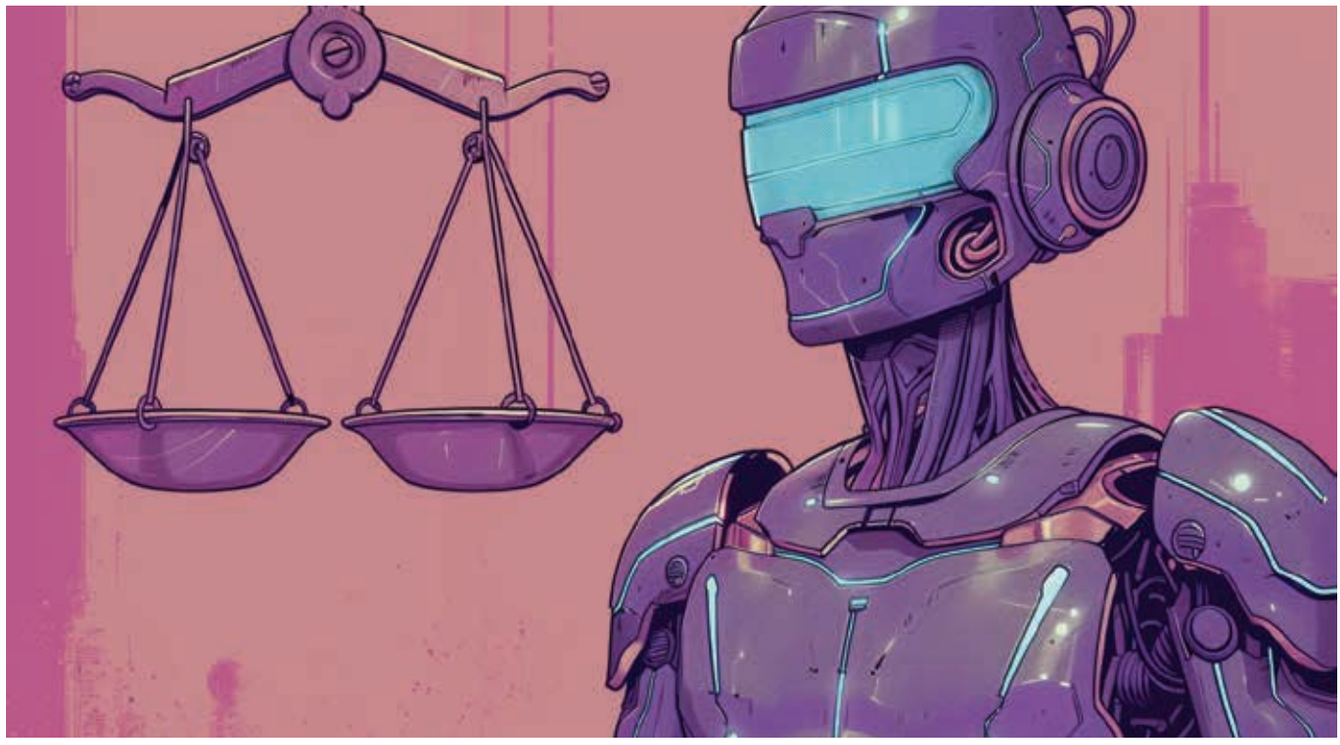
By SOMESH ARORA

Member (Judicial), CESTAT

THE revenue departments (indirect and direct) sure have a reason to smile as they not only recognised that the Government has been a superfluous litigant for years, but has also been enormously wasting its efforts in unwieldy litigation, at least on the civil side. Therefore, being a dependable quick response team of fiscal experimental policy-making, they have leaned towards a pragmatic approach. Initially, the same was done by removing the stay stage requirement of litigation through mandatory deposits in 2014.

Then, fiscal limits for government litigation as a benchmark were raised to Rs 2 crore in the Supreme Court, Rs 1 crore in the High Court, and Rs 50 lakhs in the Tribunal. This reduced Government appeals considerably. These limits have been revised upward again in this fiscal. The enforcement and focused litigation efforts thus could get a great thumbs up even in Courts. Amnesty schemes like Sabka Vishwas - (Legacy Dispute Resolution) Scheme, 2019 (SLVDRs) provided impetus and reduced litigation by another 20% yielding a good revenue response of more than Rs 45,000 crores. CESTAT could also plan an early switch over to digital litigation with files of the past having dust mites being no more required. So far so good. All concerned enjoy incidental health benefits too.

The areas needing greater attention have been alternative dispute resolution like the Settlement Commission, Advance Ruling Authorities and the compounding of offences. The Settlement Commission cannot be considered an effective medium for arbitration because it only comprises members from the Department of Revenue - its members are largely trained to be pro-revenue and do not represent the side of the taxpayers. The same is by and large true of the Advance Ruling Authority especially in GST as multiple authorities in various states have only increased



the tug-of-war rulings in conflict with each other.

Executive Decision-Making

Let us recognize that the government's litigation policy at this stage is going to face certain unique challenges. It has to chisel out the fat and flab of the past to make Government litigation a result-oriented mean machine. Litigation has to be chosen objectively free from egos. The low cost of litigation for the Government eventually creates a logjam for its functioning in other desirable areas of priority and therefore deserves to be eschewed. Further, the decision to initiate legal proceedings can be debated at the highest levels of the executive at least for common issues.

Some efforts in this direction are discernible as GST is focusing on making pre-deposit limits of up to 30% deposit to be reduced to reasonable limits. More importantly, the right to grant a stay of High Courts and Supreme Court will need to be specifically provided statutorily and not left to the nitty gritty of equity jurisdiction.

Directions are also being given that field units should not bring in litigation on legal interpretation issues without prior referral to the highest executive of either the GST Council or the Board. It will be proper if the SCNs drawn after such approval refer to such executive approval also. Again, it cannot be understood why government litigation should be subsidised and why filing fees for an appeal are not charged from the Government departments in Tribunals, High Courts, and the Supreme Court. Equitable treatment at least will create an impact through visible cost also.

Public Sector Units, public sector banks, etc. already function as independent cost units for their litigation centres and Government field units should be no exception.

The right to condone procedural lapses of taxpayers' delays not leading to substantive non-compliance should be allowed to be condoned by higher executive authorities based on reasonable fine only, rather than requiring

SNAPSHOTS

1. Alternative dispute resolution like the Settlement Commission and Advance Ruling Authorities need greater attention, as they are largely trained to be pro-revenue and do not represent the side of the taxpayers.

2. Amnesty schemes like Sabka Vishwas - (Legacy Dispute Resolution) Scheme, 2019 (SLVDRs) provided impetus and reduced litigation by another 20% yielding a good revenue response of more than Rs 45,000 crores.

3. The government's litigation policy at this stage is going to face certain unique challenges. It has to chisel out the fat and flab of the past to make Government litigation a result-oriented mean machine.

There cannot be any litigation policy of the future that aims at cutting down pendency exclusively, rather, the aim should be to increase the dispute resolution capacities in exponential terms. The pendencies will be taken care of in the process

prolonged litigation.

Lastly, first appellate authority and tribunals should be given power to allow stay even without pre-deposit in cases where violations of natural justice are clearly noticed from orders of the adjudicating authorities. This will take the load of litigation from High Courts Worldwide there is nothing that stops arbitration in Government business including relating to its past cases of civil side enforcement but arbitrators should not be biassed with revenue orientation. The composition of arbitration bodies should allow taxpayers or litigants to put on the panel someone from their professional or trade interest.

Future-Proofing Litigation Policy

While all the above-flagged concerns are addressable at this stage also, any litigation policy concerned with the future cannot remain oblivious of the need of capacity building.

Much as it may appear that artificial intelligence will reduce and even eliminate the present need of prolonged litigation, it appears that it will rather result in re-orientation that will create new vistas that may be hard to imagine at present. What we have witnessed since the 1990's to date is just the opening of the floodgates of knowledge by Internet-connection of the world. Mobile applications have interlinked individuals and sometimes multiple times. The knowledge available with the connected world even at this stage is phenomenal. Knowledge-based research is providing a virtual black hole to dig deep into spheres of old and new knowledge orders.

International Imperatives

Data analytics is further affording unimaginable assimilation of such knowledge. With varied thought processes emerging from experts and even commoners from even the last corner of the world through cross-current views, the selection of the credible version poses both research and decision-making challenges. The competence to decide through adversarial views was known only to Indians through "Shastrath" about metaphysical and etymological issues and then developed further by the common law system. Now, this may encompass all walks of life.

Human vs. Humanoid

Even the scientific theories of the

past will need to be tested on various analytics as it may show that a simple theory like antibiotics has found excess use in the USA may indicate through data analytics that the same is not good for another region, say of India or Africa where antibiotics penetration till recent decades was not of high magnitude. There will be varied theories and resultant conflicts each with its own data analytics-based elaborate arguments. Even if the experts in any field agree, propositions may require another seal of approval by any judicious or objective body.

Can it then be said that the days of litigation are going to be over or to the contrary a mind-boggling phenomenon of new litigation and dispute resolution is what the world is entering into in the AI-based world of tomorrow? The time may not be far off when the judicial tribunals may be sitting to decide disputes between human beings and humanoids through tribunalisation of justice with the benches having either an equal number of humans or humanoids or at least some combination of the two. There cannot be any litigation policy of the future that aims at cutting down pendency exclusively, rather, the aim should be to increase the dispute resolution capacities in exponential terms. The pendencies will be taken care of in the process.

Revenue Litigation Challenges

Again, if there is a requirement in GST alone of about twenty-six ARAs and their appellate authorities, about twenty-six GST Tribunals and an equal number of High Courts for the traditional litigation, a conflict of rulings itself can be mind-boggling to increase the work at the level of Apex Court. This only relates to revenue and does not take into account various civil, criminal, contractual, and sovereign jurisdiction disputes involving the Government. Economic and geo-political compulsions may force the Government to litigate internationally at WTO, UN etc at considerable expense and with uncertainty about the outcome. Dedicated bodies for international litigation with Indian expertise thereof shall be the need of the hour for India if it has to justify its stature as one of the largest economies of the world with a huge capital market and digital marketing system. This may require an efficient response for the present Indian litigators and judicial work for international litigation.

Time is therefore ripe to tighten the belt for a new world order of massive opportunities where decision-making will hold the fort and old skills of 'knowledge in mind' may become less important

Decision-Making Paradigm

The Indian Government, as a cornerstone of its litigation policy, should encourage decision-making in every sphere including based on scientific research for an opportunity that is going to present itself in the years to come. The policy thus should lay down the framework for reduced traditional litigation and consider settling old civil cases by offering settlement terms that include higher compensation to the sufferers, community service, community cost for frivolous litigations, as well as building phenomenal capacities for dispute resolution including research-based of varied expert opinions. And India should strive to become a hub of such activities. The shawarma thus may require both slicing down and sprucing up simultaneously, though more of the latter.

Another area of focus for India is to create rule-bound credible rating agencies of its own and establish certification marks including for various services.

Time is therefore ripe to tighten the belt for a new world order of massive opportunities where decision-making will hold the fort and old skills of 'knowledge in mind' may become less important. The *"shruti* and *smriti"* are likely to pave the way for *"Nirnayak Budhi"* (decisive minds). The world of the future may see the co-existence of humans and humanoids in every sphere of activity including judicial and legal work. Government litigation policy should therefore strive to accommodate such futuristic needs.

SECTION 28 EXPLAINED

UNDERSTANDING DUTIES AND DISPUTE RESOLUTION

Section 28 of the Customs Act, 1962, is a cornerstone of India's customs duty recovery process, embodying the government's efforts to create a balanced and fair system for both enforcement and dispute resolution

By SANDEEP KUMAR

Chairman, Customs & Central Excise Settlement Commission

Section 28 of the Customs Act, 1962, empowers the Department to recover duties and interest. In 2011, the section underwent a replacement enacted through Section 42 of the Finance Act, 2011 (8 of 2011), followed by amendments in 2013, 2015, 2016, 2018, and 2020. With fifteen sub-sections and four explanations, it merits close reading to fully understand the responsibilities and obligations of both officers and taxpayers.

The period within which duty can be recovered has been structured as (i) within two years from the relevant date (also known as the 'normal period') and (ii) within a period of five years (also known as the 'extended period').

Before the amendment made through the Finance Act 2016, the normal period for recovery of duty was one year. With the period having increased to two years, taxpayers became concerned about the longer period of implied uncertainty that came with it. To assuage these anxieties, an amendment was brought through the Finance Act 2018, providing for mandatory pre-show cause notice consultations (proviso to Section 28(1) refers).

Step Towards Dispute Resolution

The regulations titled "Pre-Notice Consultation Regulations, 2018" provide that the proper officer shall inform the taxpayer, in writing, of the grounds on which a show-cause notice demanding duty is proposed to be issued. The regulations mandate that the process of pre-notice consultation shall be initiated, as far as possible, at least two months before the expiry of the time limit. The taxpayer is required to respond within a period of fifteen days from the date of

the communication. Taxpayers have also been given the latitude of seeking a personal hearing, which the customs officer is required to accord within the next 10 days. It is also prescribed that the consultation process shall be concluded within sixty days from the date of communication. Furthermore, sub-regulation 3(4) provides that if the customs officer concludes that a notice is not necessary, he shall intimate the same to the taxpayer "by a simple letter."

Since this is a starting point in the journey of dispute resolution, an evaluation of the process would be in order. A situation may arise when a customs officer is faced with an imminent period of limitation and cannot proceed in terms of the timelines prescribed in the regulations. Since the law states that timelines are to be adhered to "as far as possible," non-adherence cannot be fatal to the issue of a notice, though at the cost of much agony to taxpayers. Perhaps, by providing a period of exclusion within the time limit of two years or as its adjunct, the process of consultation could perform as envisaged.

Taxpayer Dissatisfaction

Furthermore, the independence of the process of pre-consultation often emerges as a cause for taxpayer dissatisfaction. At times, it is alleged that the officer, having come to a preliminary conclusion to issue a notice, is prejudiced enough to not change his mind. To address this issue, it would be worthwhile to consider providing an institutional mechanism where a senior officer or another officer can be made responsible for the pre-notice consultations. Finally, we come to a very progressive provision included in sub-regulation 3(4), which states that if a proper officer, after hearing the taxpayer, decides not to proceed with the notice, he will intimate the same "by a simple letter." It would be worthwhile to undertake a data-based evaluation of the implementation of sub-regulation 3(4), which would provide immense

SNAPSHOTS

1. Section 28 of the Customs Act, 1962 empowers the Department to recover duties and interest. It has fifteen sub-sections and four explanations.

2. Litigation can be time consuming and costly. In order to avoid show cause notices, all businesses should remain committed towards maintaining high standards of compliance.

3. If a taxpayer receives a notice for the extended period and fails to voluntarily pay the duty in full or as accepted by him along with the interest and penalty, he can approach the Settlement Commission for bringing quietus to a dispute.

insights into any implementation bottlenecks and possibly generate reformative ideas for mitigating disputes. Perhaps, if a circular is issued to detail the process, it can go a long way in addressing the hesitant implementation of this provision.

Dispute Resolution under Section 28

Section 28 also provides that any person chargeable with duty or interest can voluntarily pay the amount, either ascertained by himself or as ascertained by the proper officer. In both eventualities, no show-cause notice shall be served. Further, sub-section (2) categorically extinguishes the right of the Department to impose any penalty. It is a very empowering clause for taxpayers, which can become even more effective, if the process and timelines were detailed in a circular. Alternatively, a clause could be added within the "PreNotice Consultation Regulations, 2018" on voluntary payment of duty by the taxpayer and the manner of time-bound closure.

Moving on to the subject of the "extended period," an area of potential disquietude for taxpayers, is the law empowering the proper officer to raise a demand for duty up to a period of five years, provided that evidence is adduced of "collusion," "willful misstatement," or "suppression of facts." As a conscious effort to mitigate litigation, the law provides that the noticee may pay duty, interest, and a penalty calculated at 15 percent of the duty amount within 30 days of receipt of the show-cause notice, entitling him to a closure of the proceedings. The process of closure is defined in sub-section 28(6)(i), but not without a caveat, which is that the proper officer has two years to decide upon the matter. In the circumstance that a taxpayer is making a voluntary payment, the time period of two years should be revisited. The proper officer should be in a position to respond to the taxpayer within a period of thirty or sixty days from the date on which a voluntary payment of dues is made. This will go a long way in assuaging the anxiety of taxpayers.

Sub-section 28(5) provides a profoundly facilitative provision for voluntary payment of duty by a taxpayer after issue of show cause notice, but the provision to subsection 28(2) does not contain the words "duty so accepted by that person"

Another profoundly facilitative provision is contained in subsection 28(5) in the words "duty so accepted by that person", implying that a taxpayer can voluntarily pay the duty demanded to the extent that he accepts. Sub-section 28(6) empowers the proper officer to decide upon whether the "accepted payment" is satisfactory. While the provision is liberal and progressive, the fact remains that in such cases taxpayers struggle to win a closure of the proceedings without there being an adjudication. In order to strengthen the implementation of the provision, the issuance of clear guidelines, which prescribe the process of voluntary payment by a taxpayer after the issue of a show-cause notice and the manner of closure of the proceedings, would be highly welcomed by the trade.

It is also interesting to note that the words contained in sub-

section 28(5)– "duty so accepted by that person" – are conspicuously absent in the proviso to sub-section 28(2). The provision to sub-section 28(2) states that the amount of duty along with interest payable as specified in the notice has to be paid in full within thirty days from the date of receipt of the notice. It is difficult to argue for grant of this latitude in cases involving the "extended period" but not making it available in cases of the "normal period." Aligning sections 28(2) and 28(5) would be in the spirit of equity and go a long way in improving dispute settlement.

Managing Disputes and Providing Closure

In a case where the taxpayer receives a notice for the extended period but fails to avail himself of the window of opportunity of thirty days to voluntarily pay the duty in full or as accepted by him, along with the interest and penalty, the law provides for recourse to an alternative dispute settlement mechanism laid out from sections 127A to 127N. Subject to exclusions provided under section 127B, a noticee and co-noticees can make an application to the Settlement Commission for bringing quietus to a Show Cause Notice. Section 127J states that every order of the settlement commission is conclusive as to matters settled therein and shall not be reopened in any proceeding under this Act or under any other law. Taxpayers seeking to settle a notice can voluntarily pay the duty in full or as accepted by them along with applicable interest and approach the Settlement Commission. Taxpayers are also entitled to seek waivers from fines, penalties, and immunity from prosecution.

The settlement process provides an effective alternative to the process laid down under sub-sections 28(4) to 28(6) inasmuch as it does not require making a mandatory payment of a penalty of 15%. Also, co-noticees, if any, can avail themselves of the settlement process, simultaneously or subsequent to the settlement of the case against the main noticee.

Adjudication and Appeals

Upon the taxpayer not choosing any of the above alternatives of dispute resolution, a notice is taken up for adjudication by the proper officer as per the timelines provided in sub-section 28(9). The proper officer is required to provide an opportunity to the noticees for replying in writing and accord a personal hearing, after which a speaking order under sub-section 28(8) is passed. The order may involve the imposition of penalties under section 114A, which is mandatorily 100% of the duty or interest involved. Again, the law provides that taxpayers who choose to concede the issue to the department can avail themselves of relief by merely paying 25% of the penalty imposed, but within 30 days of the communication of the order. Should this window close, the concession can still be availed at a later stage, post a decision at the appellate forums.

Litigation can be time-consuming and costly. In order to avoid show-cause notices, all businesses should remain committed to maintaining high standards of compliance. Any transactions in international trade are best subject to a process of professional due diligence before they are executed. Should an unsavoury situation involving a demand for duties arise, understanding the rights and obligations set forth by Section 28 is essential for mitigating disputes. As is evident from the legislative history of Section 28, it has been the CBIC's constant endeavour to minimise and smoothen dispute settlement, which also serves as proof of its willingness to adopt more and more facilitative measures and narrow the gap between pledge and performance.

In a case where the taxpayer receives a notice for the extended period but fails to avail the window of opportunity of thirty days to voluntarily pay the duty in full or as accepted by him, along with the interest and penalty, the law provides for recourse to an alternative dispute settlement mechanism laid out from sections 127A to 127N

NEW LITIGATION POLICY: ADDRESSING GAPS AND SOLUTIONS

The backlog of cases in our legal system remains a persistent challenge, despite the introduction of new litigation policies. While recognizing this issue is crucial, we must also focus on practical solutions

By VIKRAM NANKANI

Senior Advocate

APART from recognizing the menace of the backlog of cases, the new litigation policy does not offer solutions. There are arrears pending at different levels in different courts, which is an age-old story.

As it is always said, no policy shall succeed unless all the stakeholders contribute. It is said that litigation in our country is a luxury. The affluent and the big corporates can command the best resources to have the cases heard. The rest of the population is at the mercy of the system including when it comes to personal liberties. The Government is the largest litigant with no empathy. This makes a perfect recipe for disaster.

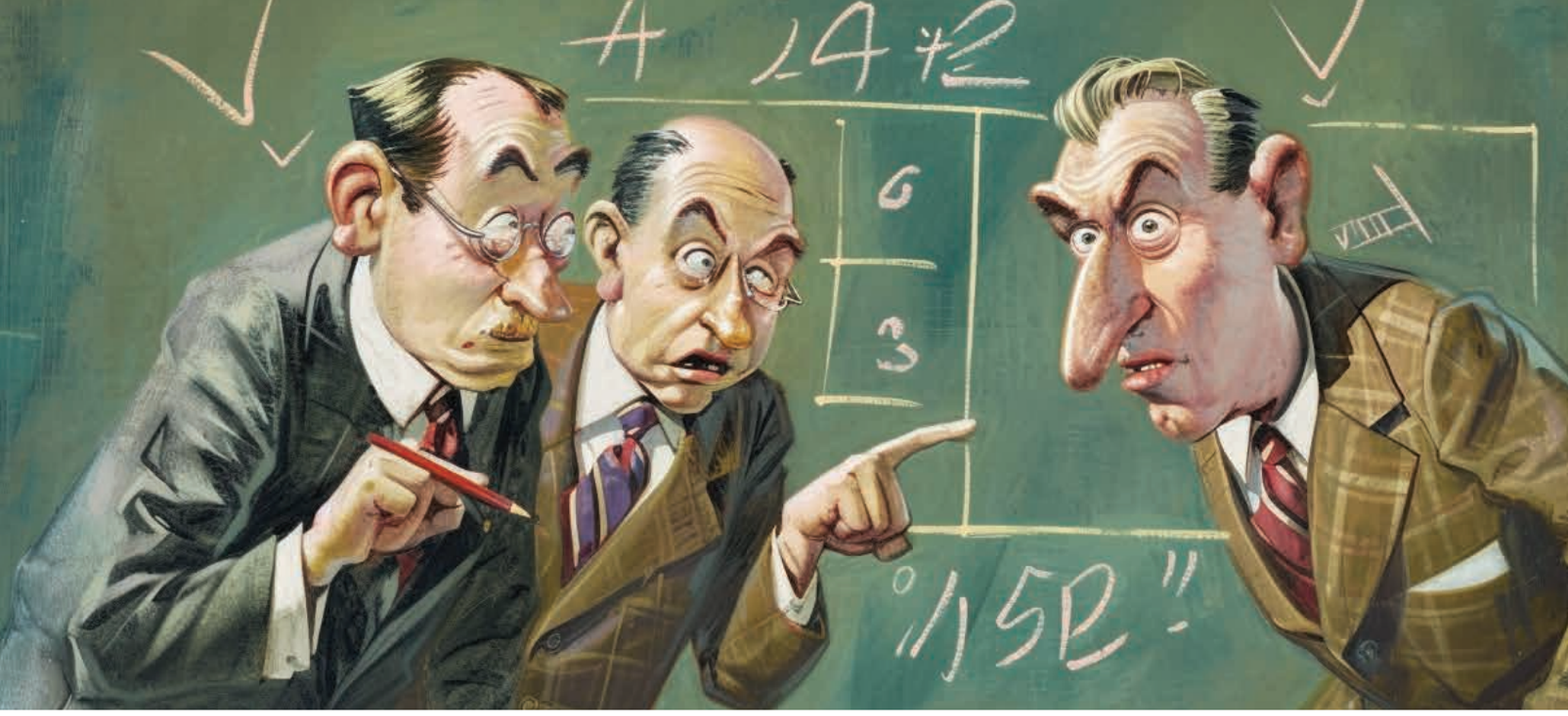
Areas Requiring Reform

Given the size and the complexities of the laws, broadly reforms are required in the following areas:

(i) Legal framework, and not just policy to reduce litigation;
(ii) Change in bureaucratic mindset;
(iii) Inducing greater voluntary compliance;
(iv) Upgrading the infrastructure and
(v) Increasing use of technology.

An example of the first point is the insertion of Section 12A by the Parliament in the Commercial Courts Act, 2015. But legal ingenuity ensured that it remained a dead letter until the Supreme Court in Patil Automation Pvt. Ltd v. Rakheja Engineering Pvt Ltd made it mandatory to first refer the disputes to mediation unless there is a case of extreme urgency for the courts to grant interim protection before the parties could take a shot at mediation.

Legal Framework and Policy



The Supreme Court, undoubtedly has given mediation its due importance, but do the parties and the professionals advising them take mediation seriously? There lies the problem. The gain from mediation hardly needs reiteration. Mediation is known to reduce costs and has also brought down the pendency in commercial courts. No doubt, mediation is non-binding, but its gains far outweigh its non-binding nature. But the law alone will not solve the problem. This requires a programme for the training of mediators. Even the practising professionals need training because they are the ones to convince their clients about the advantages of mediation. Only then can mediation be a successful tool.

Another step in the same direction is to cut down on the number of appeals provided in each statute. There should be a maximum of one full appeal, not just on questions (or substantial) of law. The final stage should be, at best, an appeal with special leave to the High Court. This would require an amendment to Article 136, eliminating any further recourse thereafter to the Supreme Court.

The Supreme Court should be given the task of dealing only with pure constitutional matters or of conflict between the Union and States or States inter se or matters from High Courts with certificate.

Menace of Case Backlogs

A large number of pending matters are on a single point. Matters involving the same issue may be pending in different High Courts or in the Supreme Court. A statutory provision, especially in taxation matters can ensure that matters involving recurring issues or identical questions are kept in abeyance by saving limitation and safeguarding the interest of the Government, until the final resolution of the issue by the Supreme Court. This shall avoid repeated notices and multiplicity of proceedings at the lower level including at the stage of adjudication or the first and second appellate authorities or courts and at the same time, ensure security to the bureaucrat for not being hauled for dereliction of duty in not issuing the notice in time.

There is a practice of keeping matters in a call book, but the same

SNAPSHOTS

1. One of the major reasons why the Government contributes to the litigation is because its officers do not discharge their obligation efficiently and in a kindly manner, compelling the citizens to rush to the courts.

2. India has 21 judges per million people. The Law Commission had recommended 50 judges per million 36 years ago. In countries like the U.S.A., the ratio of judges to population is 150 and in China, it is more than 300 per million.

3. Good use of technology can be used to weed out a lot of dead wood. If all the pending matters are digitised and then analysed, it is possible that nothing survives in many of them on account of either amendments in law or stakes having been reduced to a paltry amount.

is largely discretionary since the same is given by departmental circular. A provision in the law shall introduce greater certainty.

It is possible that many a time, a case may involve multiple issues, where one of the issues is pending in higher courts. A statutory provision may provide an answer by providing that the issue pending in higher courts can be segregated and kept under freeze while the other matters can proceed.

On the mindset, the Government needs to undertake serious introspection. It could do well to look at the data on the number of matters in which the Government succeeds after adjudication. At the first level, the success ratio of a citizen or an assessee may probably be a single-digit number, but the tables turn dramatically, as the matter goes higher and higher. Ultimately, it perhaps turns out that the Government's success ratio at the highest level is in single digit. This reflects that there are frivolous matters which are made only with a view to meet targets or project false numbers towards revenue collection, particularly near to the end of the financial year. What can be done as a part of the litigation policy to remedy this problem?

Bureaucratic Mindset

One of the major reasons why the Government contributes to the litigation is because its officers do not discharge their obligation efficiently and in a kindly manner, compelling the citizens to rush to the courts. Regardless of the outcome of the litigation, if the Government officer is held accountable for not disposing of the matter efficiently, and preventing litigation, such a measure by itself would reduce litigation. The counter-argument to increasing court fees is that no citizen should be deprived of seeking justice. This can be dealt with by introducing a mechanism or timely disposal of matters at the first level of Government officers and holding them accountable.

Apart from introducing a mechanism for accountability, as aforesaid, the second deterrent is levying costs, and if required as a matter of law by legislative interference. The third is instilling confidence in its officers to have the courage to make the right decision. The fear of witch-hunting compels sometimes even

the most upright or rational officer from making a wrong decision only on the basis of fear or suspicion of being harassed subsequently. It is said a judge must discharge his duties without fear or favour. A fearful officer cannot do justice.

While it may sound radical, any matter pending for more than 5 years at any level must be capable of automatic settlement. There may be a situation where the matter is pending for more than 5 years for reasons beyond the control of the parties. For the Government, it is the blockage of revenue and for the private parties, it is a risk of continuing interest liability, where at times, interest could either be equal to or exceed the principal amount. This may sound like a permanent amnesty scheme where the taxpayer has the incentive of settling the case on certain terms avoiding the risk of losing the matter and eventually paying up a huge amount.

Recently, on June 3rd, 2024, the Government of India issued an Office Memorandum containing guidelines for arbitration and mediation in contracts of domestic public procurement. While it purports to encourage mediation under the Mediation Act 2023, shockingly it provides that as a norm, arbitration included in the contract may be restricted to disputes with a value of less than Rs. 10 crores. The Office Memorandum on the face of it defeats the very purpose of the new litigation policy to reduce matters in Courts. Instead of making arbitration compulsory, in all matters, it seeks to reduce arbitration into an option, and restricts arbitration only to matters below Rs.10 crores, leaving all other matters to be adjudicated by the courts. The Office Memorandum does not spell out, but necessarily implies, a reflection on arbitrators and arbitration professionals. It seeks to question the credibility of arbitration as an alternative dispute resolution mechanism in India.

While the Government is blamed for being the most litigious, the private parties are equally to be blamed when it comes to taking a “chance” in court. This malaise can be taken care of by imposing actual costs on the losing party

It is sad that instead of addressing issues like providing training to arbitrators and arbitration professionals, institutionalising arbitration and making the arbitration ecosystem robust, the Office Memorandum has damaged the case for making India an arbitration hub. The Office Memorandum seems to have been issued insensibly and insensitively.

Technology and Digitalization

A good use of technology can be used to weed a lot of dead wood. There are several matters which have become infructuous for multiple reasons. If all the pending matters are digitised and then analysed, it is possible that nothing survives in many of them on account of either amendment in law or stakes having been reduced to a paltry amount due to the passage of time or the issues stand settled by one or the other judgments of the higher courts. Thus, statistically, there is a good chance of a large number of pending matters going down considerably.

While the Government is blamed for being the most litigious, the private parties are equally to be blamed when it comes to taking a “chance” in court. This malaise can be taken care of by imposing actual costs on the losing party. Procedural reform like affidavits of evidence in lieu of examination-in-chief must be made a norm, as should a full compilation of the documents relied upon by each side, and such a mandatory requirement must be dispensed, with strict timelines only in rare cases with the leave of the Court. Summary trial or documents-only trial must be made compulsory in matters of low pecuniary stakes.

Judicial Reforms

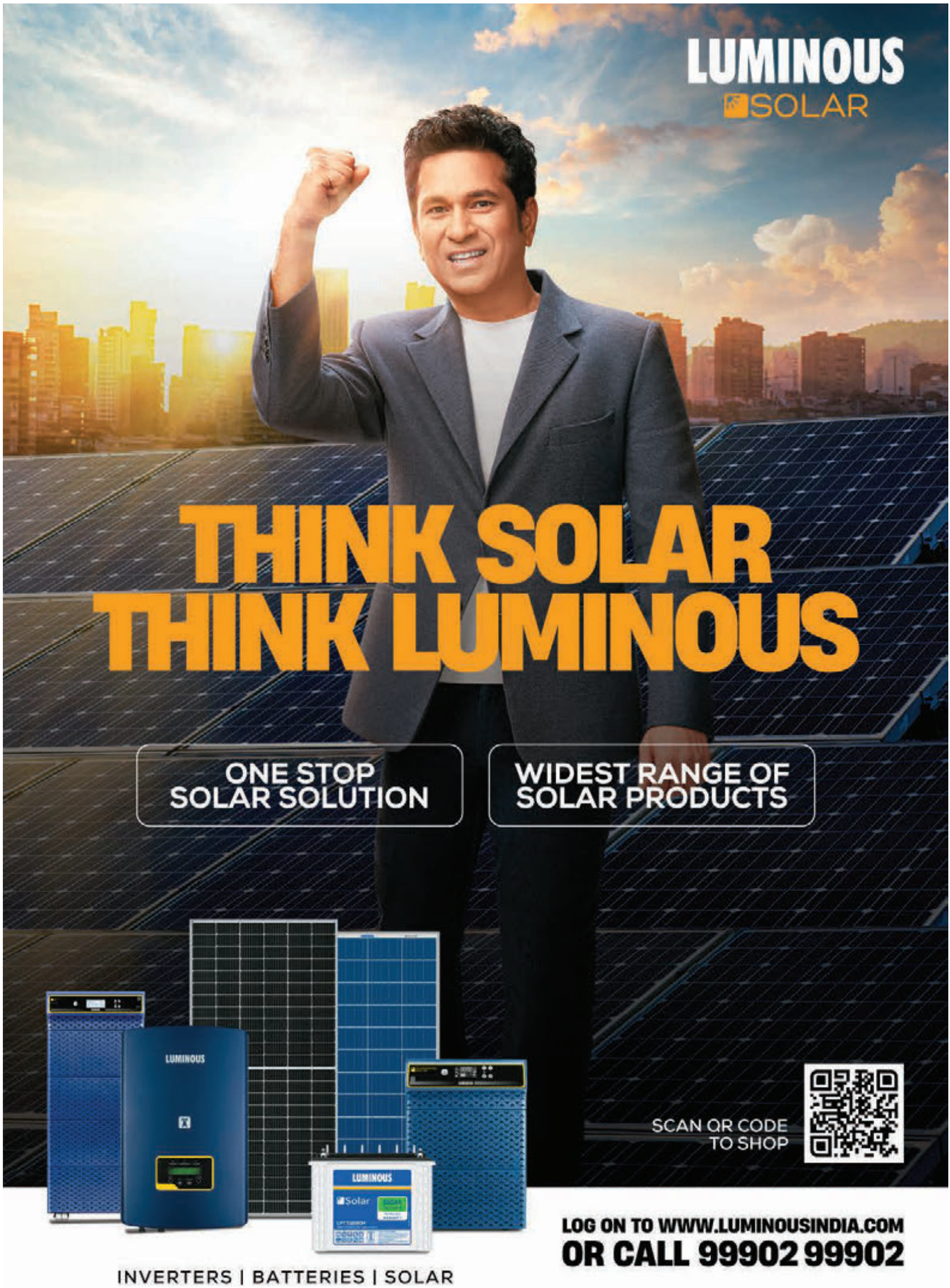
No litigation policy can succeed without introducing judicial reforms. India has 21 judges per million people. [Answered by the Law Minister in Parliament on December 8, 2023.] The Law Commission had recommended

India's legal system has long been plagued by a backlog of cases, an issue that the new litigation policy recognizes but fails to adequately address. While the policy identifies the problem, it does not provide concrete solutions to the longstanding issues within the judicial system

50 judges per million 36 years ago. In countries like the U.S.A., the ratio of judges to population is 150 and in China, it is more than 300 per million. There are not enough incentives for younger members of the Bar to accept judgeship. The budgetary allocation for all Courts in India is around 0.1% both at the Centre and State. This is abysmally low. A special programme must be introduced, perhaps after graduation, for making career judges, so that there is a trained pool of prospective judges.

The Court fees must be increased, particularly in commercial matters, not only to augment the Government revenue but more importantly, to discourage frivolous and chance litigation. In criminal matters, bail must be granted as a matter of course, except in a few serious offences like sedition, murder, rape so as to avoid repeated bail applications. We have come a long way with modern and hi-tech forms of investigation based almost entirely on documentary or electronic records where custodial interrogation may not be necessary thereby reducing the pressure on courts. The government has initiated steps to decriminalise several offences under corporate laws, but the government must also equally ensure that its officers are not trigger-happy to arrest. It may not be admitted, but often arrests at the state of investigation are punitive in nature because of a lack of confidence in the officers of success post-trial leading to pressure on Courts. In a recent judgement in the case of Arvind Kejriwal v Directorate of Enforcement (Order dated 12th July 2024 in Criminal Appeal No. 2493 of 2024), the Supreme Court while granting interim bail, referred to statistics to show the rampant arrests without addressing the seminal question of "need or necessity to arrest".

It is hoped that a comprehensive litigation policy with a 360-degree view will be formulated. Some radical measures are required to shake up.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NEW CONTOURS OF DISPUTE RESOLUTION MECHANISM IN CUSTOMS?

Tax disputes arise when taxpayers and tax authorities disagree on decisions related to audit findings, assessments, or other determinations that impact tax calculations. Tax litigation is the formal process of resolving these civil or criminal tax disputes through presentation, review, and adjudication in the relevant forum or court

By S K RAHMAN

IRS, Principal Commissioner

"Taxation should not be a painful process for the people. There should be leniency and caution while deciding the tax structure. Ideally, governments should collect taxes like a honeybee, which sucks just the right amount of honey from the flower so that both can survive. Taxes should be collected in small and not in large proportions." – Arthashastra

TAX disputes refer to disagreements between the taxpayer aand the tax administrator over decisions regarding the appraisal of an examination report or any other similar decision on which the tax is calculated. Tax litigation is the process by which questions involving civil tax disputes or criminal tax matters are presented, reviewed, and decided in the appropriate venue.

To reduce litigation by the government and streamline the process of litigation management, the Government of India, Ministry of Finance, Department of Revenue, CBIC, has introduced the National Litigation Management Policy. Under this policy, if a matter involves disputed tax less than a specified amount, officers are not required to challenge such orders before the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), the High Courts, or the Supreme Court. If they have already challenged such orders, they are required to withdraw those appeals that are below the prescribed monetary limit and pending before various tribunals. The CBIC recently issued an instruction dated 02.11.2023, wherein the following monetary limits have been fixed

below which no appeal shall be filed before the CESTAT, High Court, and the Supreme Court (See table next page).

But for the tax litigation by the trade (importers, exporters, manufacturers, traders) , there is no limit prescribed at the High Court and Supreme Court . Only in CESTAT , as per 2nd Proviso to Sec 129A(1) of Customs Act 1962, tax disputes above Rs 2 lakhs are only admitted .

Some of the mechanisms that are available to the trade to avoid tax disputes and unnecessary tax litigation are as follows

PROCEEDINGS DEEMED TO HAVE BEEN CONCLUDED

The Section 28 of Customs Act 1962 is for demand of duty and it also gives provisions for proceedings deemed to have been concluded in certain situations as shown below:

Situation	No Suppression	With Suppression
Time limit for issue of demand from relevant date	28(1)(a)-demand for 02 years	28(4)- 05 years
Tax and interest paid on own **before** investigation, audit or verification and Before Show Cause Notice and informed department in writing	28(1)(b)(i)-no penalty 28(2)-duty with interest	Not Applicable
Tax and interest and penalty paid **before** show cause notice but **after** audit, investigation or verification or before duty ascertained by proper officer of customs and department informed in writing	28(1)(b)(ii)-no penalty 28(2)-duty with interest	28(5)-penalty equal to 15% of duty 28(6)-duty and interest paid
Tax, interest and penalty paid **after** Show Cause Notice but **before adjudication order, within 30 days from SCN** and department informed in writing	28(2)-no penalty, duty and interest paid, Shall not serve any notice	28(5)-penalty equal to 15% of duty 28(6)-duty and interest paid within 30 days of SCN
Tax, interest and penalty paid **after** Show Cause Notice and **after adjudication order within 30 days from the date of communication** of the order.	Sec 112(ii)Penalty equal to 10% of Duty Duty and interest paid	114A-penalty equal to 25% of duty Duty and interest paid within 30 days of O-i-O

SNAPSHOTS

1. Sec 28 gives opportunity for proceedings deemed to have been concluded.

2. Factors to be considered before filing appeal are strength of the case, Case laws and precedence.

3. Monetary limits for Appeal by Department may be kept in mind.

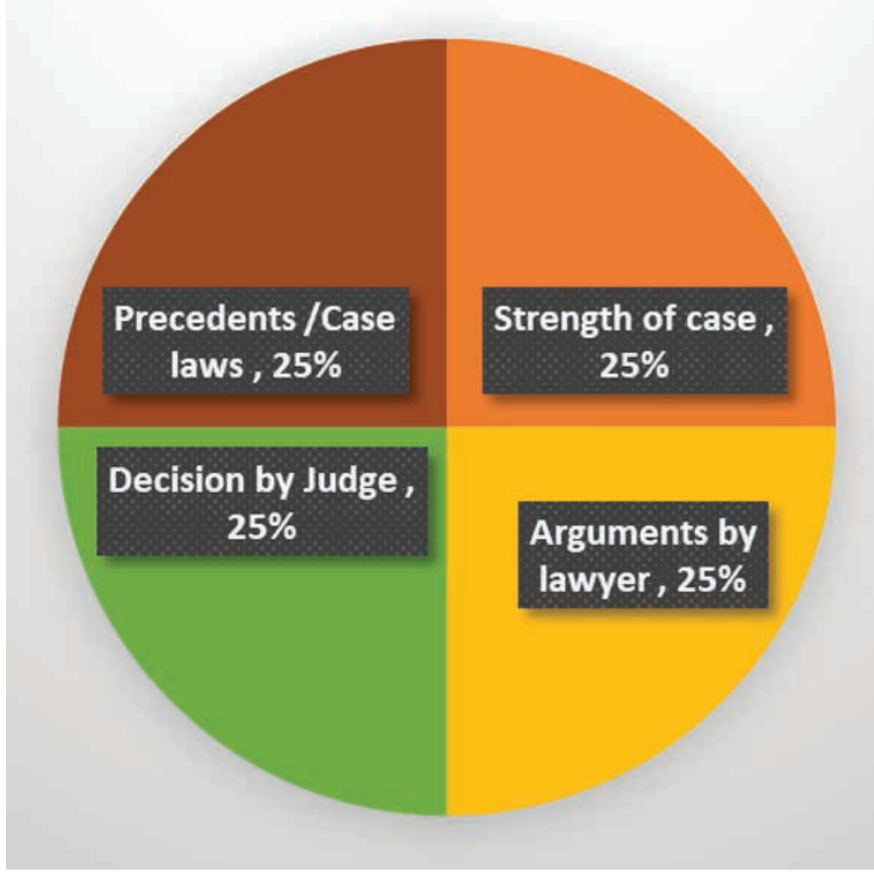
Appellate Forum Monetary	Monetary limit
SUPREME COURT	Rs. 2 Crore
HIGH COURTS	Rs. 1 Crore
CESTAT	Rs. 50 Lakh

Thus, the importer gets an opportunity to avoid the dispute:
(a) Before investigation, audit, or verification: They can pay the duty and interest, and no penalty is levied.
(b) Before show cause notice but after audit, investigation, or verification, or before duty is ascertained by the proper officer of customs and the department is informed in writing: In such cases, only the duty with interest has to be paid if there is no suppression. In cases of suppression, apart from duty and interest, only a penalty equal to 15% of the duty is required to be paid.
(c) After show cause notice but before adjudication order, within 30 days from SCN: The same requirement as mentioned above applies. In cases of suppression, apart from duty and interest, only a penalty equal to 15% of the duty is required to be paid within 30 days of the issue of the show cause notice (SCN).
(d) After show cause notice and after adjudication order within 30 days from the date of communication: The next opportunity comes after adjudication, where:
(i)In cases of no suppression, duty and interest shall be paid with a penalty equal to 10% of the duty under Sec 112.
(ii) In cases of suppression, duty and interest shall be paid with a penalty equal to 25% of the duty under Sec 114A, which is required to be paid within 30 days of receipt of the Order-in-Original.

Thus, many opportunities have been given to the trade to avoid tax disputes at various stages of litigation with minimal penal burden.

SETTLEMENT COMMISSION

Any importer, exporter or any other person, who has been issued Show Cause notice under Customs Act, 1962, can make an application for settlement in respect of a case for adjudication to the Settlement Commission. The basic objectives of setting up of the Settlement Commission are:-
(i) to provide an alternate channel for dispute resolution for the assesses; (ii) to serve as a forum for the assesses to apply for settlement of their cases and
(iii) To encourage quick settlement of disputes and save the business from the worries of prosecution in certain situations,



A voluntary payment of Duty. Interest and minimal penalty would be a better exit than to confront in disputes

The advantage of going to Settlement Commission is that the Settlement Commission may grant immunity from prosecution for any offence under this Act and also either wholly or in part from the imposition of any penalty and fine under this Act, with respect to the case covered by the settlement

The factors to be considered before appeal is filed (See diagram in the previous page)

Thus, the importer gets an opportunity to avoid the dispute:

(a) Before investigation, audit, or verification: They can pay the duty and interest, and no penalty is levied.

(b) Before show cause notice but after audit, investigation, or verification, or before duty is ascertained by the proper officer of customs and the department is informed in writing: In such cases, only the duty with interest has to be paid if there is no suppression. In cases of suppression, apart from duty and interest, only a penalty equal to 15% of the duty is required to be paid.

(c) After show cause notice but before adjudication order, within 30 days from SCN: The same requirement as mentioned above applies. In cases of suppression, apart from duty and interest, only a penalty equal to 15% of the duty cause notice (SCN).

(d) After show cause notice and after adjudication order within 30 days from the date of communication: The next opportunity comes after adjudication, where:

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The factors to be considered before appeal is filed are :

(a) Strength of the Case: Whether the case aligns with the law, rules, and acts, and if it will withstand judicial scrutiny by appellate forums, tribunals, or courts.

(b) Arguments by Lawyer: How effectively the lawyer can present or submit arguments in the tribunal or court.

(c) Case Laws and Precedent: Whether the issue involved is already settled or if it is a covered case where the tribunal or court has already issued an order on the issue that has reached finality.

(d) Judge's Decision: Ultimately, it is the jurisprudence and understanding of the Hon'ble Judge who decides the case, which is beyond the control of the appellant.

Ensuring Compliance and Reducing Disputes

Apart from these factors, the trade/appellant must consider one important factor before filing an appeal. If they win the case in the present tribunal or court, will the Department file an appeal against this order? This can be easily guessed by looking at the amount of disputed tax. For the Department, there are threshold monetary limits below which they would not file an appeal. For example, if the disputed tax amount is Rs.75 lakhs, it would be worth filing an appeal in CESTAT. If the importer wins the case at CESTAT, i.e., if CESTAT gives an order in favour of the party, the order would become final as the Department may not file an appeal in the High Court since it is below the threshold monetary limit of Rs. 1 crore. After considering all these factors, if the trade (party) still wants to file an appeal, they must remember that a pre-deposit as prescribed under Sec 129E of the Customs Act 1962 to the extent of 7.5%, and in further appeal, an additional 2.5% of the disputed amount is required to be paid before filing an appeal before the Commissioner (Appeals) and CESTAT respectively. In case the appellate forum gives an order in favour of the party, they have to make an application for a refund of the pre-deposit, which would take some time to process.

> For every appeal pre-deposit is required to be deposited under Section 129E

Last but not least, one must check the time limits for filing the appeal, whether the appeal is filed within the prescribed time or not. An appeal is required to be filed within the prescribed 3 months or 6 months of receipt of the impugned order. It may not be worth filing with a condonation of delay.

Once Benjamin Franklin said, "In this world, nothing can be said to be certain, except death and taxes." When tax is certain, why dispute it? Pay and have a peaceful period. Time and money can be spent on how to increase business rather than on whether the tax amount is to be paid or disputed. Remember,

"A nation is made when taxes are paid."

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GST AND LITIGATION
A PARADOXICAL JOURNEY

Goods and Services Tax in India has made litigation an inevitable part of the legal landscape. GST's paradoxes and complexities often lead to disputes, requiring a robust National Litigation Policy to mitigate them

By S. JAIKUMAR

Advocate, Swamy Associates

God said, "Let there be light and there was light" and when HE said, "Let there be laws and there was litigation!"

RULES could be cast water-tight but would always have a leakage with exceptions and Procedures, however air-tight would always stand punctured by violations, thus making the inevitable "Litigations" as the next certainty after the ones quoted by Sir Benjamin Franklin – the Death and Taxes.

Overhauling the Litigation Framework

The migration from a conservative to a progressive litigation landscape should basically start with a paradigm shift in the mindset of moving from a "compulsive litigant to a responsive litigant" and if it has to be successfully achieved in its true letter and spirit, then it shall start at the sacrosanct pillars of the Constituent Polity – the Legislature, Executive and the Judiciary. The role of each of these leviathans in achieving this motto is very crucial and for which a liberal and successful National Litigation Policy (NLP), becomes inevitable. When we say NLP, it's not just fixing a monetary limit for appeals and revising it periodically but a true shift in mindset. It shall not be a stand-alone process but an on-going and evolving dynamics with the underlying essentials of Prevention, Control, Reduction, Efficiency, Responsibility and Integration of Technology. To us, if these jargons are diligently adopted, it would put the nation's top litigator, the Government, on a glittering podium finish, both as a responsive litigant as well as a responsible one.

GST: A Treasury of Paradoxes

The height of humour is that, often, the humongous revenue

collections are claimed to be the testimony to the success of GST. Fortunately, you don't need to be a pundit to understand that the Revenue collections have nothing to do with the system or machinery but are purely based on involuntary consumerism. They are like the common cold, where you take medicines, you recover in seven days and, in a week, if you don't.

To us, GST is an autistic baby, born to an estranged father (technology) and juvenile mother (tax-payer) caught between two mothers-in-law (Centre & State). With the "Self-assessments" turning out to be "curses in disguise" in the GST lexicon, "error" means "crime", "mistake" means "fraud" and "inadvertence" means "sin". With their craving obsession to achieve revenue targets, often the officers become merrily myopic and cross all legal fences to collect "tax" beyond every legal prescription. It is truly unfortunate that, many times, the Government machinery chooses to be a mute spectator witnessing (read as tacitly approving) to the above ugly shades of grey. Time and again, the swelling number of cases admitted and decided by various High Courts directing to follow the cardinal principles of natural justice and observations regarding pre-determined mind or not following settled principles of adjudication, are a testimony that "discretions" have reduced to shameful "prejudices".

Misuse of Authority and Arrest Threat

Another shameful arrow in the revenue' quiver is the threat of "arrest". This "Brahmastra" is grossly misused and abused only to arm-twist, where the "rule of law" is made the first casualty. We are yet to decipher the take-away of a preventive arrest in a tax evasion case. In the past, we have seen that

SNAPSHOTS

1. Rules could be cast water-tight but would always have a leakage with exceptions and Procedures, however air-tight would always stand punctured by violations, thus making the inevitable "Litigations".

2. While introducing GST, the most popular tagline was "No more check-posts". But none of us knew that there would be a hidden second line, "Instead every road could be one".

3. Another shameful arrow in the revenue' quiver is the threat of "arrest". This "Brahmastra" is grossly misused and abused only to arm-twist, where the "rule of law" is made the first casualty.

the Revenue would pathetically fail to establish the tax-evasion case, where there would have been arrests at the first place. It would not be improper to suggest that, in cases where there had been arrests, if the noticee ultimately succeeds in the tax case, then the "(im)proper officer" who was responsible for such arrest, should be held liable under an offence of outraging the modesty of a tax-payer. The new CrPC should incorporate a Section to this effect.

Micro-Level Challenges

From the above macro-level bazookas, let's now move on to some specific micro-level darts. These poisonous pygmy arrow heads are so deadly that, if left unattended, would soon shift the ailing new-born from ICU to the morgue.

Section 129 of the GST Act dealing with the interception and detention of vehicles has the distinction to be red-flagged as one of the most-abused Sections of the GST Act, invoked right, left and centre, meaningless as well as merciless. When introduced initially, any contravention under Section 129 of the GST Act attracted payment of equal tax and penalty which now stands as

The migration from a conservative to a progressive litigation landscape should basically start with a paradigm shift in the mindset of moving from a "compulsive litigant to a responsive litigant" and if it has to be successfully achieved in its true letter and spirit, then it shall start at the sacrosanct pillars of the Constituent Polity – the Legislature, Executive and the Judiciary

200% penalty. Despite repeated Instructions and Circulars, the inspecting officers continue to hunt for their prey with their obscene revenue hunger targets. Often the officers are more Catholic than the Pope, that, even when an interstate consignment is intercepted, the demands are collected as CGST and SGST. While introducing GST, the most popular tagline was “No more check-posts”. But none of us knew that there would be a hidden second line, “Instead every road could be one”.

Cross-Empowerment and Its Consequences

Cross-empowerment of Officers under Section 6 of the GST Act is another major culprit-contributor of litigation under GST, which leads to multiplicity of proceedings. It’s understandable that the investigation and audit could be cross-empowered but the adjudication and appeal proceedings shall be only though either State or Centre with whom the tax-payer has been registered, could well be a simpliciter solution. But if all is that simple, many including the authors, may have to seek an alternate profession.

The removal of the section identical to Section 9D(2) of the Central Excise Act, 1944, is another myopic piece of legislation. This change is likely to create a significant amount of litigation, requiring the noticee to potentially travel to the GST Tribunal, High Court, or even the Supreme Court to secure the basic entitlements of the litigation process - an opportunity for cross examination

Need for a Settlement Commission

Last but not the least, the establishment of Authority for Advance ruling under GST has reduced from a law to a flaw. The authority has rightly gotten a notorious reputation as Adverse Ruling Authority, thanks to its consistent prejudicial pro-revenue approach. Instead of this failed resolution mechanism, we feel having a Settlement Commission could go a long way in litigation-resolution. Though its patronage in legacy laws have reduced (mainly owing to the Sabka Viswas scheme), we feel, this could help redressal, that too during the formative years of a new tax-regime.

The removal of the section identical to Section 9D(2) of the Central Excise Act, 1944, is another myopic piece of legislation.

This change is likely to create a significant amount of litigation, requiring the noticee to potentially travel to the GST Tribunal, High Court, or even the Supreme Court to secure the basic entitlements of the litigation process - an opportunity for cross examination. It is curious that the Section which was originally present in the draft was consciously removed from the final draft of the GST bill.

IMPACT OF NATIONAL LITIGATION POLICY ON GOVERNMENT CASES

India's judiciary faces a daunting challenge with 1,73,377 pending cases, prompting the urgent need for a National Litigation Policy to streamline government litigation and ensure judicial efficiency

By G. SHIVADASS

Senior Advocate

WITH roughly 1,73,377 pending cases, the Ministry of Finance ranks the highest amongst the top five litigants responsible for augmenting the Court's calendar. With the Court's docket being clogged by pendency, implementing an NLP is a pressing priority. In addition to over burdening the judiciary, pending government litigation further impacts the administrative process. A well-executed NLP guarantees that the government acts responsibly and fairly in court, acting as a model for other litigants.

Concept & Origin of NLP

A compelling need for a concept such as NLP has been echoed time and again by the Courts. In the year 1974, while pronouncing a judgement on the eligibility of a dismissed railway servant for running allowance, Justice V R Krishna Iyer expressed his displeasure on governmental tendencies to resort to litigation for petty cases. His specific words were - "in the context of expanding dimensions of State activity and responsibility, is it unfair to expect finer sense and sensibility in its litigation policy,…?". (Dilbagh Rai Jarry vs. Union of India (UOI) and Ors.)

The 100th Law Commission Report on "Litigation by and against the government some recommendations for reform" highlighted that the delay in disposal of the pending cases is due to the lack of guidance and orientation to the over-zealous governmental departments and officers who miss out the point of matter. The Law Commission recommended creation and appointment of litigation ombudsmen, empowered to investigate and recommend on any act, omission or decision of the government or its officers.

Further, no effort was taken to identify an alternate mode of

resolving conflicts involving the Government and Public Sector Undertakings, though recommendations were brought in for setting up an arbitration panel to resolve disputes and examination of litigation initiated by the Government.

NATIONAL LITIGATION POLICY 2010

Based on the resolutions adopted at the "National Consultation for Strengthening the Judiciary toward Reducing Pendency and Delays" on the 24th and 25th October 2009, a strategic policy was formulated in 2010, aiming to transform the Government and its officers, Ministries and Departments into an 'Efficient' and 'Responsible' litigant.

The NLP seeks to establish guidelines as to when and how to file or defend legal claims for reducing governmental litigation and intends to reduce the average pendency time from 15 years to 3 years. It calls upon litigators appearing on behalf of the government to identify the tailbacks pertaining to the relevant departments and remove cases which are redundant. Some of the key recommendations in the NLP 2010 are enumerated below:

a. Appointment of nodal officers by every ministry and department to proactively manage litigation;
b. Legal knowledge, domain expertise, integrity and areas of specialization to be checked while recommending panel lawyers representing government;
c. Reasonable adjournments may be taken in fresh litigations and adjournments are to be discouraged in appellate courts if paper books are complete;
d. Appeals to be filed before the Court of first instance except in extraordinary circumstances and Tribunal Orders not to be challenged as a matter of routine;
e. Proper certification as a prerequisite to file an appeal before the Supreme Court;
f. Appeals to be filed before the Supreme Court only if the case involves a question of law or when a statutory provision has been struck

SNAPSHOTS

1. The Courts have echoed the need for a concept such as NLP time and again, and in 1974, Justice Krishna Iyer expressed his displeasure on governmental tendencies to resort to litigation for petty cases.

2. The Law Commission recommended creation and appointment of litigation ombudsmen, empowered to investigate and recommend on any act, omission or decision of the government or its officers.

3. In order to facilitate timely litigation management, CBIC launched Systematic Adherence and Management of Timelines for Yielding Results in Litigation Application (SAMAY Application) in December 2023.

The Central Government introduced the Sabka Vishwas (Legacy Dispute Resolution) Scheme (SVLDRS), 2019 to reduce litigation and settle disputes pertaining to legacy taxes. The scheme resulted in recovery of Rs. 27,866 crores of indirect taxes and emerged as the best performing scheme

down;
g. An appeal pertaining to a question of fact shall be filed before the Supreme Court only if the conclusion on facts arrived is so irrational that no honest judicial opinion could have arrived at such a conclusion;
h. Applications for condonation of delay to be carefully drafted by identifying the areas and causes for such delay and appropriate actions to be taken if the delay is not bonafide;
i. C ases involving statutes or rules and regulations or vires to be treated as specialised litigation and affidavits to explain the rationale behind the concerned statute or regulation under consideration and the legislative competence.
j. Pending cases to be reviewed, categorized, grouped and all frivolous and vexatious matters to be filtered from meritorious matters;
k. Cases which are already covered by the decisions of the Court to be identified and withdrawn.

Where To Not File

The policy specifically laid down the following circumstances under which appeals shall not be filed in Revenue matters:
a. Appeal shall not be filed if the stakes involved are not high and are less than the monetary threshold fixed by revenue authorities;
b. No appeal shall be filed if the issue under dispute has been decided by the Tribunals or the High Court in a series of precedents and when the same has not been appealed before the Apex Court;
c. Appeal shall not be filed in cases where the assessee has acted in compliance with the

long-standing industry practice; d.Appeal shall not be filed merely on account of change in opinion on the jurisdictional officer's part.

Challenges in Implementing the NLP

The Central Board of Indirect taxes and Customs ("CBIC") has been actively taking measures in an attempt to comply with NLP, curb unnecessary litigation and reduce pendency rate. The following are the measures taken by CBIC to comply with NLP:

Monetary Thresholds for Filing Appeals

In order to reduce government litigation, CBIC vide instruction dated 02.11.2023 (Reduction of Government litigation - providing monetary limits for filing appeals by the Department before CESTAT, High Courts and Supreme Court.) directed that no appeal shall be filed before the Supreme Court if the total revenue or duty involved is below Rs. 2 Crore, Rs. 1 Crore in case of High Court and Rs. 50 lakhs in case of appeals before CESTAT.

Based on the recommendations given by the 53rd GST Council Meeting held on 22nd June 2024, Circular dated 26.06.2024 has been issued which lays down the monetary limits to be adhered to by the Department for filing appeal. The monetary limit to file an appeal is tabulated below:

Before GST Appellate Tribunal	Rs. 20 Lakhs
Before High Court	Rs. 1 Crore
Before Supreme Court	Rs. 20 Crore

While complying with the proposals pertaining to monetary thresholds, the Circular duly recognised the concept of "specialised litigations" to mean that irrespective of the monetary limits, the following aspects shall be contested:

(1) Adverse decisions on the constitutional validity of any provision or rule,

(2) Ultra vires nature of any notification, instructions, orders or circulars,

(3) Issues pertaining to refund,

(4) Classification or valuation of goods or services,

(5) place of supply or any other issue that is recurring in nature or requires interpretation.

Moreover, decisions passing adverse comments on Government/ officers and imposing of costs on the Department or the officers or where the Board deems it is necessary to contest, shall be appealed against irrespective of the monetary limits.

Adherence to Judicial Discipline

Instructions dated 11.03.2015 were issued, providing directions to follow judicial discipline while adjudicating pending matters. However, adherence to judicial discipline seems to be a far cry, compelling the Courts to step in.

The Division Bench of Hon'ble High Court of Delhi, while disagreeing with the argument of the Department that an appeal shall lie over every bill of entry if the assessment was not favourable, stated that the said argument refutes the NLP. The Division Bench widely discussed the NLP and the concepts of "efficient litigant" and "responsible litigant", and observed that "Judgments are not mere ornaments and are meant to be followed in letter and spirit". (Interglobe Aviation Ltd. V. Union of India 2022)

Pre-Show Cause Notice Consultation -

Due to the impracticability of other modes of alternate dispute resolutions in tax matters, CBIC has mandated pre-show cause notice consultation in cases where duty involved is above Rs. 50 lakhs. Under GST laws, a pre-show cause notice consultation is to be issued under Form DRC-01A in compliance with Rule 142 (1A) of the CGST Rules, 2017. Regardless, the Officers generally fail to issue pre-show cause notice, thereby compelling the Assessee to seek judicial assistance.

Launch of SAMAY App

In order to facilitate timely litigation management, CBIC launched Systematic Adherence and Management of Timelines for Yielding Results in Litigation Application (SAMAY Application) in December 2023.

Poor Quality Adjudication Orders

Keeping in mind the costs imposed by CESTAT owing to

The NLP 2010 recommends that every ministry and department appoint a nodal officer to proactively manage litigation, that panel lawyers representing government should have legal knowledge, domain expertise, integrity and areas of specialization, that adjournments should be discouraged in appellate courts if paper books are complete, and that applications for condonation of delay be carefully drafted

poor quality of adjudication orders, CBIC issued instructions to examine such cases and send a report on the feasibility for challenging the same before the appellate forums.

Amnesty Schemes

The Central Government introduced the Sabka Vishwas (Legacy Dispute Resolution) Scheme (SVLDRS), 2019 to reduce litigation and settle disputes pertaining to legacy taxes. The scheme resulted in recovery of Rs. 27,866 crores of indirect taxes and emerged as the best performing scheme. Contrary to its objective however, the Scheme unintentionally resulted in an increase in litigation before various forums.

Despite the best efforts taken by CBIC, the Ministry of Finance stands as the top litigant in the Country which reflects on the poor implementation and adherence to the NLP. Effective implementation of the said measures is in the hands of the adjudicating officers who must act as an efficient and responsible litigant.

Recommendations for Strengthening NLP

With plenty of measures in place, there seems to be lack of compliance of the same backed with lethargy on the part of the Officers. One can hope that with the following recommendations, awareness may be possible to be imparted:

a. Training programmes for adjudicating officers to curb repeated mistakes;

b.Lectures on recent amendments and interpretations of landmark judgements to avoid mechanical application of the said judgements without examining the factual matrix e.g. Northern Operating Systems judgement;

c. Discussions regarding the approach of interpretation to be taken before the introduction of amnesty schemes to avoid further litigation on such schemes.

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REFORMING LITIGATION

NATIONAL LITIGATION POLICY'S PATH FROM 2010 TO 2024

The National Litigation Policy was envisioned as a strategic framework to streamline litigation involving the Central Government. Despite its ambitious goals, the policy has faced several challenges and undergone multiple revisions

By RAMAKRISHNAN VIRARAGHAVAN

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THE National Litigation Policy (NLP) is a document that outlines a strategy for the initiation, monitoring, and closure of litigation in which the Central Government is a party. The objective of this policy is to avoid litigation, lower litigation costs, and reduce the number of pending cases.

Economic Reality of Litigation

In the majority of cases, litigation serves as a revenue centre only for the lawyers. This is not a legal maxim but an economic reality. Private parties and enterprises generally conduct a robust cost-benefit analysis for every litigation in which they are involved in. Litigation perceived to be cost-heavy is either not initiated or is settled or withdrawn when it is seen to incur more costs than benefits.

This is not the case with governmental litigation. Here, over-zealous government departments or officers, who are not properly oriented or guided, often miss the point of the matter. This unknowingly contributes to a large volume of litigation against the government that could have been avoided (The Law Commission of India, 100th report *'Litigation by and against the Government: Some Recommendations for Reform'*).

More often, resorting to court litigation is an escape route for accountability for decision-making. For example, an officer, having been satisfied that a claim against the government or a public sector undertaking is genuine, might invite litigation to avoid making an affirmative decision. Once the court intervenes, it is assumed that the concerned department or undertaking should not make 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.

Law Commission's Observation

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 (The Law Commission, 146th Report *'Government and Public Sector Undertaking Litigation Policy and Strategies'*).

According to the Law Commission (in its report referred above), the three major causes for the initiation and continuation of litigation are:

1.The lack of accountability in the officer who has the power to determine whether to initiate litigation or continue it by preferring appeals.

2. Corrupt motives to continue litigation in the hope of exhausting the other side, with the expectation that the litigant may, out of exasperation, be willing to offer bribes.

3. The desire to avoid making decisions that, in the current culture, may lead to doubts about the bona fides of the officer responsible for making those decisions.

The Law Commission also observed that litigation and delays in hearing cases have significantly contributed to time and cost overruns of projects, as well as to low profitability. The money in the

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The Government is the largest litigant in the country and uses public money to meet the expenditure required for litigation including those by and against public sector undertakings.

2. A properly framed NLP will reduce the initiation of litigation and avoid prolongation of litigation, resulting in substantial savings of litigation costs.

3. Policy makers hope that the National Litigation Policy 2024, supported by an efficient real-time data gathering web platform and aided by AI, will be a success.

exchequer's coffers is the main source to meet the expenditure required for litigation by and against public sector undertakings. This is nothing but a waste of precious exchequer funds, collected through the hard-earned money of the public, and utilised merely for the whims and fancies of certain over-enthusiastic government departments and public sector undertakings to keep litigating for frivolous reasons, such as matters of prestige.

The Government (central and state governments) is the largest litigant in the country. A properly framed National Litigation Policy will lead to a decrease in the initiation of litigation and avoid prolongation of litigation. It will result in substantial savings of litigation costs, not to mention a decrease in the number of cases pending in courts across the country. These savings can be deployed in the welfare of the nation. A National Litigation Policy is not an option. It is a necessity.

13th Finance Commission's Recommendation

The 13th Finance Commission in its Report (December 2009) noticed that the Central Government was planning on a National Litigation Policy. The Finance Commission proposed that the proposed National Litigation Policy must include the following four steps namely (i) reviewing the existing cases and wherever necessary, withdrawing cases identified as frivolous and vexatious; (ii) formulating norms for defending cases as well as for filing appeals and (iii) setting up of Empowered Committees to eliminate unnecessary litigation.

The Finance Commission allocated Rs 5000 Crores for improvement of the justice delivery system. One of the conditions laid down by the Finance Commission for states to avail the grant was to form a State Litigation Policy on the lines of the proposed National Litigation Policy. Therefore, when the National Litigation Policy 2010 was framed, a large number of states also framed individual state litigation policies modelled on the National Litigation Policy 2010.

NLP 2010: Origin and Demise

The National Litigation Policy 2010 was launched on June 23, 2010. The policy focused on Central Government litigation, aiming to transform the government into an efficient and responsible litigator. It aimed to reduce government litigation in courts, ensuring that the courts could spend the additional time available resolving other pending cases. This was expected to help achieve the National Legal Mission's goal of reducing the average pendency time of litigation from 15 years to 3 years.

Government must cease to be a compulsive litigant. The easy approach of letting the court decide must be condemned and discarded. Empowered Committees would be established for the identification and removal of frivolous and vexatious cases preferred by the Central Government. Core issues involved in the remaining government litigation were to be focused on and addressed squarely to ensure that the litigation is managed and conducted in a cohesive, coordinated, and time-bound manner. Good cases are to be won, and bad cases should not be needlessly persevered. The government should be represented by competent and sensitive legal persons. Lastly, arbitration shall be encouraged as

> 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

an alternative dispute resolution mechanism at every level.

The National Litigation Policy 2010 did not have much impact. It was reviewed in 2015, and a new National Litigation Policy 2015 was in the process of formulation. A draft of the National Litigation Policy was eventually sent to the Law Commission. In 2017, the Law Commission's report was received, and its recommendations were under examination. The revised policy, after multiple deliberations at various levels, including Inter-ministerial, Committee of Secretaries, informal team of Ministers, and the Law Commission, was re-submitted for consideration by the Committee of Secretaries. During a meeting on September 14, 2017, the Committee of Secretaries decided that the intent of reducing litigation could be optimally achieved through simplified guidelines rather than formulating a National Litigation Policy. In accordance with this decision, the assurances given by the Central Government to Parliament were withdrawn with the approval of the Committee of Assurances. With this, the National Litigation Policy 2010 came to an end.

Reasons for its Failure

The reasons for the failure of the National Litigation Policy 2010 are not in the public domain. However, a major reason for its failure seems to be the absence of data on the pendency, costs and results of governmental litigation on a real-time basis.

The management guru Peter Drucker is often quoted as saying "You can't manage what you can't measure." In the absence of real-time data, implementation of the National litigation policy 2010 was difficult, if not impossible.

Fortunately, such a real-time data gathering system is now available. The Legal Information Management & Briefing System (LIMBS), a web-platform for monitoring of Central Government litigation was created in 2016 six years after the launch of the National Litigation Policy 2010. LIMBS Ver.2 has been launched in the year 2019 to overcome the then existing technological gaps in application. The vision of LIMBS Ver.2 is 'to be a single platform for Central Government litigation along with the establishment of a synchronised regime for monitoring of litigation across all Ministries/ Departments of Government of India'.

NLP 2024: A New Beginning

Possibly encouraged by the availability of real-time data on Central Government litigation, the present government had promised a new National Litigation Policy in Its election manifesto. As per the election manifesto, the National Litigation Policy will be formulated to expedite the resolution of all matters in courts, lower the cost of contested court proceedings, and decrease the number of cases in which the government is a party and the consequent load on the courts.

National Litigation Policy 2024 proposes to cover (i) expeditious resolution of all matters in courts and (ii) reduce the cost of contested court proceedings. These are new aims which appear to cover all litigation and not just Central Government litigation. In this sense, National Litigation Policy 2024 appears to go much beyond National Litigation Policy 2010. National Litigation Policy 2024 has been approved by the Union Law Minister in June 2024 and is expected to be placed before the Cabinet shortly. The text of the policy is not yet available in the public domain.

Policy Makers framing the National Litigation Policy 2024 would have surely learnt lessons from the failure of the National Litigation Policy 2010. It is hoped that the National Litigation Policy 2024, supported by an efficient real-time data gathering web platform and aided by artificial intelligence would be a resounding success. This will be a step towards fulfilling our Constitutional mandate of securing justice for all our citizens.

PERILS OF COMPULSIVE LITIGATION IN GOVERNANCE

In our constitutional framework, the Legislature frames laws, the executive implements them, and the Judiciary ensures adherence to their spirit. While litigation is often unavoidable due to various factors, it can also result from hasty decisions and inadequate handling of situations

By UPENDER GUPTA

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"In the strange heat all litigation brings to bear on things, the very process of litigation fosters the most profound misunderstandings in the world". - Renata Adler

THE aspect of litigation is something that is inextricably linked with the complexity of the laws and the manner of implementing them. In our constitutional scheme of things, while framing the laws is the prerogative of the Legislature, the executive has the responsibility of implementing them and the Judiciary has the important role of ensuring that the spirit of the laws continues to define the executive action. While it might be true that litigation is unavoidable as many factors contribute towards its aliveness, but at the same time there is no denying the fact that many a time, litigation is the result of a fickle mind and inept handling of situations. This is true where the stakes are very high and the persons who are expected to execute the laws have a sense of detachment that is bordering on aloofness. This is further compounded by the fact that the question of litigation is an easy one to answer for the executive as there is normally not much responsibility associated with the aspect of challenging any unfavourable order or judgement and the cost of litigation is not a factor which is considered while evaluating the proposal for contesting in the court of law.

Supreme Court Observations

This was recognized by the Supreme Court when it stated in Director Of Income Tax New Delhi vs M/S S.R.M.B. Dairy Farming (P) Ltd. that, "The Government must cease to be a compulsive litigant. The philosophy that matters should be left to the courts for

ultimate decision has to be discarded. The easy approach, "Let the court decide" must be eschewed and condemned."

In fact, in Dilbagh Rai Ys. UOÏ & 0rs. AIR 1974 SC 130, the practice of the government contesting the claim of its employees on frivolous grounds was depreciated and it was recorded that, "Krishna Iyer, J.-The judgement just delivered has my full concurrence but I feel impelled to make a few observations not on the merits but on governmental disposition to litigation, the present case being symptomatic of a serious deficiency. In this country, the State is the largest litigant today and the huge expenditure involved makes a big draft on the public exchequer. In the context of expanding dimensions of State activity and responsibility, is it unfair to expect finer sense and sensibility in its litigation policy, the absence of which, in the present case, he led the Railway callously and cantankerously to resist action by its own employee, a small man, by urging a mere technical plea which has been pursued right up to the summit court here and has been negatived in the judgement just pronounced ?"

Similarly, in the State of Punjab v. Geeta Iron & Brass Works Ltd., (1978) 1 SCC 68, the Hon'ble Supreme Court denounced the lack of litigative diligence by the Government and stated that, "While dismissing the special leave petition for the reasons mentioned above, we would like to emphasise that the deserved defeat of the State in the courts below demonstrates the gross indifference of the administration towards litigative diligence". It was further stated that, "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

SNAPSHOTS

1. Litigation is unavoidable, but many times it is the result of a fickle mind and inept handling of situations.

2. TThe issuance of instructions on monetary limits for filing of an appeal is a great initiative by the govt to rationalise the litigation in taxation matters.

3. Another interesting aspect of govt litigation is that it often involves interdepartmental disputes, with different govt wings contesting cases against each other in court.

continue them in court. We are constrained to make these observations because much of the litigation in which Governments are involved adds to the caseload accumulation in courts for which there is public criticism. We hope that a more responsive spirit will be brought to bear upon governmental litigation to avoid waste of public money and promote expeditious work in courts of cases which deserve to be attended to."

Another interesting aspect of government litigation is that not only the cases are being contested against the citizens including the employees of the government but many a time the challengers are two wings of the government i.e. there are interdepartmental disputes that go up to the court. The said aspect was highlighted by the Hon'ble Supreme Court in the Chief Conservator of Forests V. Collector, (2003) 3 SCC 472 wherein it was observed that "It was not contemplated by the framers of the Constitution or the C.P.C. that two departments of a State or the Union of India will fight a litigation in a court of law. It is neither appropriate nor permissible for two departments of a State or the Union of India to fight litigation in a court of law. Indeed, such a course cannot but be detrimental to the public interest as it also entails avoidable wastage of public money and time. Various departments of the Government are its limbs and, therefore, they must act in coordination and not in confrontation. Filing of a writ petition by one department against the other by invoking the extraordinary jurisdiction of the High Court is not only against the propriety and polity as it smacks of indiscipline but is also contrary to the basic concept of taw which requires that for suing or being sued, there must be either a natural or a juristic person."

Taking into account the aforementioned observations of the Hon'ble Supreme Court and appreciating the challenge of rising government litigation, the Government of India through the Ministry of Law and Justice conceived the idea of a National Litigation Policy. It was based on the recognition that the Government and its various agencies are the predominant litigants in courts and Tribunals in the country. It aimed to transform the Government into an efficient and responsible litigant.

NLP : A Step Towards Reform

This policy was also based on the principle that it is the responsibility of the Government to protect the rights of citizens, and to respect fundamental rights and those in charge of the conduct of the Government litigation should never forget this basic principle. The policy clearly indicated that all pending cases would be reviewed from time to time so that frivolous and vexatious cases are filtered and that cases, which are covered by previous decisions of the Court are also withdrawn. Accordingly, the Department for Legal Affairs formulated a National Litigation Policy in the year 2010 and launched the same on 23rd June 2010.

Taking a cue from the same, the Department of Revenue, Government of India through its agencies i.e. The Central Board of Direct Taxes (CBDT)and the Central Board of Indirect Taxes and Customs (CBIC) issued instructions for how the litigation is to be handled by the tax authorities. The primary focus of the said instructions was on defining the monetary limits for the litigation before the various appellate forums, which as per the latest instruction, are tabulated hereunder:

S. NO.	APPELLATE FORUMS	MONETARY LIMITS
1.	CESTAT	Rs. 50,00,000/-
2.	HIGH COURT	Rs. 1,00,00,000/-
3.	SUPREME COURT	Rs. 2,00,00,000/-

It was categorically instructed that the appeals shall not be filed in taxation cases where the amount in dispute is less than the monetary limit as detailed above. Further, there were certain exceptions to the said rule and it was detailed that the said monetary limits may not be

The amount of monetary limit for non-filing of an appeal under GST has followed the similar pattern as that of the erstwhile laws, with the exception being the filing of an appeal before the GSTAT where the amount has been significantly reduced from Rs. 50 Lakhs to Rs. 20 Lakhs

considered where the constitutional validity of the provisions of an Act or Rule is challenged or a Notification, Instruction, Order, or Circular has been declared illegal or ultra vires or the case involves Classification and refund issues which are of legal and/ or recurring nature.

However, the said instructions issued by the taxation department only partially satisfied the requirement in respect of future litigation but did not take into consideration the review of the pending cases. No effort was made to review the pending cases, an aspect that was recognised by the Hon'ble *Supreme Court in the Director Of Income Tax New Delhi vs M/S S.R.M.B.Dairy Farming (P) Ltd.* *wherein it was stated that, "Pending cases were required to be reviewed and frivolous and vexatious matters was required to be filtered out from the meritorious ones. Unfortunately, the instructions issued by CBDT only partially satisfied the requirement in respect of future litigation but did not take into consideration reviewing the pending cases. The only measure taken in reducing the litigation was to raise the monetary limit. No effort was made to review the pending cases."*

Impact of GST on Litigation

The advent of GST has brought tectonic changes in the indirect taxation system of the country and in its seven years of existence it has been successful in shoring up the revenue of the government while building on the principles of ease of doing business and simplification of the taxation system. At the same time, it must be admitted that the teething problems that any newly introduced system had to endure has spawned a series of challenging issues and the burden of litigation that defined the earlier taxation system has again started showing its shades under the new regime. The said fact has been acknowledged by the GST Council which is the apex federal constitutional body for defining the contours of the GST architecture in the country. Drawing inspiration from the constitutional mandate of the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services, the GST Council in its 53rd meeting had recommended that the monetary limits for the litigation before the various appellate forums need to be demarcated to streamline the litigation under GST. Accordingly, in light of the mandate of section 120 of the CGST Act, 2017, on the recommendation of the GST

Council, the CBIC has issued Circular No. 207/1/2024-GST dated 26th June, 2024 whereby the monetary limits for filing appeals or applications by the Department before GSTAT, High Courts and Supreme Court have been fixed. It has been mandated that appeal or application or Special Leave Petition, as the case may be, shall not be filed by the tax authority before Goods and Service Tax Appellate Tribunal (GSTAT), High Court and Supreme Court under the provisions of GST Act, where the amount involved is less than the monetary limit as tabulated hereunder:

S. NO.	APPELLATE FORUMS	MONETARY LIMITS
1.	GSTAT	Rs. 20,00,000/-
2.	HIGH COURT	Rs. 1,00,00,000/-
3.	SUPREME COURT	Rs. 2,00,00,000/-

Emphasis on Merits Over Monetary Limits

It is discernible that the amount of monetary limit for non-filing of an appeal under GST has followed the similar pattern as that of the erstwhile laws with the exception being the filing of an appeal before the GSTAT where the amount has been significantly reduced from Rs. 50 Lakhs to Rs. 20 Lakhs. Further, an overview of the exceptions to the said limits reveals that the grounds on which the said monetary limits can be disregarded have been further expanded. While retaining the earlier principles of exception new factors have been added to ensure that the process of appeal is based on stronger footing. It has been detailed that decision to file an appeal shall be taken on merits irrespective of the said monetary limits where the matter is related to valuation or classification of goods or services or the issue pertains to Refunds or Place of Supply. It has been further stated that the matters may be contested irrespective of the said monetary limits where the strictures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers. Interestingly, a catch- all clause has been added to the list of exceptions whereby the Board has been empowered to file appeals in a case or class of cases, where in its opinion it is necessary to contest in the interest of justice or revenue.

It must be noted that the said instruction has focussed on taking the notion of "responsible" and "efficient" litigant, as defined in the National Litigation Policy, further by stating that an appeal should not be filed merely because the disputed tax amount involved in a case exceeds the monetary limits fixed above. It has been brought out that the filing of appeal in such cases is to be decided on merits of the case and the officers concerned shall keep in mind the overall objective of reducing unnecessary litigation and providing certainty to taxpayers on their tax assessment while taking a decision regarding filing an appeal. This clearly underlines the importance that the government is giving to the challenge of unnecessary litigation and highlights its commitment towards streamlining the litigation landscape in taxation matters.

Although the said instructions have been precisely stated and have clearly laid down the principles that shall guide the tax authorities while applying the said limits to the filing of an appeal, it would be interesting to see whether the same have to be

> Government litigation is interesting because many times the challengers are two wings of the government. The Supreme Court has observed that it is neither appropriate nor permissible for two departments of a State or the Union of India to fight litigation in a court of law

The advent of GST has brought tectonic changes in the indirect taxation system of the country and in its seven years of existence it has been successful in shoring up the revenue of the government while building on the principles of ease of doing business and simplification of the taxation system

applied prospectively or shall be applicable to the existing cases which are already at the appeal stage before the various appellate forums. In this regard it would be fruitful to look at the judgement of the Hon'ble Supreme Court in the case of Director of Income Tax New Delhi vs M/S S.R.M.B. Dairy Farming (P) Ltd. where while examining the issue of the applicability of the earlier instruction issued by the CBDT on monetary limits to the existing cases the Hon'ble court endorsed the view taken by the Hon'ble Supreme Court in the SLP(C) No.CC 13694/2011 titled CIT Central-III v. Surya Herbal Ltd. In the Surya Herbal case (supra) the retrospective applicability of the Circular dated 09.02.2011 was not interfered with, but with two caveats – (i) Circular should not be applied by the High Courts ipso facto when the matter had a cascading effect; (ii) where common principles may be involved in subsequent group of matters or a large number of matters.

Streamlining Taxation Litigation

To conclude, the issuance of instructions on monetary limits for filing of an appeal is a great initiative by the government to rationalise the litigation in taxation matters and has the potential to re-shape the litigation landscape under GST. At the same time taking cognizance of the Hon'ble Supreme Court's observations it would be enriching if a wholesome exercise of review of existing cases is carried out by the tax authorities to ensure that the spirit of National Litigation Policy continues to define the taxation litigation.

It is understood that the National Litigation Policy is considered to be the part of the 100-day agenda of the new government and it is said that after assuming charge for the second time, the Hon'ble Law Minister, Shri Arjun Ram Meghwal has signed the document on the National Litigation Policy, which is expected to be sent to the Cabinet for deliberation.

NATIONAL LITIGATION POLICY: A CRUCIAL STEP TOWARDS JUDICIAL REFORM

The National Litigation Policy aims to transform the government into a more efficient and responsible litigant, addressing high litigation costs, reducing court backlogs, and decreasing the government's litigation burden on the judicial system

By GEETA KANWAR

LAW AND POLICY PROFESSIONAL

By RAGHU GAGNEJA

LAW AND POLICY PROFESSIONAL

RECENTLY, the Law Minister Shri Arjun Meghwal signed the order on the long-overdue National Litigation Policy ('NLP') for sending to Cabinet for deliberation. This marks a significant milestone in the journey of a policy that's been almost a decade and a half in the making. The NLP aims at transforming the government into an efficient and responsible litigant by addressing high-level costs, reducing the pendency of lawsuits in courts, and decreasing the number of cases in which the government is a party and consequent load on courts.

Historical Context

To briefly recap, the formal genesis of NLP dates back to 2010 when it was brought by the then Law Minister Veerappa Moily, under the UPA government, in response to grave systemic issues affecting the judicial setup in India. Ultimately, the policy was not implemented and a renewed attempt was made in 2015 under the NDA government. However, after years of back and forth, where the Union government consistently maintained that the policy is under consideration, the then Law Minister Kiren Rijiju finally in 2022 stated in response to a parliamentary question that a decision had been taken internally to move away from formulating an NLP. This abrupt change of course was attributed to recommendations by the Committee of Secretaries, and it was decided that the government will instead come out with guidelines to tackle the

prevalent issues.

While the NLP has been a part of BJP's manifesto since 2014, the move came as a surprise to many, perhaps because the government itself has adopted divergent positions on NLP in just these past few years.

In states such as Bihar, Gujarat, West Bengal, Maharashtra, Andhra Pradesh, state litigation policies have existed since 2010. These policies focus on litigation involving state governments, and providing recommendations for improving legal infrastructures.

Need for a National Litigation Policy

The sheer gravity and the scale of the problem is not lost on anyone. As per data available on the National Judicial Data Grid, almost 84000 cases are pending before the Supreme Court, over 60 lacs before various high courts, and a staggering 4.5 crore before the lower judiciary. Similarly, India's tribunals aren't much better off either. The issue of pendency is in such dire straits that a 2018 NITI Aayog strategy paper estimated that it would take 324 years just to clear the existing backlog at the current pace of disposal. Further, recent data from the National Criminal Records Bureau reveals that the undertrial population reached unprecedented levels, with 75.8% of the total prisoners being undertrials in 2022.

These are sobering statistics, no doubt; nevertheless, they do not paint the entire picture. There are associated first and second-order effects: the huge backlog results in severely diminished access to the judiciary for individuals. With the average time for case disposal steadily climbing, it all but precipitates in denial of the right to speedy justice. Even matters of constitutional and great public importance have suffered gravely as a consequence.

There are several contributing

SNAPSHOTS

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3. 'Adalat.ai' has designed AI-driven speech recognition software, available in multiple Indian languages, that is envisioned to provide transcription-related services to assist court stenographers.

factors, from insufficient staffing to a low judge-to-population ratio to inadequate infrastructure. However, a major culprit here is the government litigation. Multiple accounts suggest that the government is the biggest litigant in India, with several high court benches and occasionally, the Supreme Court, pulling the government up for its overly litigious nature. This propensity to litigate not only clogs the system, but causes a significant drain on resources – with legal costs borne by the exchequer consistently averaging around 50 crores in the past five years.

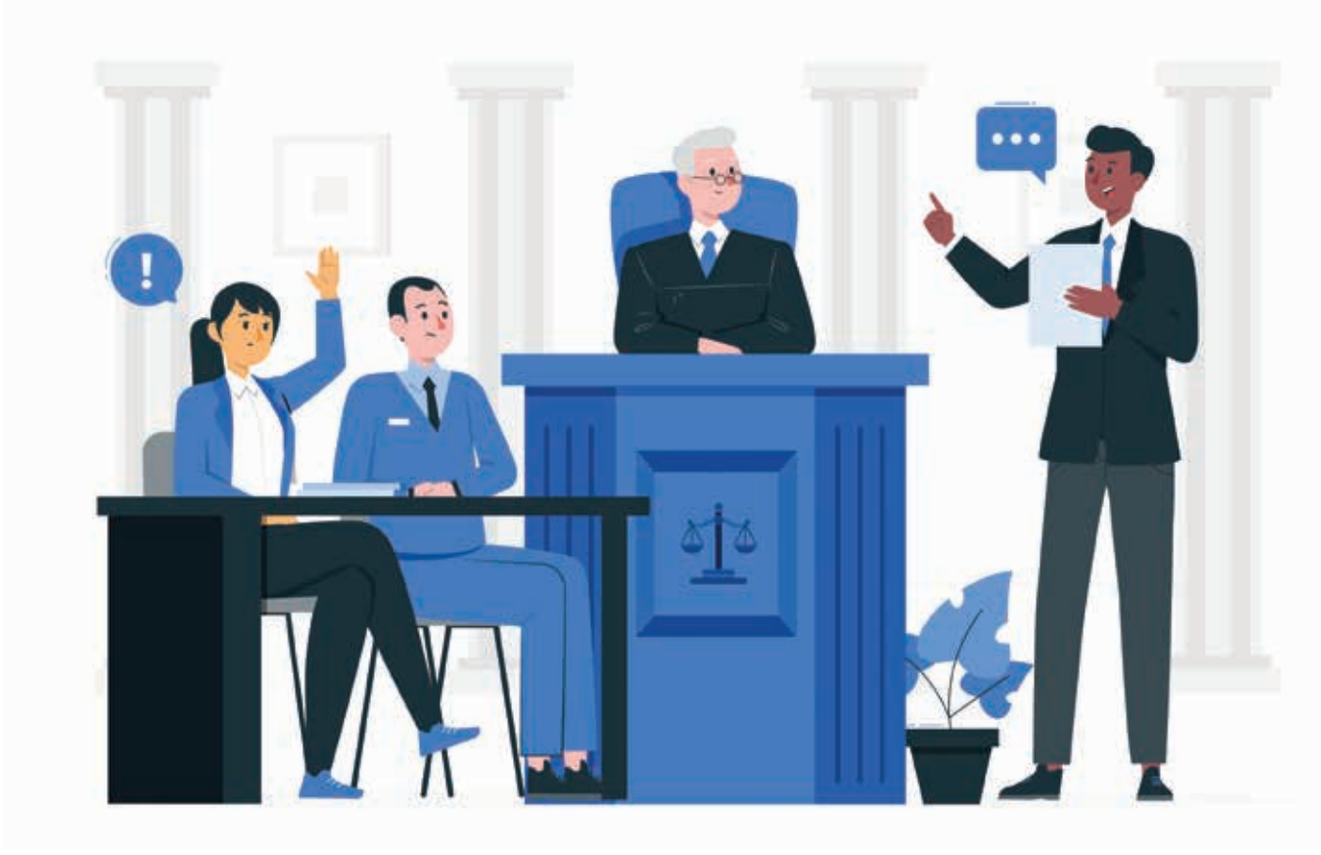
Unnecessary litigation involving central/state governments or PSUs is an old problem in India. Many sources indicate that the government alone is responsible for over 70% of the cases instituted before the Supreme Court. In fact, the former CJI N.V. Ramana noted in 2022 that government litigation constituted nearly half of all pending cases. Unfortunately, the absence of up-to-date data on cases involving the government as a party makes it difficult to accurately assess the current figures. As far back as 1974, prominent Supreme Court judge, Justice Krishna Iyer, in Dilbag Rai vs. Union of India emphasised the need for government departments and agencies to avoid filing frivolous or avoidable legal cases.

In the absence of a litigation policy, Justice Iyer wrote: "In this country, the State is the largest litigant today and the huge expenditure involved makes a big draft on the public exchequer. In the context of expanding dimensions of State activity and responsibility, is it unfair to expect finer sense and sensibility in its litigation policy, the absence of which, in the present case, has led the Railway callously and cantankerously to resist action by its own employee, a small man, by urging a mere technical plea which has been pursued right up to the summit Court here and has been negatived in the judgement just pronounced?" Part of the reason for the government's disposition towards litigation lies in the fact that there is an absence of an overarching framework guiding litigation policy. This results in even weaker cases contested in appeals before higher courts.

In State of Punjab v. Geeta Iron & Brass Works Ltd. [1978], the Apex Court observed: "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 of icer 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." Aparna Chandra, co-author of the recent book – Court on Trial: A Data-Driven Account of Supreme Court, notes that a predominant reason for a disproportionate number of cases being appealed is that the officers responsible for decision-making don't have to bear personal costs for any filings; however, the same officers might be reprimanded by their superiors for not filing an appeal, if the case is later to deemed to be appeal-worthy. These institutional structures often result in needless litigation.

Further, there are also disputes stemming from inter-departmental or inter-ministerial conflicts, for which too, legal resources are often sought. The

In states such as Bihar, Gujarat, West Bengal, Maharashtra, Andhra Pradesh, state litigation policies have existed since 2010. These policies focus on litigation involving state governments, and providing recommendations for improving legal infrastructures



Supreme Court in Chief Conservator of Forests v. Collector [2003] had observed: "It was not contemplated by the framers of the Constitution or CPC that two departments of a State or the Union of India will fight litigation in a court of law. It is neither appropriate nor permissible for two departments of a state or the Union of India to fight litigation in a court of law. Indeed, such a course cannot but be detrimental to the public interest as it also entails avoidable wastage of public money and time. Various departments of the Government are its limbs and, therefore, they must act in coordination and not in confrontation." In addition to these, in the 126th Report on 'Government and Public Sector Undertaking Litigation Policy and Strategies,' the Law Commission of India discussed some of the causes for clogging of the judiciary, and opined on the need for a litigation policy to reduce litigation and the burdening on the judicial setup.

Just in May last year, the Supreme Court bench led by Justice B.R. Gavai observed the frivolity of government litigation, remarking that"at least 40% of litigation by the Centre and States is frivolous." In order to deal with this precarious situation, the ministries and departments most involved in legal disputes, such as the Ministry of Railways and the Department of Revenue, have been taking measures over the years. For instance, monetary thresholds have been set for the Central Board of Direct Taxes ('CBDT') and the Central Board of Indirect Taxes and Customs ('CBIC') for filing appeals. For CBDT, unless the dispute involves an amount above Rs. 50 lacs, an appeal can not be filed before the Income Tax Appellate Tribunal, and the threshold for appealing before the high court and the Supreme Court is set at Rs. 1 crore and Rs. 2 crore, respectively. Similar thresholds have been defined for CBIC as well. However, despite these efforts, there is certainly considerable more work required to ensure that the government is not a party to cases without merit.

Correcting the Course

Unless there are systemic reforms that take into account the situation from the ground up, the promise of justice will remain merely a lip service, brewing

The government is the biggest litigant in India, with several high court benches and occasionally, the Supreme Court, pulling the government up for its overly litigious nature. This propensity to litigate not only clogs the system, but causes a significant drain on resources – with legal costs borne by the exchequer consistently averaging around 50 crores in the past five years

cynicism and distrust towards this important pillar of democracy. In that regard, the move to finally get the wheels turning on NLP is certainly a laudable step. It can go a long way in ensuring speedy dispensation of justice, and even bear fruits for India's ease of business standing (India's current contract enforcement ranks 163 out of 190 countries, as per World Bank). The government now needs to open up the process for industry-wide consultations, bringing in more voices and perspectives. Opinions of the business community especially must also be paid attention too, if we are to truly build India into an economic powerhouse and provide further impetus to the bustling startup ecosystem. Various propositions have been suggested to tackle these issues, from directly addressing the quantum of government litigation with clear threshold mandates only beyond which appeals can be instituted, to taking the decision-making process for appeals out of the hands of individual officers and placing it before independent panels.

There have also been recommendations to tackle the vast vacancies by urgently appointing more judges and finding ways to improve judges' productivity through technological interventions, in addition to increasing budgetary allocations for the judiciary and

putting in well-designed measures to improve case management. Further, many, including government ministries, have voiced a need for overarching administrative reforms which can take the form of professional agencies that can potentially strategically decouple the administrative and judicial functions of the court. This can bring in much-needed efficiency within the judicial system.

Additionally, institutional arbitration has been put forth as a key component that needs to be promoted under the new NLP.

Role of Technology in Judicial Efficiency

Technology is likely to play a huge part in the Law Ministry's efforts to overhaul the legal system. There is already visible evidence of it through initiatives in place, including the promotion of Online Dispute Redressal from various corners and a move towards digitisation of courts. These measures need to be standardised, and where they already exist, their effectiveness and uptake must be improved. There are also legal startups that are leveraging AI technology and LLMs to build indigenous tools that can be deployed within courts.

For instance, 'adalat.ai' has designed AI-driven speech recognition software, available in multiple Indian languages, that is envisioned to provide transcription-related services to assist court stenographers. Such technological interventions have the potential to greatly assist in unburdening the courts. However, care must be taken that technology is not merely thrown at a problem but that an attempt is made to redesign the process fundamentally. Moreover, caution should be exercised to implement these AI and advanced technological tools in a careful, thoughtful manner, particularly within sensitive areas such as criminal law, so that inherent biases of these systems do not end up marginalising the already marginalised – and create more problems than they were meant to solve. Deploying technology can not be a substitute for resolving social inequities within our systems.

> The government now needs to open up the process for industry-wide consultations, bringing in more voices and perspectives. Opinions of the business community especially must also be paid attention too, if we are to truly build India into an economic powerhouse and provide further impetus to the bustling startup ecosystem

Conclusion

The need of the hour is to put in place comprehensive, across-the-board, well-consulted and evidence-based reforms that will effectively de-clog the system and chart the future of a fair and accessible judicial system.

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2024 AWARDS

ENRICHING TAX SPACE

SPECIAL EDITION

SECTION B

RIGHTS OF BUSINESSES UNDER INVESTIGATION

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INNOVATIVE STRATEGIES FOR MANAGING TAX DISPUTES

Advance Pricing Agreements (APAs) in India offer multinational enterprises (MNEs) tax certainty by proactively tackling transfer pricing issues. These agreements minimize disputes and establish a transparent compliance framework. However, the current APA system has limitations, leaving many transfer pricing disputes unresolved at the ITAT level

By AKHILESH RANJAN
Former Member, CBDT

RAPID economic growth over the last several years has propelled India into a position from where it can legitimately aspire to become a developed nation by 2047, as envisioned by the government. Economists and other experts have, however, emphasised that for this to happen, the country must maintain a high and sustainable growth rate over several years to come. Such growth may not be possible without substantial investments in both public and private sectors. While the government has in recent years stepped up its outlay on infrastructure and capital expenditure, the response from the private sector has fallen short of expectations. Apparently, a policy focus is required on creating a congenial and risk-mitigated environment that can persuade business and industry to loosen their purse-strings.

Efforts So Far

One of the principal ways in which tax policy can contribute to the creation of such an environment is by providing a high level of tax certainty. However, in the sphere of direct taxes, despite the notable success of mechanisms like the Advance Pricing Agreement (APA) scheme, the quantum of litigation has been growing year after year in terms of the pendency of appeals filed by the Revenue as well as by the taxpayer. Figures published from various Action Plans adopted by the Central Board of Direct Taxes (CBDT) show that the number of appeals pending at the level of Commissioner (Appeals) has increased from 3.41 lakh as on 31st March 2019 to 5.16 lakh as on 31st March 2023. In addition, a large number of appeals are filed by taxpayers directly before the Income

Tax Appellate Tribunal (ITAT) every year against assessments involving transfer pricing and international tax issues that are completed in accordance with directions of the Dispute Resolution Panels (DRPs).

The CBDT has been making sustained efforts over the years to control and reduce litigation at all levels. Annual action plans lay down carefully calibrated targets for disposal of appeals as well as guidelines for better handling of litigation in Courts. Thresholds have been laid down in respect of the revenue involved in appeals, below which such appeals can normally not be filed by tax authorities before the ITAT and the Courts. Even where the revenue effect exceeds the thresholds, mechanisms such as collegiums of Commissioners have been put in place to ensure that appeals are filed only in deserving cases. A number of special dispute-resolution schemes have been implemented over the last several years providing for withdrawal of litigation in specified cases on part payment of tax, interest and penalty. Despite these efforts, the number of appeals pending and the quantum of taxes in dispute have been increasing over time.

Need for a Transformational Change

The above context and prevailing situation evidently suggest that a change in approach to managing litigation deserves serious consideration. Dispute resolution schemes have limited utility, primarily because such schemes do not give immunity to the taxpayer from future disputes on the same issues as are resolved for the years covered under the scheme. Imposing thresholds that curtail the filing of appeals by Revenue based on tax effect can be justified to some extent by a cost-benefit analysis, but such restrictions beyond a certain threshold may lead to sacrificing of legitimate revenue interests. Heavy-handed administrative monitoring and control over Commissioners (Appeals) may become counter-

SNAPSHOTS

1. Rapid economic growth has propelled India into a position from where it can legitimately aspire to become a developed nation by 2047, but the private sector has fallen short of expectations.

2. The CBDT has been making sustained efforts to control and reduce litigation at all levels. Annual action plans lay down carefully calibrated targets for disposal of appeals as well as guidelines for better handling of litigation in Courts.

3. In countries around the world, pre-filing and pre-assessment agreement processes are available under the law, and the taxpayer is fully aware of the manner in which the tax authorities will deal with the claim or arrangement.

productive after a certain stage and cause a deterioration in quality standards in the disposal of appeals. Clearly, the time has come for a transformational change in the way we look at tax disputes, entailing a fundamental shift in emphasis from dispute-resolution to dispute-prevention. The traditionally adopted adversarial attitude of taxpayers and tax authorities alike must give way to an environment of transparency and cooperation where improved compliance and greater tax certainty are the guiding principles.

Global Best Practices

It is a notable fact that the quantum of tax-related litigation in countries around the world is far less in volume than the litigation in India. The reason for this is apparently the existence of pre-filing and pre-assessment agreement processes available under the law of those countries.

> In the sphere of direct taxes, despite the notable success of mechanisms like the Advance Pricing Agreement (APA) scheme, the quantum of litigation has been growing year after year in terms of the pendency of appeals filed by the Revenue as well as by the taxpayer

For example, the USA has a pre-filing agreement programme in which the taxpayer engages with the Internal Revenue Service even before filing its return and seeks its opinion as to whether a claim or contention proposed to be made would be tenable. In the UK a cooperative compliance assurance program is available, in which taxpayers and the Revenue authorities examine a proposed arrangement in detail before the same is put into operation and the Revenue provides an opinion on what would be the tax treatment given to the arrangement. In all these programmes, the taxpayer is not bound to accept the advice of the Revenue and may choose to go ahead with its proposed claim or arrangement if it considers the same to be in its best interests. Importantly, however, in all such cases the taxpayer is fully aware of the manner in which the tax authorities will deal with the claim or arrangement and is able to make a conscious choice of action.

Before attempting to design

such processes in the Indian context it would be important to understand the cause of the heavy tax litigation in India. While the reasons could be many, the major ones can be identified to be:
(a) The ambiguities and complexities in the law, which lend themselves to varying interpretations regarding the rights and obligations of the taxpayer as well as the tax department;
(b) Inconsistent, often contradictory and sometimes high-handed approach taken by tax officers in assessments in the pursuit of high revenue collection targets or merely to play safe;
(c) Aggressive strategies and interpretations adopted by taxpayers with a view to find 'loopholes' in the law for minimising the tax cost;
(d) The legacy of heavy litigation pending in courts, which breeds fresh and continuing litigation every year on the unresolved issues.

Keeping in view this context and some of the internationally followed best practices, a few measures that could be considered as part of the new approach are outlined below -

Tax rulings by CBDT

Under the present law, the CBDT is empowered to issue beneficial circulars for removing any hardship being caused by provisions of the Act to any class of people. CBDT can also issue orders and directions to the subordinate authorities for the proper administration of the law. For these purposes it may find it necessary to explain the intent and purpose of a certain provision. However, CBDT is not empowered to make its own interpretation of any statutory provision, which is left to the judicial authorities to do.

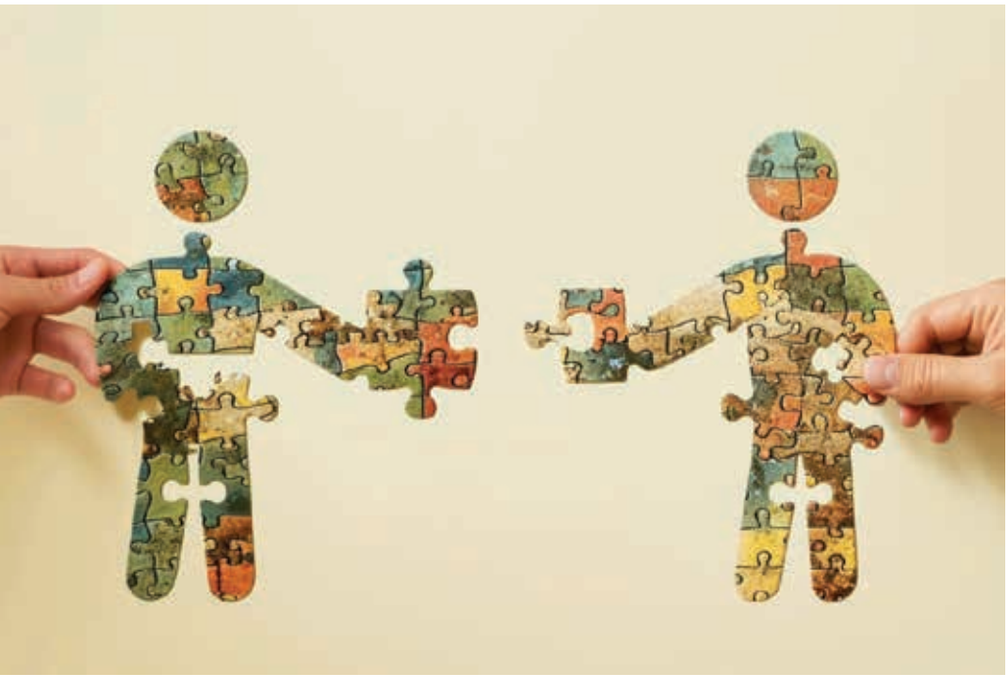
In the current environment of technology-enabled faceless assessments, a greater degree of consistency in approach would help to make the assessment process more taxpayer-friendly and efficient. To achieve this objective, as well as to provide more certainty to the taxpayer, the CBDT could be empowered to issue a Public Ruling on any matter of public importance, relating to interpretation of statutory tax provisions or of tax treaties. Such rulings may be issued suo moto or on request and could involve public consultation before finalisation. Once formally issued, they would be binding on the tax authorities.

Mediation in Transfer Pricing

India has a robust system of Advance Pricing Agreements in place that can potentially provide certainty of transfer pricing for a period of 9 years. Such agreements, however, are able to cover only a limited number of cases. It is a known fact that the majority of disputes pending at the ITAT level are transfer pricing disputes. In these circumstances and with a view to supplement the beneficial impact of APAs, a kind of mediation mechanism could be contemplated for resolving transfer pricing disputes before they actually arise. The mediation process would be entirely voluntary, and the taxpayer would be able to opt out at any time and go back to traditional appellate remedies.

Mediation would be carried out with the assistance of a mediation panel drawn from experienced transfer pricing experts who could also have the powers to recommend waiver or reduction of any penalty imposable with regard to the adjustment retained. The process can be made more effective by delinking transfer pricing audits from regular corporate tax assessments, so that the mediation can be carried out solely in respect of the transfer pricing adjustment.

India has a robust system of Advance Pricing Agreements in place, but the agreements can cover only a limited number of cases. A kind of mediation mechanism could be contemplated for resolving transfer pricing disputes before they actually arise, with the taxpayer being able to opt out at any time



Co-operative compliance is an extension of a risk-based approach to tax compliance. It envisages an ongoing and real time cooperation between selected taxpayers and the tax authorities resulting in the payment of correct taxes in an effective and efficient manner on the understanding that the taxpayer can be trusted and the tax administration behaves predictably and provides certainty

Towards Cooperative Compliance

Recent times have seen an increased emphasis on tax transparency, as also a greater level of uncertainty caused by a slew of anti-avoidance and compliance measures. Countries around the world have therefore been trying to adopt a more holistic and comprehensive approach to tax compliance. One such model that has been analysed in-depth by the OECD and is already under implementation in several advanced economies is the cooperative compliance model.

Co-operative compliance is an extension of a risk-based approach to tax compliance. It envisages an ongoing and real time cooperation between selected taxpayers (e.g. top taxpayers) and the tax authorities resulting in the payment of correct taxes in an effective and efficient manner on the understanding that the taxpayer can be trusted and the tax administration behaves predictably and provides certainty.

At the base of co-operative compliance lies the assumption that if a taxpayer voluntarily abides by its tax obligations and is transparent, the tax administration should provide certainty in advance on various tax positions.

Additionally, taxpayers are expected to give the tax authorities an entry to their control systems used to manage tax risks on the premise that if the authorities are satisfied with those, they will apply a lighter touch compliance regime to eligible taxpayers. Tax authorities are expected to set apart carefully selected and dedicated resources who can effectively manage the cooperative compliance programme with the selected taxpayers.

The above are only some examples of the measures that could be considered for the purposes of enhancing tax certainty and easing compliance. The underlying idea that must inform policy initiatives for creating a more congenial investment climate is that the best results can be achieved by engendering an environment of mutual trust and cooperation between the taxpayer and the tax authorities.

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ENSURING FAIRNESS IN FINANCIAL INVESTIGATIONS

Enforcement agencies have a fundamental responsibility to enforce fiscal laws. All of these agencies have a set of values embedded in their mission statements, which guides their actions and decisions

By NAJIB SHAH

Former Chairman
Central Board of Indirect Taxes & Customs

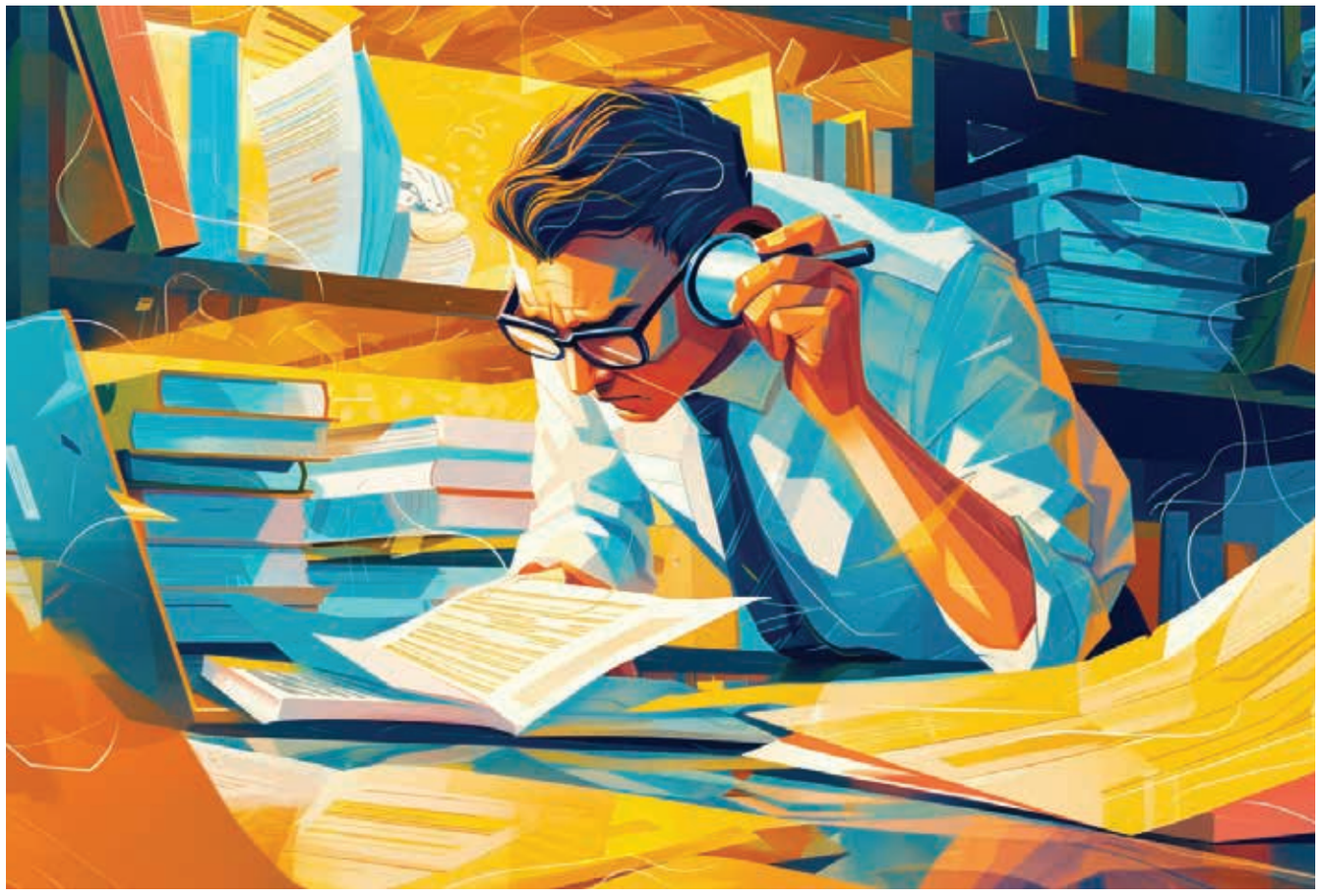
EVERY agency, more so enforcement agencies, tasked with ensuring that the provisions of fiscal laws are being respected, have a code of values enshrined in their respective mission statements. The code of values is expected to be ingrained in the ethos of the organisation and to act as a guiding light.

Core Values of Enforcement Agencies

The Central Bureau of Investigation's (CBI) motto is industry, impartiality and integrity. The Enforcement Directorate (ED) talks of establishing and maintaining high professional standards and highlights their core values to be integrity, accountability, commitment, excellence and impartiality. The Income Tax (IT) department has integrity, accountability, responsiveness, professionalism, innovation, collaboration as their values. The Central Board of Indirect Taxes and Customs (CBIC) highlights integrity, judiciousness, courtesy, understanding, objectivity, transparency, promptness and efficiency. A common theme running across all major organisations are principles of integrity, trustworthiness, fairness, reasonableness and pursuit of truth. All businesses under investigation by any of these agencies can reasonably expect that these core values are being adhered to. In other words, the rights of businesses can be said to be flowing from the core values which dictate the functioning of the organisations who are carrying out the investigations. Businesses thus can expect that the investigations being pursued against them are based on a reasonable belief that the law has been breached.

Reasonable Belief and Legal Actions

Reasonable belief is an essential ingredient for initiating any



investigation and for all subsequent actions initiated under the law - be it summon, search, recording of statement, seizure, arrest, initiating adjudication proceedings or prosecution. This is true, be it for proceedings under the Prevention of Money Laundering Act (PMLA) or Income Tax Act (ITAT) or Customs Act (CA) or the Goods & Services Tax Act (GST). The courts have in several decisions held that the phrase' reason to believe' 'implies and contemplates the existence of reasons on which the belief is founded and not merely a belief in the existence of reasons inducing the belief.

The said belief must not be premised on suspicion but on information. If any authority passes an order without the precondition being satisfied, then it is supposed to be acting without jurisdiction'. This is an inalienable right of all businesses under investigation-a right which they can exercise if they believe that action has been initiated without jurisdiction by challenging such action in a court of law.

Compliance with Summons, Search, and Seizure

All the laws - be they PMLA or CA or GST, have provisions of summons, search and seizure. Businesses will be well advised to honour the requirements of the summons. Thus, they would have to ensure that all documents being sought are furnished. This is the first step for initiation of investigations. Investigations can also be initiated through searches of the business or residential premises. Such searches must be done under a search warrant. Businesses can and should satisfy themselves that the search is being done under a proper search authorization. Two witnesses are to

SNAPSHOTS

1. The rights of businesses can be said to be flowing from the core values which dictate the functioning of the organisations who are carrying out the investigations.

2. All relevant laws, including the PMLA, CA, and GST, have provisions for summons, search, and seizure. Businesses are advised to honour summons requirements by furnishing all requested documents.

3. It is essential that all businesses should put in place professionals who are well equipped with the requirements of law and ensure that business functions accordingly.

The Companies Act too provides for investigations to be initiated into the affairs of the company. The investigations could be to detect mis-statement of a prospectus, fraudulent inducement to invest, reduction in share capital or fraudulent conduct of business. The Serious Fraud Investigation Office (SFIO) is the organisation which investigates these types of corporate fraud

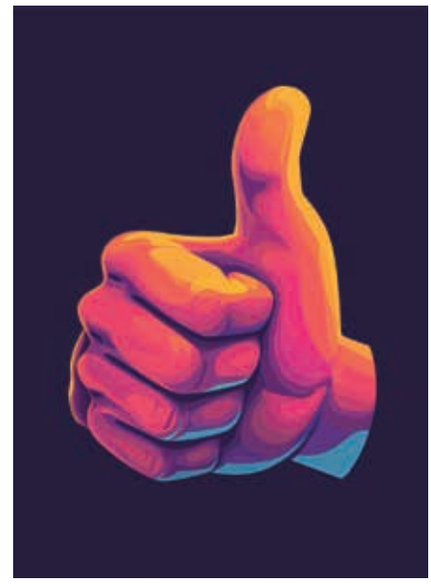
be present while such action is being taken. A summons or search can necessitate the need for an explanation of the documents. The law provides for recording of statements. The person whose statement is being recorded is statutorily bound to state the truth. Ideally and as per several court rulings copies of statements should be made available to the person whose statement was recorded. This is observed more in breach by all agencies-when however, charges in the form of a charge-sheet are filed in the court of law or a show cause notice is issued, all the documents which have been relied upon have to be provided to the accused.

Arrests and Judicial Oversight

The preliminary investigations can lead to the investigation officer coming to the reasonable belief that an arrest is warranted. It should be remembered that an arrest at this point of time is not a punishment but resorted to ensure that investigations are not stymied. The grounds of arrest typically would suggest that further investigations are in progress and the presence of the accused outside could result in the tampering of evidence. All the statutes stipulate that the authorised officer making an arrest shall as soon as possible inform the arrestee of the grounds of arrest. The Apex Court has held that under PMLA the ED should furnish to the accused in a written form 'as a matter of course and without exception' the grounds of arrest. Further every person so arrested is to within 24 hours be produced before the judicial magistrate. The bail conditions under PMLA are harsh; apart from shifting the burden of proof to the accused, the law stipulates that bail should not be considered by the magistrate unless the twin conditions that there are reasonable grounds for believing that the accused is not guilty of such offence and that he/she is not likely to commit any offence while on bail, are met.

These requirements are rarely met, and a magistrate has little choice but to deny bail. The other two laws, the CA and GST which have similar provisions of arrest have less stringent provisions relating to bail-it is for the department to establish the case. Depending upon the quantum of

A common theme running across all major organisations are principles of integrity, trustworthiness, fairness, reasonableness and pursuit of truth. All businesses under investigation by any of these agencies can reasonably expect that these core values are being adhered to



alleged offence and provisions which are impacted the offences are bailable and non-cognizable or non-bailable and cognizable.

The Companies Act too provides for investigations to be initiated into the affairs of the company. The investigations could be to detect mis-statement of a prospectus, fraudulent inducement to invest, reduction in share capital or fraudulent conduct of business. The Serious Fraud Investigation Office (SFIO) is the organisation which investigates these types of corporate fraud.

Constitutional and Legal Protection

All the laws relating to financial irregularities work under the overarching provisions of the Constitution of India, the Code of Criminal Procedure, Indian Evidence Act or the Indian Penal Code (now under the new enactments, *Bharatiya Nagarik Suraksha Sanhita, Bharatiya Sakshya Adhiniyam, Bharatiya Nyay Sanhita*) unless where specifically provided otherwise. These provisions provide for the manner in which searches are to be conducted, statements recorded, arrests made, bail granted, trial proceedings to be conducted. The rights to a person/body corporate under investigation flow from the various provisions of these statutes. The fundamental premise is that no one is deprived of a legally appropriate proceeding. Thus Articles 21,22 and 39 of the Constitution of India and several sections of the Bharatiya Nagarik Suraksha Sanhita, Bharatiya Sakshya Adhiniyam and Bharatiya Nyay Sanhita have provisions which offer protection and in effect rights to all citizens, including businesses, of India have provisions which offer protection and in effect rights to all citizens, including businesses, of India. All these provisions are in place to ensure principles of procedural fairness are adhered to.

Accountabilities of Businesses

Having enumerated the rights of businesses, it is essential that the duties of businesses are also highlighted. Businesses are responsible to themselves, to their shareholders, to the nation at large. It is critical that the law be adhered to. Taxes due should be paid. One cannot build a business on the shaky foundation of evasion of law. The long arm of the law will catch up sooner or later. It is essential that all businesses should put in place professionals who are well equipped with the requirements of law and ensure that business functions accordingly. It is essential that all businesses put in place a robust risk management framework to detect any possible infringement and ensure corrective steps are put in place. Due diligence to weed out corrupt or inefficient practices should be carried out regularly.

As the latest instruction of March 2024 issued by the CBIC would show, departments are also concerned in ensuring maintaining ease of doing business while engaging in investigation with regular taxpayers. It is in everybody's interest to do so-and saves time and money. If businesses ensure they adhere to the requirements of the law the wrath of the law will never befall them . While they do need to be aware of their rights, they would never need to exercise them.

GST
EMPOWERING TAXPAYERS THROUGH COLLABORATIVE COMPLIANCE

The Goods and Services Tax system in India has experienced remarkable revenue growth, signaling both economic health and a fundamental shift in compliance culture. Unlike enforcement-driven measures, this growth is primarily organic, driven by increased self-compliance

By M K SINHA

CEO, GSTN

GOODS and Services Tax (GST) regime has witnessed remarkable and consistent revenue growth in recent years, signalling economic health as well as a fundamental shift in compliance culture and tax administration. This growth is primarily organic, driven by increased self-compliance rather than enforcement measures. The magnitude of this growth underscores a crucial insight: Handholding taxpayers achieves substantial growth in revenue as all taxpayers are not alike.

The GST system, a monumental digital public infrastructure, is a testament to India's technological prowess in handling taxation at an unprecedented scale. On a daily basis, the system processes an astounding 30 lakh E-Way bills, facilitates 7.50 lakh return filings (GSTR-1 & GSTR-3B), manages 1.40 lakh payment transactions, and processes a staggering 67 lakh E-invoices. This massive volume of transactions is handled with remarkable efficiency, as evidenced by the significant reduction in support tickets. Currently, the system receives only 3 support tickets per 10,000 returns filed which was 67 per 10,000 returns filed in the year 2017, a testament to its user-friendliness and robustness. These figures not only highlight the system's capacity but also underscore the efficiency of the compliance process in GST, fostering a more transparent tax ecosystem and instilling confidence in the tax administration.

At the heart of this transformation is the innovative architecture of the GST system, spearheaded by the Goods and Services Tax Network (GSTN). The GSTN, a non-profit, non-government company, is responsible for providing IT infrastructure and

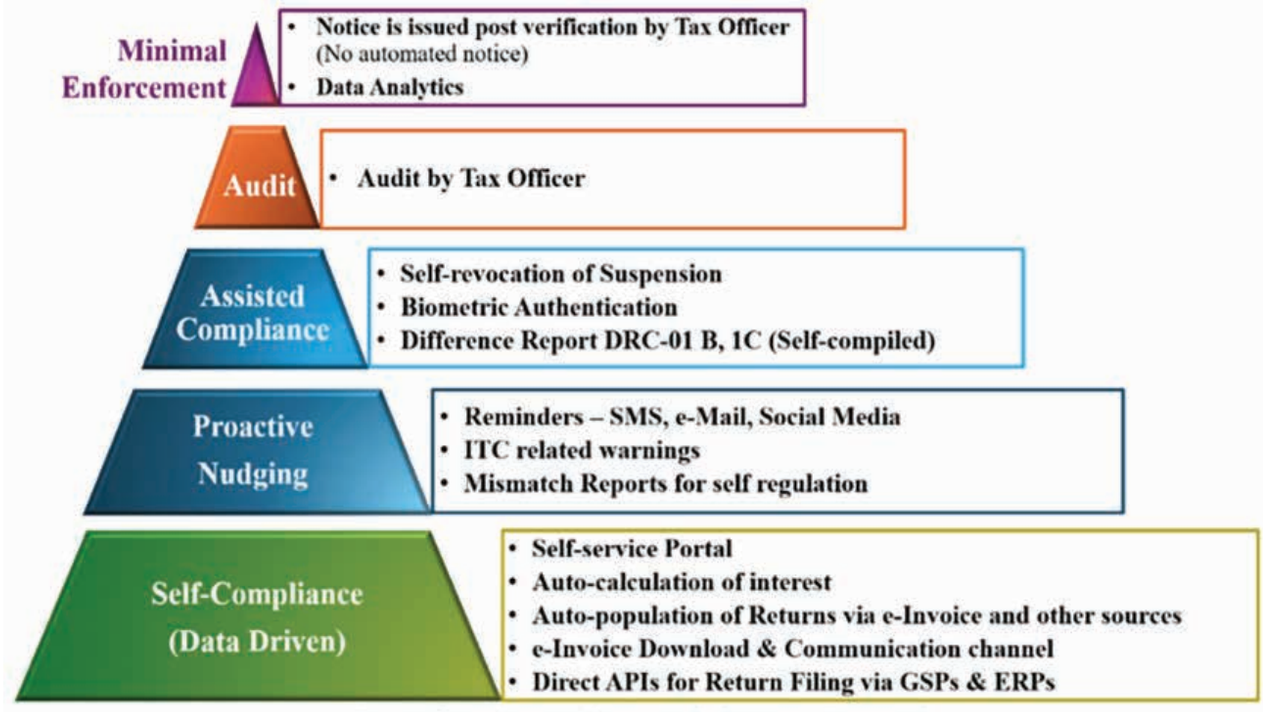


Fig.1: Compliance Support & Strategy Pyramid

services to the Central and State Governments, taxpayers, and other stakeholders for implementation of the GST. This new approach aptly represents a paradigm shift from regulation to facilitation, leveraging technology and behavioural insights to make compliance intuitive and effortless for taxpayers.

The Compliance Pyramid: A New Approach

The GST compliance pyramid is a strategic framework adopted for categorising taxpayers based on their compliance behaviour, enabling targeted interventions. It consists of three segments:

1. Base of the Pyramid: Self-Compliant Taxpayers

This largest group voluntarily adheres to GST regulations with minimal intervention. They consistently file returns, pay dues accurately, and maintain proper records. They are supported with educational resources to keep them informed.

2. Middle Segment: Taxpayers Requiring Nudges and Support

These taxpayers generally comply but benefit from reminders and support. Behavioural nudges like filing reminders, alerts for deadlines, and discrepancy notifications help maintain their compliance. Support is provided to address their specific needs.

3.Top of the Pyramid: Taxpayers Requiring Enforcement Actions

The smallest group requires audits and enforcement due to non-compliance. This involves detailed inspections, penalties, and legal actions. Rehabilitation programs are also developed to guide them towards future compliance.

The compliance pyramid ensures efficient resource allocation, focusing enforcement on non-compliant taxpayers while supporting those generally compliant. It enhances voluntary compliance, builds trust, and encourages cooperation between taxpayers and tax authorities. This data-driven approach improves overall compliance rates and creates a transparent, cooperative tax ecosystem, benefiting both parties .

SNAPSHOTS

On a daily basis, the GST system processes an astounding 30 lakh E-Way bills, facilitates 7.50 lakh return filings (GSTR-1 & GSTR-3B), manages 1.40 lakh payment transactions, and processes a staggering 67 lakh E-invoices.

2. Self-compliance is a critical concept in tax administration, where taxpayers proactively ensure their tax returns and payments are accurate and consistent, reducing the need for intervention by tax authorities.

3. This modern model of tax administration sets a global benchmark, showing how technology and trust, combined with collaborative compliance, can transform the relationship between citizens and government.

Streamlining Registration: Building Trust from the Start

One of the important aspects of cooperative compliance begins with the registration process, where the goal is to ensure a transparent and faster registration of taxpayers. The GST registration process aims to verify three key aspects: whether the person exists, whether the business premises exist, and what the financial profile of the person is . This meticulous verification helps in building a trustworthy tax ecosystem from the very start. Taxpayers identified as high-risk are required to perform biometric-based Aadhaar authentication at any GST Seva Kendra, ensuring that only genuine businesses are registered under GST.

Currently, this feature is rolled out in six states and is being expanded across India. Additionally, an Aadhaar-based face authentication app has been developed in collaboration with UIDAI for identity verification using face for ease of taxpayers.

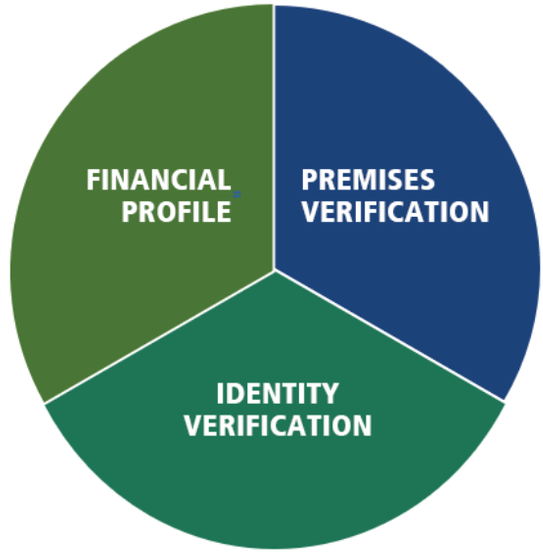


Fig: Attributes of Registration

For premise verification, geocoding-based address registration and verification using a geocoding engine have been implemented.

Innovative Functionalities: Simplifying Compliance

The GST system introduces a range of innovative functionalities designed to simplify compliance and empower taxpayers. Returns filing has been enhanced through e-invoice integration and extensive auto-population features. E-invoice capabilities have been significantly enhanced, with the addition of four new Invoice Registration Portals (IRPs) to improve system reliability and handle increased volume. The e-invoice portal interface has been revamped for better user experience, while system capacity has been augmented to manage peak filing periods seamlessly.

The system now automatically provides alerts for potential mismatch issues through form DRC-01B (for GSTR-1 and 3B mismatch) and DRC-01C (GSTR 2B & 3B mismatch) and automated interest calculations further assist taxpayers in accurate filing. The refund process has also been enhanced, with new functionality for unregistered users, a PMT-03 undertaking edit facility, and auto-population of zero-rated supplies in GSTR-3B for exporters. Further, compliance mechanisms have been significantly improved with the enhancement in GSTR-2B for determining ineligible ITC and has streamlined the reversal and reclaim of ITC in GSTR-3B. Communication between tax authorities and taxpayers has become more transparent, with detailed document upload capabilities.

> The GST system has revolutionized compliance through its robust APIs, accessible via GST Suvidha Providers (GSPs). This data-driven approach allows taxpayers to directly link their ERP systems with GST return filing through GSPs, enabling real-time data flow and minimizing manual errors

Leveraging Self-Compliance: The DRC-01B & 1C Success Story

Self-compliance is a critical

concept in tax administration, where taxpayers proactively ensure their tax returns and payments are accurate and consistent, reducing the need for intervention by tax authorities. In the context of the Goods and Services Tax (GST) in India, promoting self-compliance is essential for fostering a cooperative relationship between taxpayers and tax authorities, making the process more efficient and taxpayer friendly.

As part of this initiative, the GST system has introduced two new forms, DRC-01B and DRC-01C. These system-generated forms capture discrepancies between different GST returns:
1. DRC-01B: Highlights the differences between the liability reported in GSTR-1 and the tax paid in GSTR-3B.
2. DRC-01C: Highlights discrepancies between Input Tax Credit (ITC) available in GSTR-2B and GSTR-3B.

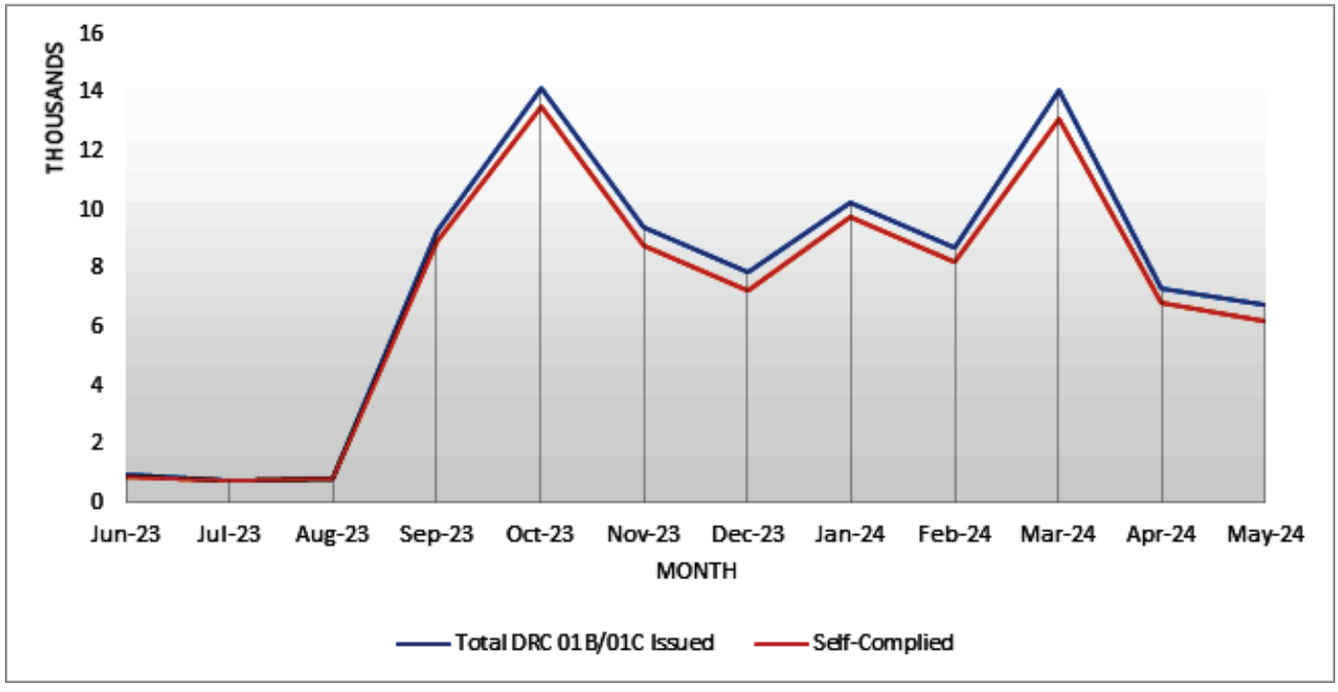
Self-compliance is a critical concept in tax administration, where taxpayers proactively ensure their tax returns and payments are accurate and consistent, reducing the need for intervention by tax authorities

When the system detects discrepancies exceeding a particular threshold, it automatically generates a notice to the taxpayer, alerting them to these issues. Taxpayers are then required to provide explanations or pay the differential amount. The system was introduced in June 2023, and the data collected over the subsequent months shows promising results. The table below summarizes the number of DRC-01B/01C forms issued and the number of these forms that were self-complied by taxpayers:

The accompanying chart illustrates the percentage of self-compliance for each month, showing a consistent and high rate of compliance.

The importance of self-compliance cannot be overstated. It transforms the process into a more taxpayer-friendly approach, saving precious time for both taxpayers and the tax administration. It creates the

THE NUMBER OF DRC-01B/01C FORMS ISSUED AND THE NUMBER OF THESE FORMS THAT WERE SELF-COMPLIED BY TAXPAYERS



GST signifies a transformative shift in tax administration. By harnessing technology, utilizing behavioural insights for nudging, implementing self-compliance modules (such as DRC-01B and 1C), and adopting a trust-based approach

mindset of viewing taxpayers as partners in economic progress and development. This initiative lays a strong foundation for broader self-compliance.

Data-Driven Self Compliance: The Present and Future

The GST system has revolutionized compliance through its robust APIs, accessible via GST Suvidha Providers (GSPs). This data-driven approach allows taxpayers to directly link their ERP systems with GST return filing through GSPs, enabling real-time data flow and minimizing manual errors. By providing tools for easy compliance, the GSTN has fostered an environment where voluntary adherence to tax obligations becomes standard practice.

The ultimate goal is to develop a system where comprehensive data access and powerful self-assessment tools greatly reduce the need for routine audits, easing the burden on taxpayers and tax authorities. Taxpayers empowered by data insights tend to be self-regulating and self-correcting for GST payments. This leaves tax administration with time and energy to focus on recalcitrant tax evaders, identifying them with precision using data analytics.

Conclusion:

GST signifies a transformative shift in tax administration. By harnessing technology, utilizing behavioural insights for nudging, implementing self-compliance modules (such as DRC-01B and 1C), and adopting a trust-based approach. India is thus developing a tax system that is both efficient and taxpayer-friendly. The steady increase in GST revenue is also driven by voluntary compliance, which validates this strategy.

As innovation continues, the future holds the promise of even more seamless integration and advanced systems. Throughout this journey, the core principles remain steadfast: empowering taxpayers is the most reliable path to a robust and thriving tax ecosystem.This modern model of tax administration sets a global benchmark, showing how technology and trust, combined with collaborative compliance, can transform the relationship between citizens and government. As India progresses, GST stands as evidence of the power of collaborative compliance in fostering economic growth. Tax administrations must place trust in taxpayers and selectively verify compliance using precise targeting.

[2]*Russell, Barrie. 2010. Revenue Administration: Developing a Taxpayer Compliance Program, 5-12. International Monetary Fund, Fiscal Affairs Department. Authorized for distribution by Carlo Cottarelli. November*

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BUSINESS RAID LEGAL ASPECTS: FROM PANIC TO PANACEA

In the complex landscape of business operations, unexpected challenges can arise at any moment. One such challenge is the sudden raid of business premises. Resolving this dilemma requires knowledge of the legal framework and an awareness of the business environment in which the business operates

By BALESH KUMAR

Member, Appellate Tribunal (SAFEMA, NDPS, PMLA, FEMA & PBPT)

"SIR! Our office is being raided !" is the panic-stricken scream which pierced through from the other end of the phone line. The astounded Managing Director had a sudden rush of thoughts. Who is raiding them? Why are they being raided? What should be done? In such grim situations there is always a tug-of-war between the rights of the businesses and the duties which need to be discharged by them. Resolution of the dilemma calls for knowledge of the legal framework and awareness of the business environment in which they are operating.

The Indian Legal System with its widespread maze of general statutes and Special Acts have evolved over time to ensure public order, to safeguard consumer interest and to eliminate undue competitive advantages. Unfortunately, the myriad laws have also ended up creating complexities which are roadblocks to easy comprehension. The business hence suffers costs in terms of time and money.

To somewhat overcome these challenges, it is desirable to have a general understanding of the legal framework in which business operates. Of course, the detailed handling of the framework requires a competent and dedicated team of experts.

The activity and the functions of a business determine the kind of economic environment in which it has to work. For instance, its operation may not only require environmental clearance and labour law adherence but also compliance with tax laws. At the same time, it would have to ensure that general statutes are not violated. Therefore, first and foremost a business should in-build

compliance with the law as an intrinsic part of its working environment and operative functionalities.

Economic Offences Laws

While there may be rights available under any specific law which are distinct to such law, discussion in subsequent paragraphs has attempted to enlist a few rights which are available during investigation, of which one should be aware. The discussions have been restricted to the framework of economic laws under which the businesses operate. The expanse of these laws covers the Companies Act 2013, the Income Tax Act 1961, the Customs Act 1962, the Goods and Service Tax Act 2017, the Foreign Exchange Management Act, 1999 and the Prevention of Money Laundering Act 2002, which may give a fair idea of the rights that businesses should be conscious of when subjected to investigation.

Taking the situation of a raid, it is important to ascertain whether, for the search of premises, the search party is in possession of a duly authorised search warrant. No unauthorised entry can be forced into any premises. The search warrant must bear the address which is to be searched and must be signed by the competent authority. To ensure the authenticity of such search warrants few Departments like CBIC (Central Board of Indirect Taxes and Customs) and CBDT (Central Board of Direct Taxes) allot specific DIN numbers to the search warrants which can be verified from their respective websites.

Ensuring Legality

The search party has to offer itself

SNAPSHOTS

1. Article 22 of the Constitution requires that the arrested person is not denied the right to consult and to be defended by a legal practitioner of his choice. Every person arrested is to be produced within 24 hours of his arrest before the nearest Magistrate.

2. The investigation may necessitate searching for a person. It is mandatory that 'reasons to believe' are recorded by the duly authorised officer to cause such search, so as to prevent any vexatious action.

3. The investigation of economic offences has to be in accordance with the procedure established by law, and checks and balances are in place to prevent the unbridled use of investigation techniques.

for search by the premise holder to eliminate the possibility of implanting any incriminating material or evidence. The holder of the premises is entitled to peaceful search. The search is to be conducted before two independent witnesses. A recovery or seizure memo called 'Panchnama' needs to inventorize the recoveries and narrate the proceedings on behalf of the independent witnesses. The authority which is competent under the statute to issue the search warrant has to record 'reason to believe' in writing for issuing the search warrant. The statute thereby protects the right of a person, natural or legal, against arbitrary and malafide action.

The investigation may necessitate searching for a person. The statute permits the search of a person by an officer who is duly authorised for the purpose. Moreover, even for such a search, it is mandatory that 'reasons to believe' is recorded by the duly authorised officer to cause such search, so as to prevent any vexatious action. The reasons to cause such search will only arise if it is believed that any incriminating material or evidence has been concealed by the person on his body. In cases of concealment in a body cavity or within the body, permission from a Magistrate can be insisted upon for extraction by a registered medical practitioner.

Seizure: Handling and Rights

In the course of the search of either premises or person, the search party may find it necessary to effect the seizure of documents, records and goods. Items under seizure need to be enlisted in the Panchnama. A copy of the Panchnama is to be given to the person from whom such recovery has been made. Where it is not practicable to seize such record or property, the authorised officer may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with. Either seizure or freezing cannot be for an indefinite period. A person is entitled to release of the record and property after the specified period. Extension of such period is through approvals by specially designated authorities. Release of records and property beyond an extended period is a juridical right. Before the completion of the normal extended period, issuance of a Show Cause Notice to the person concerned is mandatory.

> The Indian legal system, with its widespread maze of general statutes and special acts, has evolved over time to ensure public order, safeguard consumer interests, and eliminate undue competitive advantages. Unfortunately, the myriad laws have also created complexities that are roadblocks to easy comprehension

Recording of Statements

A commonly used tool in the investigation is a recording of statements of an accused as well as of witnesses. Special laws which have been enacted to regulate and investigate economic offences have provisions, whereby the statements tendered before Gazetted Officers working under such Acts, are admissible as evidence. The statements are recorded as a response to summons issued by the Gazetted Officer. The proceedings are deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code 1860. These statements are supposed to be voluntary in nature and truthful. Any sort of inducement or coercion can hit its voluntariness and its admissibility as evidence. The Hon'ble Supreme Court in SLP (Cri) No. 3543 of 2000 in the case of *Paramvir Singh Saini vs Baljit Singh (2020-TIOL-175-SC-MISC-LB)* directed the Police as well as other enforcement agencies to compulsorily install CCTV cameras in all offices where statements of the accused are recorded. These directions were issued by the Apex Court in furtherance of the fundamental rights of citizens of India guaranteed under Article 21 of the Constitution.

Safeguarding Personal Liberty

Serious infringement of personal liberty occurs when a person is arrested under a statutory provision. The duly authorised officer has to record 'reason to believe' in writing, that either the person is guilty of an offence punishable under the Act or is liable to be prosecuted under the statute. The person who is arrested is to be informed of the grounds of his arrest as soon as possible. Normally the arrest is made only for compelling reasons such as the likelihood of his flee, or the possibility of him tampering with evidence. Article 22 of the Constitution requires that the arrested person is not denied the right to consult and to be defended by a legal practitioner of his choice. Every person arrested is to be produced within twenty-four hours of his arrest before the nearest Magistrate. The Hon'ble Supreme Court in the famous case of D. K. Basu vs. State of West Bengal laid down specific guidelines required to be followed while making an arrest. These guidelines have been in the nature of upholding human dignity.

Procedure for Attachment

Enactment of the Prevention of Money Laundering Act, 2002 introduced 'attachment' of property as another measure in the hands of an investigator to immobilise proceeds of crime. The statute requires the competent authority to record 'reasons to believe' in writing based on material in his possession before he initiates action for attachment. While the provisional order of attachment issued by an executive officer prevents the alienation of attached property, it is confirmation of the provisional attachment order by an independent 'Adjudicating Authority' which makes such attached property amenable to transfer of its possession to the investigating authority. The Adjudicating Authority has to issue a Show Cause Notice to all those who are aggrieved with the provisional attachment order and adjudicate on rival claims after giving an opportunity to be heard. In July 2022 the Hon'ble Supreme Court in the case of Vijay Madanlal Choudhary vs. Union of India held that the investigative authority can give notice to deprive possession of property only under exceptional circumstances.

Rights During Investigation

A quick glance through the statutory provisions which regulate the investigation of economic offences brings forth the facets and the underlying provisions which bestow rights on those who are subjected to such investigation. Deprivation of liberty and property has to be in accordance with the procedure established by law that is enshrined in Article 21 of the Constitution. The statutory scheme of various enactments provides checks and balances to prevent the unbridled use of investigation techniques.

General business practices may justify a business conduct which may seem violative of the law. Businesses have sensitive information, disclosure of which may give unfair competitive advantage to business rivals. The

Enactment of the Prevention of Money Laundering Act, 2002 introduced 'attachment' of property as another measure in the hands of an investigator to immobilise proceeds of crime. The statute requires the competent authority to record 'reasons to believe' in writing based on material in his possession before he initiates action for attachment

business can ask for the confidentiality of trade secrets. They have the right to insist upon non-discriminatory treatment during the course of the investigation. Protection against coercive action is a normative expectation from the investigators. Investigation cannot become a means of harassment. Those who are subjected to the investigation expect fair treatment and for the timely conclusion of the investigation to prevent disruption of business operations.

Dispute Resolution Mechanisms

Machinery for dispute resolution prescribed within the statutes provides an important mechanism to bring about correctives to any excessive actions in the course of the investigation. Most of the enactments have an adjudicatory authority. Results of investigations are put to adjudication before such authority, which issues a 'Show Cause Notice' to the impacted businesses and to aggrieved persons to reply to the allegations and charges. Opportunity to be heard is to be provided. The Adjudicating Authority has to ensure adherence to the principles of natural justice and to the tenets of law. The Authority must dispense justice through a speaking and a well-reasoned order. Most of the enactments on economic offences have provisions for an Appellate Tribunal wherein appeals against the order of the Adjudicating Authority can be filed by either side. The Appellate Tribunal as the first appellate forum is expected to decide the appeals expeditiously and judiciously. Of course, the aggrieved person and business can always approach the High Court and the Supreme Court for further remedial relief.

Impact of Investigation

Investigation entails conflict of interests, disruption of normal business functioning, diversion of resources and resultant litigation. Compliance with the legal framework minimises the probability of deviation from the normal. Businesses and those responsible for their conduct of affairs should discharge their responsibilities with integrity and competence. At the same time, those responsible for investigation should be conscious of their duty to ensure legal protection for business entities. Arbitrary and disproportionate action by regulatory authorities and enforcement agencies can vitiate the business environment which may impair the national economic growth.

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THE LEGAL SHIELD: PROTECTING BUSINESSES UNDER INVESTIGATION

Globalization has led to diverse business models, from small boutiques to multinationals, often resulting in legal challenges related to taxes, regulations, and compliance. It's crucial for companies to understand their legal protections and the principles of natural justice when facing investigations for white-collar crimes and corporate offenses

By PALLAV SHISHODIA

Senior Advocate

IN a global world and markets across nations, businesses operate in a bewildering variety of ways, from local 'vyapaari' (businessman) to world trade behemoths, from start-ups to mega multinationals, and from small boutiques to transnational chains. Businesses, willy-nilly, get caught in the crosshairs of laws as they deal with legal regimes of taxes, regulations, and compliances, inviting investigation. This article mainly deals with the rights of businesses under investigation for what is popularly known as white-collar crimes and touches upon cases of corporate offenses by artificial personas of businesses, such as causing damages, destruction, or death by negligence, like the Bhopal gas leak disaster.

A business, whether run by an individual, firm, corporate, or any other legal entity, has a legal personality. This legal personality is recognized by law to be different from the individuals who may own the business. One may or may not own the business, but the law holds only the person in charge of the business responsible for violations of laws, legal misdemeanours, and economic offences. In both cases of white-collar crimes and corporate offences, the primary question for determination before proceeding further is who is in charge of the act or omission of the business under investigation.

Origins of Investigations

An investigation may originate at the instance of tax authorities, law enforcement agencies, competitors, creditors, or complaints from a disgruntled employee. The investigation may relate to tax liability, regulatory issues like Securities and Exchange Board of

SNAPSHOTS

1. The principles of natural justice have evolved as part of administrative law and are applied across the board in a variety of cases for businesses.

2. The common sense inherent in simplicity of these principles of natural justice cannot undermine their importance for businesses.

3. Another major principle of natural justice is that the hearing must be granted without bias.

India (SEBI) or the Competition Commission, corporate malfeasance, violation of labour laws, or the like. Whatever the cause or source, the investigation can be personal to the business entity through the agency of the person(s) in charge or as one of the units of an industry or given sector, e.g., an investigation into a complaint of monopoly and abuse of dominant position in the cement sector. In either case, the rights of businesses under investigation have certain common features, some of which are discussed here with a caveat that there is no substitute for case-specific legal advice.

Principles of Natural Justice

To begin with, there are now very firmly established principles of natural justice in Indian jurisprudence. The principles of natural justice have evolved as part of administrative law and are applied across the board in a variety of cases for businesses dealing with governments. They have an overarching presence over all enacted laws as part of constitutional guarantees. The principles of natural justice are read into laws that may otherwise be silent about them. A law that denies the principles of natural justice would be invalid. For a society governed by the rule of law, the salutary principles of natural justice form the core for protection against discriminatory and arbitrary action, abuse of authority, and violation of legal rights.

Right to Be Heard

One of the core principles of natural justice is Audi alteram partem i.e. “let the other party be heard”. This translates into an inalienable right for a business to be heard before any adverse order or action. A show cause notice is very common to businesses to allow the opportunity of being heard. The idea is to zero down on the precise allegation and points on which explanation is needed. A hearing has to be focused on contents of show cause and not meander here and there. To put it simply, a business cannot be told to come and answer that there is generally a case of tax evasion without details of proposed demand and/or reasons for the same. A hearing has to be by the same person who passes the adverse order or takes action. It is not allowed that one incumbent to office grants hearing but final order is passed by another incumbent in that office. A denial of the right to be given a proper opportunity and effective hearing by itself is enough to set aside an adverse order or action. There are cases where the idea of post-decisional hearing is entertained but the overall trend is to quash the order passed without hearing

or remand the matter for fresh adjudication after proper hearing.

Impartiality in Hearings

Another major principle of natural justice is that the hearing must be granted without bias. For instance, an appeal against an order cannot be heard by the same authority which passed the order or even by an officer of similar rank. Or a judge who has been counsel for one party cannot hear and decide the same matter. Subject to doctrine of necessity, even reasonable apprehension of bias is enough to vitiate the adjudication e.g. a legal adviser to one party becoming an arbitrator in a claim against that party.

Reasoned Decisions

To complete the trinity is another most important principle of natural justice that the decision that follows after fair hearing must have reasons with basic facts, issues and conclusions based on considerations of contentions raised. An adverse order must reflect that the adjudicator arrived at the decision after due application of mind on all relevant aspects of the dispute. The common sense inherent in simplicity of these principles of natural justice cannot undermine their importance for businesses.

Right to Remain Silent

The businesses in their legal persona and through the person in charge are at par with a citizen to enjoy the bunch of fundamental rights guaranteed by the Constitution of India which amongst other includes the right under Article 20 to remain silent or 'not to be a witness against self'. The police or other authorities like Customs or PMLA are under legal obligation that any suspect being questioned be informed of the right to remain silent and right to have access to legal aid. An investigating agency cannot subject anyone to third degree treatment to extract desired information. Even Narco Analysis or Lie-detector or Brain mapping or such similar tests cannot be imposed on anyone by any investigative agency. A failure to inform a suspect of the right to remain silent or have legal aid before interrogation or any compulsion to extract information through such involuntary tests violate constitutional protection

against self-incrimination, autonomy over one's own body and mental privacy. The outcome of such compulsion, even if correct, shall be discarded from admissible evidence. However, this right to remain silent does not grant immunity against search and seizure subject to procedural safeguards.

Protection Against Double Jeopardy

Another fundamental right under the same Article 20 is protection against double jeopardy or 'not to be prosecuted or punished for the same offence more than once'. This should not be confused with one transaction, e.g. cheating, entailing separate civil and criminal proceedings or one act of misdemeanour being treated as offence under more than one statute dealing with different aspects. There has been a recent trend of multiple First Information Reports (FIRs) against business and media houses for the same offence technically committed separately in different states. In such cases, the Supreme Court of India can club all the FIRs to be investigated and tried at one place.

Immunity Against Retrospective Criminal Liability

Yet another fundamental right under the same Article 20 is immunity against retrospectivity of criminal liability post-facto. This means that an act which is not criminal when committed cannot be made criminal with retrospective effect. For instance, recently Supreme Court of India held that penal provisions regarding confiscation of property held in Benami transactions cannot be applied to such transactions made before the amendment Act of 2016.

Last but not the least the person in charge of business enjoys at par with a citizen is fundamental right guaranteed by Art.21 of our Constitution to not be deprived of 'life or personal liberty except according procedure established by law', right to a free and speedy trial and fair treatment as detenue, if that be the contingency. Our judicial ecosystem favours bail as rule and jail as an exception. Supreme Court of India in the recent case of Satinder Kumar Antil vs. CBI recently laid down elaborate guidelines and emphasised that power to arrest must not be equated with justification for arrest which must be resorted only for demonstrably valid reasons reduced in writing. An accused who co-operates by remaining available for investigation need not be arrested "to avoid incalculable harm to reputation and self-esteem of a person."

A fair, free and speedy trial is a fundamental right in our system based on rule of law. If denied, not only a person under arrest is entitled to be released but the criminal proceedings can be quashed. Off late, the stringent provisions of bail under PMLA/ Companies Act 2013 have caused enormous anxiety among businesses and lay people. The issue of validity of these provisions is under consideration before the Supreme Court of India in review petitions after a three judges bench reversed an earlier two judges bench judgement holding these provisions unconstitutional and invalid.

These are some of the rights of businesses under investigation but not exhaustive of myriad situations, laws and regulations. Before parting, it may be pointed out that the very assertion of rights may sometimes lead to prolonged judicial proceedings. To heed to the call Shakespeare made to "Kill the lawyers first!" may not be a good idea in this complex world.

> In a global world and markets across nations, businesses operate in a bewildering variety of ways, from local 'vyapaari' to world trade behemoths, from start-ups to mega multinationals; businesses, willy-nilly, get caught in the crosshairs of laws as they deal with legal regimes of taxes, regulations, and compliances, inviting investigation

RIGHTS OF BUSINESSES UNDER INVESTIGATION IN INDIA

Businesses have rights during investigations, such as legal representation, due process, protection against self-incrimination, privacy, and the ability to challenge investigative actions. Balancing these rights with compliance and cooperation is essential for a fair investigation

By M V BHANUMATHI

IRS (Retd) & Ex DGIT (inv)

India has embraced the vision of Viksit Bharat. It encompasses India's aspiration to become a prosperous, equitable, and technologically advanced nation, with economic growth as a cornerstone. To fulfil this vision, India must sustain high GDP growth rates, ensure robust industrialization, and promote entrepreneurship within an inclusive and sustainable framework. Businesses are essential partners in this growth story as they create jobs, foster innovation, and contribute significantly to the GDP. To ensure integrity and a level playing field, the regulatory environment in the country subjects businesses to various forms of scrutiny and investigation.

Most commonly encountered laws and agencies for the Businesses, are the Department of Income tax under the Income Tax Act 1961, the Enforcement Directorate under the Prevention of Money Laundering Act, 2002 (PMLA), the Serious Frauds Investigation Office under the Companies Act 2013, the Central Bureau of Investigation (CBI) for banking frauds, the Securities and Exchange Board of India for violations under SEBI Act and SCRA and the Department of Goods and Services Taxes under CGST law among others.

Understanding these regulations helps businesses navigate the complex landscape of legal compliance and their rights during investigations.

Right to Legal Representation:

One of the fundamental rights of businesses under investigation is the right to legal representation. Businesses are entitled to engage lawyers to represent them in proceedings, provide legal advice so that they can comprehend the complexities of the laws and

regulations applicable to their case and ensure that their rights are safeguarded throughout the investigation process.

It is important to note that while the right to legal representation is well-established, the procedural details and the degree of access may vary depending on the specific circumstances of the case, the nature of the investigation, and the policies of the investigating agency. Agencies may deem that the presence of a lawyer will potentially compromise the integrity of the investigation and interfere with the investigative process. In high-profile or sensitive matters, they might restrict lawyer access to ensure security and prevent leaks of crucial information. However, even if direct presence during questioning is restricted, businesses still have the right to consult with their lawyer before and after the interrogation sessions.

The Supreme Court of India has, in various judgments, emphasised the importance of legal representation but has also acknowledged the need for investigators to conduct effective interrogations. For instance, in the case of Nandini Satpathy v. P.L. Dani, the Supreme Court held that the accused has a right to consult a lawyer during interrogation, but this does not necessarily mean that the lawyer should be present throughout the questioning process. In practice, while the right to legal representation is a fundamental right, the specific application during interrogations by investigative agencies can be subject to restrictions based on the necessity to preserve the integrity of the investigation. If there are concerns about the denial of this right, individuals can seek judicial intervention to ensure their rights are protected.

Right to Due Process and Procedures Established by Law:

Courts have reiterated the importance of due process in

SNAPSHOTS

1. One of the fundamental rights of businesses under investigation is the right to legal representation.

2. Most common challenge for individuals and businesses is seizure of mobile phones as they are also storage devices of digital evidence.

3. Maintaining proper documentation and compliance with laws and regulations is critical for businesses to protect themselves during investigations

several cases. In Maneka Gandhi v. Union of India (1978), the Supreme Court emphasised that the procedure established by law must be fair, just, and reasonable.

Elements of Due Process entail:

Notice of Investigation: Businesses have the right to be informed about the investigation. This includes details about the allegations, the nature of the investigation, and the specific laws allegedly violated. While the right to notice is a fundamental aspect of fair legal procedures, there are exceptions where notice may not be required or can be delayed. In circumstances where immediate action is necessary to prevent imminent harm, loss, or damage, or in public interest authorities may proceed without prior notice. Section 132/133A of the Income Tax Act allows for such discretion, to enter and search residential or business places as the case may be, under certain circumstances. Wherever such discretion is permitted, it is balanced with safeguards like having information in possession, having reasons to believe, recording the reasons in writing, obtaining warrant of authorisation from appropriate authority etc, which are open for judicial scrutiny.

Right to be Heard: Investigative procedures must provide businesses the opportunity to present their case, submit evidence, and respond to the allegations. Right to Fair and Impartial Investigation and any conflict of interest must be disclosed and addressed.

Right to Access Information During an investigation, businesses have the right to access relevant information and documents. This includes the right to obtain copies of documents and records that are part of the investigation. Access to information is essential for preparing a robust defense and ensuring transparency in the investigative process.

Right to Respond Businesses have the right to respond to allegations and present their side of the story. This includes the opportunity to provide evidence, make representations, and offer explanations or justifications for their actions. The right to respond ensures that investigations are balanced and that businesses have a chance to defend themselves.

Procedure Established by Law: Following the procedure established by law is a constitutional guarantee under Article 21 of the Indian Constitution, ensuring that businesses are not deprived of their rights without following a fair and just legal procedure. It is a well-settled principle that if a statute provides for doing a thing in a particular manner, then it has to be done in that manner and in no other manner (Chandra Kishor Jha vs Mahavir Prasad and others (1999) SC).

In instances where the judicial scrutiny found procedural neglect, the actions have been held invalid and quashed by the courts. Cases in example, among others are Ajit Jain vs. Union of India (2000) 242 ITR 302 (Delhi HC) L.R. Gupta vs. Union of India (1992) 194 ITR 32 (Delhi HC), Dr. Nand Lal Tahiliani vs. CIT (1988) 170 ITR 592 (All HC , where the courts quashed the search conducted by the Income Tax Department.

Seizure of assets and bank accounts

Enforcement agencies have the authority to provisionally attach bank accounts and other assets during investigations in cases where there is reason to believe that they represent proceeds of crime, unaccounted income, evidence of criminal acts, or simply to protect the interest of revenue as in the case of Section 132(9B) of the Income Tax Act. However, this power is circumscribed by safeguards, which include that such

> The Supreme Court of India has, in various judgments, emphasised the importance of legal representation but has also acknowledged the need for investigators to conduct effective interrogations

attachments can be done only with the approval of an authorised authority along with reasons to be recorded in writing, and informing the owner after attachment of the fact of attachment and reasons therefor.

They also come with timelines beyond which the attachments cannot survive. Whenever such acts fell afoul of law in complying with the due process laid down in the statute, the judiciary has not hesitated to quash the order and defreeze the accounts. In the case of OPTO Circuits India Ltd, the honourable Supreme Court ordered defreezing of the attached bank accounts on the basis that the order for freezing of account was without due compliance of legal requirements. There was no recording of the reasons to believe and the records were not forwarded to the adjudicating authority nor its approval obtained, as laid down in section 17 of the PMLA.

Right Against Self-Incrimination:
Article 20(3) of the Indian Constitution provides protection against self-incrimination, stating that no person accused of an offence shall be compelled to be a witness against themselves. This right is extended to businesses, ensuring that they are not forced to provide information that could incriminate them.

Scope of Protection
Testimony and Evidence: Businesses cannot be compelled to testify or produce documents that could be self-incriminating.

Exceptions and Limitations

Documentary Evidence: The protection against self-incrimination primarily covers testimonial compulsion. This means while an individual cannot be forced to provide oral or written statements against themselves, they can be compelled to produce documents, as the documents themselves are not considered testimonial in nature.

Judicial Interpretation: Courts have, over the years, interpreted the right against self-incrimination in various ways. For instance, the Supreme Court in the case of M.P. Sharma vs Satish Chandra (1954) held that search and seizure do not amount to testimonial compulsion. Similarly, in State of Bombay vs Kathi Kalu Oghad (1961), it was held that the protection against self-incrimination does not extend to providing physical evidence, such as fingerprints or handwriting samples.

Right to Privacy
The right to privacy is an essential right recognized by the Supreme Court of India in Justice K.S. Puttaswamy (Retd.) v. Union of India (2017). This right extends to businesses, protecting their

confidential information and trade secrets during investigations.

Limitations on Privacy: The Court noted that while privacy is a fundamental right, it is not absolute. Any infringement on privacy must satisfy the following tests:

Legality: The infringement must be backed by law.

Necessity: It must be necessary for a legitimate state interest.

Proportionality: The measures adopted must be proportional to the objective sought to be achieved.

Confidentiality of Information

Businesses have the right to ensure that any information shared during the investigation is kept confidential. Regulatory bodies and investigating authorities are obligated to handle sensitive information with care to prevent misuse or unauthorised disclosure.

Data Protection Laws:

The Information Technology Act, 2000, and the Digital Personal Data Protection Act, 2023 provide a comprehensive framework for data protection, ensuring that businesses' digital data is safeguarded against breaches during investigations.

Right Regarding seizure of Mobile Phones:

Most common challenge for individuals and businesses is seizure of mobile phones as they are also storage devices of digital evidence. While it is permitted for agencies to seize the phones, it is essential to be done as per procedure established by law, following due process.

Judicial Precedent:

In the case of Linda Samuel vs. State of Kerala, the Kerala High Court scrutinised the procedure followed by the investigating authorities. It emphasised that the seizure of a mobile phone must comply with the legal

Businesses have the right to be informed about the investigation. This includes details about the allegations, the nature of the investigation, and the specific laws allegedly violated

requirements set out in the Code of Criminal Procedure (CrPC) and relevant digital laws. The High Court directed that the data on the seized mobile phone must be handled with strict confidentiality. Only relevant data necessary for the investigation should be accessed, and the authorities must ensure that there is no misuse of the personal information stored on the device.

Practical Application:
In case of income tax investigations, the normal procedure has been to seize a clone of the device with due precautions, and the original with the data is returned to the owner, whereas some other agencies seize the original and provide a copy to the owner.

Right to Challenge Investigative Actions

Businesses have the right to challenge the actions of investigative authorities if they believe that their rights have been violated or that the investigation is not being conducted fairly.

Writ Petitions: Under Articles 32 and 226 of the Indian Constitution, businesses can file writ petitions in the Supreme Court or High Courts to challenge the legality of investigative actions.

Appeals and Revisions: Statutory provisions allow businesses to appeal or seek revisions of orders passed by investigative authorities.

Grounds for Challenge

Common grounds for challenging investigative actions include:

Violation of Due Process: If the investigation has not adhered to due process, businesses can seek judicial intervention.

Bias or Conflict of Interest: Investigations conducted with bias or conflict of interest can be challenged for lack of impartiality.

Excessive or Unwarranted Searches: Businesses can contest searches and seizures that are excessive or conducted without proper authorization.

Practical Implications and Challenges:

Compliance and Documentation

Maintaining proper documentation and compliance with laws and regulations is critical for businesses to protect themselves during investigations. This includes keeping accurate financial records, maintaining proper corporate governance practices, and ensuring adherence to tax and regulatory requirements.

Managing Internal Investigations

In some cases, businesses may conduct their internal investigations to identify and address potential issues before they escalate. Internal investigations can help businesses proactively manage risks and demonstrate their commitment to compliance and ethical conduct.

Cooperation with Authorities

Cooperation with investigating authorities can often lead to more favourable outcomes for businesses. Being transparent, providing requested information promptly, and cooperating in good faith can help mitigate potential penalties and demonstrate the business's commitment to compliance.

Handling Media and Public Relations

Investigations can attract media attention and impact a business's reputation. It is essential for businesses to have a strategy for managing public relations and communicating with stakeholders during and after an investigation. Transparency and honesty in communications can help maintain trust and credibility.

Conclusion

Understanding the rights of businesses under investigation is essential for navigating the complex regulatory environment. Businesses have the right to legal representation, due process, protection against self-incrimination, privacy, and the ability to challenge investigative actions. Balancing these rights with compliance and cooperation responsibilities is crucial for a fair and efficient investigation process By being aware of these rights and the legal framework governing investigations, businesses can better protect their interests, uphold their reputation, and contribute to a more transparent and just business environment in India.

JUDICIAL SAFEGUARDS AGAINST TAX INVESTIGATIONS

Understanding the legal framework and responsibilities is crucial for businesses to operate within the law and avoid legal repercussions. By adhering to these principles, businesses can ensure compliance and contribute to a fair and just economic environment

By S. RAMAKRISHNAN

IRS (Retd), formerly Chief Commissioner (IT)

IT is worth recollecting the quote, "Your right to swing your arm leaves off where my right not to have my nose struck begins," by John B. Finch, who was the Chairman of the Prohibition National Committee USA in the 1880s. While this quote delineates the border regarding individual rights, when it comes to the right of doing business vis-à-vis the power of law enforcement agencies, the picture becomes blurred in the real world as it is a face-off between individual liberty and public interest at large.

While any statute or the rules framed thereunder provide pointers for broad contours in this regard, one needs to take a deep dive into the Constitution and law as evolved over a period to have a better perspective on this topic. Tax administrators, while discharging enforcement functions, as well as taxpayers and tax counsels, need to be fully abreast with the latest developments to prevent tax administrator overreach, which may even lead to the crippling of businesses, entailing great economic costs.

It is in this context from the point of administration of direct taxes that I dwell upon some relevant provisions of the Indian Constitution.

Judicial Perspective

The fundamental provision of the Constitution of India relating to fiscal legislation is contained in Article 265, which provides that "no tax shall be levied or collected except authority of law." This is the constitutional guarantee given to enterprises at large and must be viewed strictly as charging sections are viewed in tax administration. Provisions with regard to investigations which are procedural in nature need to strictly comply with in letter and spirit

so that they in no way infringe with the intent of Article 265.

However, considering the greater public interest that tax laws serve, the Hon'ble Supreme Court had an occasion to consider this aspect in the case of *R. K. Garg v. UOI (1981) 133 ITR 239 (SC) (255). The constitutional bench observed that "Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc.*" The issue under contention in this case was the immunity offered to the subscribers of special bearer bonds. It was held that such privilege extended to the subscribers is not violative of the equality clause of Article 14 of the Constitution.

In the said judgement, it was also observed that *"It has been said by no less a person than Holmes, J. that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrine or straightjacket formula, and this is particularly true in the case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgement in the field of economic regulation than in other areas where fundamental human rights are involved."*

This judgement provides a broad framework when it comes to legislative intent vis-à-vis interference by the judiciary concerning the rights of businesses under investigation.

It was further observed that *"The court must always remember that "legislation is directed to practical problems, that the economic*

SNAPSHOTS

1. The right of doing business vis-à-vis the power of law enforcement agencies becomes blurred in the real world as it is a face-off between individual liberty and public interest at large.

2. Though judicial rulings are more tilted towards legislation, the Department of Income Tax has codified the rights and duties of persons searched way back in the nineties.

3. The Supreme Court has held that the provisions of section 132 of the Income Tax Act and Rule 112 of the Income Tax Rules 1962 do not violate the fundamental rights under article 19(1)(f)/(g) of the Constitution of India.

mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry" that exact wisdom and nice adoption of remedy are not always possible and that "judgement is largely a prophecy based on meagre and un-interpreted experience". Every legislation, particularly in economic matters, is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in Secretary of Agriculture vs. Central Reig Refining Company 94 Lawyers Edition 381 be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subjects to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of a pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues."

Article 265, which provides that no tax shall be levied or collected except authority of law, must be strictly complied with in letter and spirit, but the Supreme Court has held that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights

While dealing with the issue of constitutional validity of provisions of search and seizure in Income Tax Act, the case of *Pooran Mal v. DIT (1974) 93 ITR 505 (SC)* Hon'ble Supreme Court held that provision of search and seizure in section 132 and Rule 112 of the Income–tax Rules 1962, do not violate the fundamental rights under articles 19(1)(f)/(g) of the Constitution of India. Restrictions placed by any of the provisions of section 132, section 132A or Rule 112A are reasonable restrictions on the freedom under these Articles. Evidence obtained in search made in contravention of provisions can be used, unless there is an express or necessarily implied prohibition in the Constitution or other law, evidence obtained as result of illegal search or seizure is not liable to be rejected.

Practical Challenges in Legislation

Though judicial rulings relating to rights of business are more tilted towards the legislation, the Department of Income Tax has codified the rights and duties of persons searched way back in the nineties. The said codification is in the spirit of the observation (supra) "*If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.*"

Instructions are in place that search actions are to be carried out only in cases of huge tax evasion. CBDT has also issued Instruction No. 1916 dated 11-05-1994 which lays down guidelines for seizure of Jewelry.

With a view not to disrupt carrying out business of an entity covered under search action the provision relating to 132 has been amended w.e.f. 1.6.2003 mandating that stock in trade cannot be seized during search proceedings.

Supreme Court Rulings

Even though judicial rulings are tilted towards tax administration, courts have not hesitated to come to the rescue of taxpayers in case of administrative overreach. There are plethora of judgements, and a few judgements are given hereunder.

In the case of *Prakash V. Sanghvi vs. Ramesh G., Major, DDIT (Inv.) (2013) 356 ITR 426 (Karn) (HC)*, the court held that in case of trespassing of assessee's property, the delinquent officers may be prosecuted by a competent Criminal court. However, the warrant issued was held to be valid.

In the case of *Jagmohan Mahajan & Anr. vs. CIT(1976) 103 ITR 579 (P&H)(HC)* Sealing of business premises during the course of survey or section 132, 133A, or any other provision of the IT Act is not permitted, as it would amount to violation of the fundamental right guaranteed under Article 19(1)(g) &300A of the Constitution of India.

"*That the sealing of the business premises, for which there was no provision of law in violation of the fundamental rights guaranteed to a citizen under article 19(1)(g) of the Constitution of India which guarantees right to practise any profession, or to carry on any occupation, trade or business and also under article 300A of the Constitution of India in as much as the same amounted to temporary deprivation of property without authority of law.*"

In Re Rajendra Singh (Bihar Human Rights Commission) it was held that interrogation till late night amounts to "torture" & violation of "human rights" – Officers are held liable for to pay compensation from their salary.

The apex court in *Rajendran Chingaravlelu (Mr) vs. R. K. Mishra, Addl. CIT (2010) 320 ITR 1 (SC) (10) observed that "there is a growing tendency among investigating officers (either police or other departments) to inform the media, before the completion of investigation, that they have caught a criminal or an offender. Such crude attempts to claim credit for imaginary investigational breakthrough should be curbed."*

Evolving Jurisprudence

As jurisprudence evolved over the years in the context of rights of business under investigation it can be observed that though the Courts provide latitude to enforcement agencies in performance of their bona fide role, they do not hesitate to come down heavily in case of administrative excesses. As it is rightly said that it is only the crying baby that gets milk, so is the business entity which escalates any undue infringement during investigation to higher authorities without loss of time. It is in this context my humble view is that it is not necessary to file writ but first exhaust all administrative remedies available in the system as in my experience as tax administrator over three decades many a time business entities could get instant justice in this forum. Filing of writ should be the last resort.

In the context of rights of business under investigation it can be observed that though the Courts provide latitude to enforcement agencies in performance of their bona fide role, they do not hesitate to come down heavily in case of administrative excesses

TAXPAYER RIGHTS IN TAX INVESTIGATION

Tax investigations, governed by laws, grant significant powers to summon, search, arrest, and issue notices. While these powers are essential for enforcing tax compliance and combating evasion, they often overshadow the rights available to businesses under investigation

By O P DADHICH

Former Member, CBIC

IF one glances through the provisions relating to enquiries and investigations under the tax laws in India, such as the Customs Act, CGST Act, and Income Tax Act, one would come across numerous sections highlighting the powers of the authorized or proper officers to summon, search, arrest, and issue notices. However, one would hardly come across provisions specifically incorporating the rights of taxpayers and the protections guaranteed to businesses under investigation.

While it is necessary to empower officers with such powers, as investigation is essentially an enforcement action founded on suspected tax evasion, there must be some protection for the taxpayer under the law against excessive exercise or misuse of such powers by investigating officers, instances of which are not uncommon. There do exist some rights for taxpayers under investigation specifically mentioned in the tax laws, but they are few and far between. Apart from that, many safeguards and rights have been extended to businesses through directives of the Courts and administrative instructions, which lay down guidelines for investigating officers aimed at ensuring the protection of taxpayer rights and restraining authorities from exceeding their mandate.

Generally, the process of investigation under any tax law begins with a search or the issuance of summons to obtain goods, documents, or other items, with the purpose of collecting evidence to establish contravention of legal provisions and tax evasion. Many times, it also leads to the arrest of a person accused of tax evasion. All these actions—search, summons, or arrest—are essentially invasive and impinge on personal liberty and privacy. Sometimes, tax authorities call for unnecessary details or voluminous records that are too irksome and result in the deployment of valuable time and resources of businesses.

While it is absolutely necessary to empower authorities to sternly deal with cases of tax evasion and fraud, which at times take the form of organized crime and pose a threat to government

finances, it is equally imperative for businesses to be aware of their rights and the protections available under the law to deal with abuse or excessive exercise of powers by law enforcement authorities. There is a plethora of instructions and directions from CBIC as well as CBDT underscoring the rights of taxpayers and advising officers to exercise restraint while exercising their powers.

Constitutional Protections

The Indian Constitution itself confers on citizens some safeguards as fundamental rights against arbitrary and unfair action by executive authorities. Any law passed by the Parliament or state Legislature, or executive action carried out in derogation of these fundamental rights, may be immediately quashed by the High Courts or Supreme Court under their writ jurisdiction. In the context of investigations by enforcement agencies, the important safeguards in Fundamental Rights are enshrined under Articles 20, 21, and 22 of the Constitution. Article 20 provides that no person can be compelled to be a witness against himself, which means he cannot be forced to self-incriminate during any criminal proceedings. However, this immunity is available only in judicial proceedings and not in quasi-judicial proceedings, and stating facts even if they implicate the person is not protected by this right. Recovery of any incriminating document during a search is also not protected by this provision.

Another important protection to all citizens under investigations is enshrined under Article 21 which provides that no person shall be deprived of his life or personal liberty except according to

SNAPSHOTS

1. The Indian Constitution itself confers on citizens some safeguards as fundamental rights against arbitrary and unfair action by executive authorities.

2. In the context of investigations by enforcement agencies, the important safeguards in Fundamental Rights are enshrined under Articles 20, 21, and 22 of the Constitution.

3. Investigating officers are bound by the administrative guidelines and instructions issued by the government, and business entities can protest if these have not been followed.

procedure established by law. Thus all enquiries, investigations, summoning, searches, arrests etc under any tax laws are also subject to these safeguards and can be set aside if not carried out in accordance with the provisions of the respective laws.

Then, Article 22 extends certain rights to a person who has been arrested. It provides that any person who has been arrested has to be informed of the grounds of his arrests and he shall also have the right to consult or be defended by a legal practitioner of his choice. It also mandates the arresting authority to produce the arrested person before the nearest Magistrate within 24 hours of his arrest. These safeguards have been specifically incorporated in the Criminal Procedural Code, 1973 as well as taxation laws which have provisions for arrests such as Customs Act, Central Excise Act, CGST Act etc.

Under-investigation Business Entities

Both the CBIC and the CBDT have adopted Citizen's Charters aimed at providing a transparent and trust-based tax regime. Although these Charters outline the commitments of the department and the expectations from taxpayers, they do not specifically spell out the rights of business entities during investigations. However, the principles of trust and fair treatment inherently protect the legitimate rights of business entities.

Some enactments specifically provide certain rights to business entities undergoing investigation proceedings. For instance, subsection (5) of section 67 of the CGST Act, which deals with the power of inspection, search, and seizure, provides that the person from whose custody any documents are seized shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorized officer at such place and time as the officer may indicate. However, this right is not absolute and may be denied if, in the opinion of the officer, it may prejudicially affect the investigation. Although this right is not specifically mentioned in the Customs Act, it is an inherent right, and generally, requests for making copies of seized documents are acceded to by the tax authorities. Similarly, the right of an arrested person to be produced before a Magistrate soon after the arrest is specifically provided under section 69(2) of the CGST Act and section 104 of the Customs Act.

Both the CBIC and the CBDT have adopted Citizen's Charters aimed at providing a transparent and trust-based tax regime. Although these Charters outline the commitments of the department and the expectations from taxpayers, they do not specifically spell out the rights of business entities during investigations

Judicial and Administrative Support

The law relating to the rights of businesses facing investigation is evolving rapidly. Thanks to judicial pronouncements and changes in the authorities' attitudes, the rights of business entities under investigation are being recognized more eloquently, as evidenced by the large number of judgments from the High Courts and Supreme Court, as well as administrative instructions. The role of media and the extensive use of information technology by the government and taxpayers have played an important role in enabling this. The grievance redressal machinery of the tax departments and easy accessibility to the courts have also boosted the confidence of taxpayers to approach them to claim their right to fair treatment.

Investigating officers are bound by the administrative guidelines and instructions issued by the government, and business entities can protest if these have not been followed. Compliance with these directions by the investigating officers serves as safeguards and rights for businesses.

Instruction No. 01/2020-21 (GST-Inv) dated February 2, 2021, issued by the CBIC, lays down guidelines for conducting searches, which include the proper issuance of search warrants with valid DIN, the presence of a lady officer while searching residential premises, the presence of two independent witnesses or 'Panchas', and the videography of sensitive premises, among other things.

Instruction No. 3/2022-23 (GST-Inv) dated August 17, 2022, issued by the CBIC, lays down guidelines for issuing summons, aimed at protecting business entities from frivolous and frequent summons. It advises field officers not to issue summons routinely and without the approval of senior authority. It also advises officers to refrain from issuing summons for documents already available with the department or which can be obtained through a simple letter. It restrains officers from issuing summons to senior officials such as CMD/CEO/MD/CFO of companies or PSUs unless absolutely necessary. Therefore, businesses can always examine whether summons have been issued in accordance with these instructions.

Another important right is the right of a person to have the presence of an advocate during interrogation or the recording of statements. Though this right has not been explicitly recognized under the laws or by any instructions or circulars, the Hon'ble Supreme Court and several High Courts have, in a large number of cases, permitted the presence of an advocate at a visible distance but not within hearing range during interrogation or the recording of statements. Two such recent judgments are in the case of Birendra Kumar Pandey vs. UOI by the Hon'ble Supreme Court in a customs matter and in the case of Mayur Chavda vs. State of Maharashtra by the Hon'ble Bombay High Court in a GST matter.

Rights in Tax Arrests

On the procedure to be followed in matters of arrest and bail, the CBIC issued Instruction No. 02/2022-23 (GST-Inv) dated 17th August 2022. It quotes from the judgment of the Hon'ble Supreme

Court in Criminal Appeal No. 838 of 2021, in which the Hon'ble Court observed that a distinction must be made between the existence of the power to arrest and the justification for exercising it. The courts are now rigorously scrutinizing the grounds of arrest to see whether valid reasons for arresting a person existed. The existence of the conditions required for arrest, as laid down in the said Instructions, are in the nature of the rights of the person to be arrested. It also directs that the grounds of arrest should be explained to the person arrested. There have been court orders holding arrests illegal where the grounds of arrest were not properly conveyed to the arrested person. The instructions also advise on the minimum use of force or any violence and without any publicity.

The directions of the Hon'ble Supreme Court in the case of Paramvir Singh Saini for installing CCTV cameras in all the offices of the investigating agencies with powers of arrest have also provided important protection to persons under investigation. All GST and Customs offices where interrogation takes place are covered by this direction, and cameras have been installed in all such offices for recording the movement of persons called for interrogation or statements and the proceedings thereafter. On a complaint by the person concerned, the courts can call for CCTV recordings of any proceedings. This protects the right of the person called to the office to fair treatment and compliance with law and guidelines.

The courts are now rigorously scrutinizing the grounds of arrest to see whether valid reasons for arresting a person existed. The existence of the conditions required for arrest, as laid down in the CBIC issued Instruction No. 02/2022-23 (GST-Inv), are in the nature of the rights of the person to be arrested. It also directs that the grounds of arrest should be explained to the person arrested

Challenges in Seeking Relief

Despite the increasing recognition of rights and protections available to businesses under investigation, there remains a significant challenge for business entities in determining how and where to seek relief and protection against unfair actions by the authorities. There is always an apprehension among businesses that lodging a complaint against the investigating officer might not be well-received by the authorities.

Whenever business entities feel that the investigating authorities are behaving in a high-handed manner or their actions violate the spirit of the legal provisions or the Instructions, they should immediately bring it to the notice of the higher authorities, citing specific instances of such non-adherence to guidelines or instructions. Examples include calling for documents already available with the department, summoning the CMD/CEO or any top management of the business, issuing search warrants or summons or any communication without DIN, arresting without informing of the grounds of arrest, or any such action.

In extreme cases of disregard for the rights of businesses, one can go to the High Court by filing a writ petition, where relief is normally granted. The crucial point is documenting the specific instance where the taxpayer feels their legitimate right has been denied or there has been excessive exercise of authority or highhandedness by the investigating officers. Since the emails of senior officers are now available on websites, they may be directly approached by email with specific instances of violation of rights. The senior officers of law enforcement agencies are generally responsive to such communications.

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CORPORATE RIGHTS AND LAW ENFORCEMENT A CONSTITUTIONAL BALANCE

Fundamental Rights are the bedrock of individual rights guaranteed to Indian citizens under Articles 12 to 35 of the Constitution. These rights encompass essential freedoms, such as freedom of speech, right to equality, and right to life

By SAMANJASA DAS

IRS

FUNDAMENTAL Rights (FRs) are the basic rights guaranteed to the citizens of India under Articles 12 to 35 of the Constitution of India. Directive Principles of State Policy (DPSP) enshrined under Articles 36 to 51 of the Constitution, contain the guidelines to be followed by the Government while framing policies. While the FRs promote the welfare of individual citizens, the DPSP envisages the welfare of the entire community. Fundamental rights are not absolute but qualified. The State can impose reasonable restrictions on the FRs to strike a balance between individual liberties and social needs. The distinction between absolute rights and qualified rights is not expressly stated in the Constitution. However, judicial pronouncements have held some rights to be absolute and certain other rights as qualified or rights that can be subjected to reasonable restrictions.

Role of Law Enforcement Authorities

I consider the aforesaid introduction to rights to be contextually important as Constitutional rights cannot be completely delineated from the rights of individuals/corporate entities facing investigation. The golden principle of jurisprudence is that an accused or an individual or a legal entity is presumed to be innocent until proven guilty. Criminal investigation of corporates for alleged crime, misconduct or statutory breach, has been the focus area of the Indian Law Enforcement Authorities (LEAs). With the expanding corporate footprint on the Indian business landscape, the laws governing the investigation of corporates, have also evolved over the years. It has also necessitated the

requirement of domain knowledge and skillset of the LEAs to navigate through one investigation or the other.

A statute that reposes trust in its subject, must also be honoured by the subject. Any wilful breach of such trust necessarily invites penal consequences. However, the presumption of violation or breach cannot precede the assessment of compliance with the law. Nor, can compliance be ensured by physical inspection of the entities concerned. If that were the case, it would be practically impossible to administer any legal system. The benefits of having an elaborate statutory framework would be lost if LEAs are required to physically inspect the entity concerned, to be certain that the entity is compliant.

On the contrary, compliance should be based on an entity's heightened sense of legal awareness. Intrusion by LEAs should be resorted to only under exceptional circumstances involving fraud, forgery, wilful suppression etc. Such infrequent intrusion should be focussed and effective to derive maximum deterrent impact. The LEAs must also consciously desist from highhanded and arbitrary exercise of statutory powers resulting in complete disruption of the functioning of a corporate entity.

Corporates During Investigations

Regulatory investigation which involves seeking documents, conducting interviews, and analysing financial records, can be, more often than not, disruptive events for the corporate. While there is a perceived threat to the rights and liberties of the corporate/ individual under investigation, such investigation certainly exhausts the time and resources of the concerned corporate. Besides, the overlapping mandate or charter of functions of the LEAs often adds to the cost of compliance of the corporate under investigation.

Drawing on my own experiences associated with my long tenure in investigation and law enforcement outfits, predominantly in the areas of contraband smuggling, tax

SNAPSHOTS

1. The LEAs must ensure that their investigations do not impede the right of the entity under investigation to liberty, free movement and dignity.

2. The entities under investigation must be afforded the right to an attorney if they so desire, but the attorney must be passive and not interfere with the interrogation.

3. A corporate entity should be afforded an opportunity to explain alleged misconduct at the initial stage of an investigation, to avoid a wild goose chase by the investigator.

evasion, drug trafficking and profiteering, I have identified the following domains in which the rights of a corporate facing investigation need to be protected.

Right to Liberty, Free Movement, and Dignity

The LEAs must ensure that their investigations do not unnecessarily impede the right of the entity to liberty and free movement, beyond what is absolutely necessary to meet the ends of justice.

Besides, the dignity of the entity under investigation should not be lost sight of. While raiding any residential or business premises, the investigating team must comprise lady officers to ensure dignity to the female staff or family members.

Right to Good Health

During the course of interrogation or recording of statements, the physical and mental health of the entity must be borne in mind and the individual facing such interrogation must be allowed access to medical assistance, as and when required.

Right to Silence

If the entity facing interrogation chooses to exercise his right to silence, he must be so allowed and that should not, ipso facto, lead to an inference of admission of guilt.

Right to An Attorney

The entities under investigation who are interrogated or whose statements are recorded must be afforded the right to an attorney if they so desire. However, the presence of the attorney during the interrogation must be passive without any interference, prompting, consultation or counselling. It should be the endeavour of the investigator to elicit the truth without the application of any force, duress or coercion. The statement, needless to say, must be voluntary and

> The State can impose reasonable restrictions on the fundamental rights to strike a balance between individual liberties and social needs. The distinction between absolute rights and qualified rights is not expressly stated in the Constitution

truthful.

Right to Bail

An individual who has been arrested for a non-cognizable and bailable offence must immediately be offered bail and should be produced before a Magistrate only when he fails to fulfil any condition of such bail. There should not be any bar on the entity seeking an anticipatory bail from the appropriate court, prior to his arrest. The investigators must not forget that arrest is not a punitive measure. It is merely a preventive action and is resorted to only when the entity facing investigation is evading the investigator or the entity is a flight risk or the investigator apprehends that the entity might tamper with the evidence and/or influence the witnesses.

Right to Common Investigation and/or Adjudication

> A statute that reposes trust in its subject, must also be honoured by the subject. Any wilful breach of such trust necessarily invites penal consequences. However, the presumption of violation or breach cannot precede the assessment of compliance with the law

In case a corporate entity faces an investigation by a particular LEA on an identical issue at multiple locations, the entity should not be denied the right to seek convergence of all such enquiries at one location for the purpose of investigation and/or adjudication. This will substantially reduce the corporate's compliance cost.

Right to Explain Alleged Misconduct

A corporate entity should be afforded an opportunity at the initial stage of an investigation into an alleged offence, to explain its conduct and if, prima facie, it appears that the allegation is bereft of any substance, the enquiry should be dropped forthwith, rather than the investigator going on a wild goose chase. If the aforesaid rights are afforded to a business entity facing investigation, it will be beneficial both to the business and the investigation, leading to effective enforcement and good governance.

TAXPAYER RIGHTS: SAFEGUARDING FREEDOM AND FAIRNESS

The GST law provides taxpayers with comprehensive rights and robust safeguards, ensuring fairness and protection within the tax framework. Furthermore, in alignment with its citizen's charter, CBIC has issued several guidelines to safeguard those rights

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JOHN LOCKE, widely regarded as the father of liberalism, in his second treatise of government, famously remarked, "The end of law is not to abolish or restrain, but to preserve and enlarge freedom". This principle succinctly captures the essence of taxpayer rights within the framework of contemporary democratic societies. OECD in its Guidance note, General Administrative Principles - GAP002 Taxpayers' Rights and Obligations, has outlined several basic rights of the taxpayers - the right to be informed, assisted and heard, the right of appeal, the right to pay no more than the correct amount of tax, the right to certainty, the right to privacy, the right to confidentiality and secrecy. The CBIC's citizen's charter embodies all the basic rights of the taxpayers as outlined in the OECD guidelines. It explicitly states the protection of the honest taxpayer's rights as a core part of its mission. The rights of the taxpayers are integrated into the framework of the GST law just as they were integrated into the legacy legislation.

Effectiveness and fairness are the cardinal principles of a tax regime and they are intricately linked to the rights of the taxpayers. If a class of taxpayers is technically subject to a tax but is never required to pay it due to the inability to enforce the law, then honest taxpayers may view the tax as unfair and ineffective. Therefore, enforcement of tax laws is essential not just for revenue collection, but also for upholding effectiveness and fairness within the tax system. To ensure compliance with GST laws and regulations, the GST authorities employ various investigative methods. The investigation under GST may be letter-based, summon-based, inspection-based, search-based, or a combination of these methods. However, the obligation of the GST authorities to

ensure effectiveness and fairness does not preclude the taxpayers' rights. The collective right of the taxpayers to effectiveness and fairness does not extinguish their individual rights. The rights of the persons, specifically within the ambit of the GST investigation, are discussed in the following paragraphs. However, it is important to note that not all the rights mentioned below are explicitly provided in the GST and allied laws. Many of these rights are derived indirectly through various court rulings or departmental instructions.

Rights During GST Investigations

Rights Before, During and After Conclusion of Inspection/ Search Proceedings

The person in charge of the premises that has been authorised to be inspected/ searched has the right to verify the authorization for inspection/ search, check the ID cards and conduct personal searches of the officers and the independent witnesses. The personal search can be conducted both before the commencement of the search proceedings and following their conclusion. CBIC instructions dated 02.02.2021 also provided that the person in charge of the premises has the right to have a copy of the Panchnama drawn during the proceedings along with all its annexures. They also provide that the person(s) involved during the search have the right of their social and religious sentiments to be respected. The instructions provide for the right of the children to attend school and the right of the women to withdraw from the premises if they do not customarily appear in public. CBIC instructions dated 25.05.2022 provide that the taxpayer has the right to deny payment of tax involuntarily during the proceedings but in case the taxpayer agrees with the investigating agency's stand then

SNAPSHOTS

1. OECD guidelines outline several basic rights of taxpayers, including the right to be informed, assisted and heard, the right of appeal, the right to certainty, the right to privacy, and the right to confidentiality

2. The GST authorities may investigate taxpayers' activities using letter-based, summon-based, inspection-based, search-based, or a combination of these methods. However, the taxpayers' rights are not affected.

3. A person can appoint an authorised representative to appear before the investigating officer, but the representative cannot appear on their behalf for examination on oath or affirmation.

there is no bar in depositing the tax voluntarily.

Rights of the Person Arrested Under the GST Provisions

CBIC vide instructions dated 17.08.2022 has laid down the guidelines for arrest and bail. The instructions align with the guidelines laid down by the Hon'ble Supreme Court in the case of D.K. Basu vs. State of West Bengal, AIR 1997, SC 610. vide the said instructions, the rights of the arrested person have also been implicitly highlighted. The arrested person has the right to know the grounds of his/ her arrest. He/ She has a right to have a nominated/ authorised person informed as soon as practicable, of the arrest and the place of detention. The arrested person also has the right to receive a copy of the arrest memo. A woman can only be arrested by a female officer. Also, the arrested person has the right to be medically examined by a medical officer/ registered medical practitioner as soon as the arrest is made and in the case of women, the medical examination can only be conducted by a female medical officer/ registered medical practitioner. The arrested person has the right to be produced before the magistrate within 24 hours of the arrest, exclusive of the time necessary for the journey from the place of arrest till the Magistrate's court.

Right To Take Copies/ Extracts of The Seized Documents

The person from whose custody any documents are seized is entitled to make copies thereof or take extracts therefrom. However, this can be done only in the presence of an authorised officer and at such place and time as such officer may indicate. The right may be denied in case making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

> The person in charge of the premises has the right to verify the authorization for inspection/ search, check the ID cards and conduct personal searches of the officers and the independent witnesses. He/she also has the right to have a copy of the Panchnama drawn during the proceedings

Right To Have a Copy of The Statement and Retraction of the Statement

A statement recorded during an investigation is an important document and holds evidentiary value. Upholding the right to be provided with a copy of the statement, the Hon'ble Supreme Court in Amba Lal vs Union of India, 1961 AIR 264, has held that if the department wanted to rely upon the statement, it should allow the appellant to inspect it and supply a copy of such statement to the person. This judgement lays down the principle that a copy of the statement should be given in case the department wants to use the same as evidence in the proceedings. In most cases, the statement of a person is mentioned as a relied-upon document (RUD) in the show-cause notice (SCN) issued in the case and a set of RUDs is shared with all the noticees along with the SCN. In case the copy has not been provided then the concerned person has the right to seek it from the investigating agency.

Also, Statements given by a person during the investigation may be retracted subject to certain conditions. In this regard, the Hon'ble Supreme Court of India in A. Tajudeen v. Union of India, Civil Appeal No. 5773 of 2009 has held that "If findings could be returned by exclusively relying on such oral statements, such statements could easily be thrust upon the persons who were being proceeded against on account of their actions in conflict with the provisions of the 1973 Act. Such statements ought not to be readily believable, unless there is independent corroboration of certain material aspects of the said statements, through independent sources. The nature of the corroboration required would depend on the facts of each case." However, the retraction

must be made without delay and with corroborative evidence.

In the case of Kantilal C. Shah v. ACIT, 2011-TIOL-463-ITAT-Ahm, Income Tax Appellate Tribunal has held that "Law in respect of admissibility of a retraction is very well settled. There must be some convincing and effective evidence in the hands of the assessee through which he could demonstrate that the said statement was factually incorrect. An assessee is under strict obligation to demonstrate that the statement recorded earlier was incorrect and, therefore, based on the specific evidence later on retracted. Further, there should also be some strong evidence to demonstrate that the earlier statement recorded was under coercion. In the present case, the retraction is general in nature and lacks any supportive evidence. Rather the assessee took several months to retract the initial statement, which by itself created a serious doubt."

Right to Refresh Memory

Another related right that the person whose statement has to be recorded enjoys, is the right to refresh the memory of a witness, as provided under Section 159 of the Evidence Act (now replaced by section 162 of the Bharatiya Sakshya Adhiniyam, 2023). The person before or during the recording of the statement has the right to refer to books, documents, or records related to the subject investigation to refresh his/her memory.

The Right To Non-Compliance With Any Communication From The Department Wherein DIN (Document Identification Number) Is Not Mentioned

To leverage technology for fostering transparency and accountability, CBIC vide circular 128/47/ 2019 dated 23.12.2019 and circular 122/41/2019 dated 05.11. 2019, has made quoting of DIN in all official communications including e-mails from the GST authorities mandatory. It has been explicitly stated in the said circular(s) that any specified communication not bearing DIN shall be treated as invalid except in some specific circumstances. These specific circumstances are only when due to technical reasons DIN could not be generated or in case the authorised officer is outside the office in the discharge of his official duties and the communication has to be sent on

The GST law gives taxpayers several rights while simultaneously imposing specific obligations, ensuring a balanced approach to compliance and accountability. Taxpayers have an obligation to be forthright and cooperative during the investigation, to provide accurate information and documents on time, to maintain records for the specified period

an urgent notice. The communication issued without DIN should explicitly state that it has been issued without DIN, thereby keeping the addressee well-informed in case any review of procedural compliance is desired by them.

Right To Refuse To Provide Details In a Specific Format

Under the GST regime and other allied tax laws, the taxpayer is mandated to maintain certain records related to their business for a specified period. The taxpayers are obligated to provide the records sought by the investigating agency but in the case of Ebiz.Com (P.) Ltd. v. Union of India, the Delhi High Court has held that "What eBIZ was asked to submit was the information in a certain format designed by the DGCEI itself. This format is appended to the letter dated 11th May 2016, issued by Dr. Bedi to eBIZ. There is no requirement in law that eBIZ should maintain the information in a particular format." Further CBIC vide instructions dated 30.03.2024 has directed that a letter or summons should not be used as a means to seek information filled in formats or proforma (specified by investigation). Therefore, the taxpayer can refuse to provide the information in a specific format sought by the investigating agency, but at the same time, the information cannot be denied. The taxpayer can give the information through the records they have maintained, and the department must accept those records if the information sought is adequately available in those records.

Right To Representation

Any person required to appear before the investigating officer can appoint an authorised representative. Authorised representatives can appear before the GST authorities on behalf of taxpayers. This includes

attending hearings, submitting documents, presenting arguments, and responding to queries or notices issued by the investigating agency. However, the right is not available in case the person is required to appear personally for examination on oath or affirmation.

Right to Appeal

This right to appeal is an essential safeguard in protecting taxpayers' interests and ensuring accountability within the GST framework. Every action and decision of the investigating agency is subject to Judicial review. In addition to the constitutional guarantees available to the person, GST law inherently provides for the right to appeal and delineates the mechanism of appeal against any assessment, order, or ruling of the investigating agency

Rights and Obligations Go Hand in Hand

Sardar Vallabhai Patel's timeless words remind us, "Every citizen of India must remember that he is an Indian and he has every right in this country but with certain duties". Needless to say, rights are not independent of duties. They are inherently interconnected—two facets of the same coin. The GST law and allied acts afford taxpayers several rights while simultaneously imposing specific obligations, ensuring a balanced approach to compliance and accountability. The taxpayers have the obligation to be forthright and cooperative during the investigation, to provide accurate information and documents on time, to maintain records for the specified period, to pay taxes on time, to avoid unnecessary litigation etc. The rights and obligations are fundamental pillars that uphold the integrity of the GST system, ensuring equitable treatment for taxpayers, safeguarding governmental interests, and fostering adherence to regulatory standards.

> To leverage technology for fostering transparency and accountability, CBIC has made quoting of DIN in all official communications including e-mails from the GST authorities mandatory. Any communication not bearing DIN shall be treated as invalid except in some specific circumstances

Conclusion

The GST law provides taxpayers with comprehensive rights and robust safeguards, ensuring fairness and protection within the tax framework. Furthermore, in alignment with its citizen's charter, CBIC has issued several guidelines aimed at safeguarding those rights. Navigating the rights and obligations of taxpayers within GST investigation requires a delicate balance between enforcement and protection. Upholding the principles of due process, transparency, and equitable treatment is paramount to ensure a tax system that commands compliance and upholds the rights of taxpayers. In medio stat virtus.

CHALLENGES AND REMEDIES IN GST INVESTIGATION

Goods and Services Tax streamlines the country's tax system and empowers tax authorities to ensure compliance. However, these powers also bring the potential for overreach and arbitrary actions. While businesses are required to follow GST regulations, they also have rights that protect them from unfair investigations

By DR. G. GOKUL KISHORE

Advocate

RIGHTS are provided to enable the fulfilment of duties. Duties come first and rights follow though they are viewed as inseparable. When tax laws cast numerous obligations, some of them perceived as onerous, by empowering the tax authorities to take action prejudicial to taxpayers, rights guaranteed by such tax laws to circumscribe the powers of the authorities are sacrosanct. As tax laws have powers to encroach or deprive taxpayers of personal liberty or property, the safeguards provided to ensure such deprivation is as permitted by law have always been part of them. This paper seeks to not just highlight the rights of businesses under GST law but also attempts to hold a magnifying glass to the authorities and policymakers to drive home the need to make amendments.

Investigation Procedures under the CGST Act

The Central Goods and Services Tax Act, 2017 (CGST Act) and their counterpart SGST Acts contain provisions to ensure that businesses have the right to a fair and transparent investigation process. Section 67 of the CGST Act outlines the procedures for conducting searches and inspections. While procedures in general are not treated on par with substantive provisions in law, the procedures in respect of investigation themselves are substantive in nature. These provisions flow from the Constitutional guarantees in the form of various fundamental rights which mandate the investigating authority to follow the procedures without any deviation, ensuring that businesses are not subjected to arbitrary or unlawful actions.

Investigating authority needs proper authorization, typically in

the form of a written order from a designated authority for conducting a search of the business premises of the taxpayer. The authorization in common parlance is a search warrant and Courts have found fault when a search operation has been conducted without proper authorization. The taxpayer whose premises are being searched or even inspected has the right to request for authorization to be produced by the officers. Section 67(2) of the CGST Act requires the existence of reasons to believe before initiating such an operation. Reason to believe pertains to possible evasion but for such a threshold, Courts have held that there should be some prima facie material on record before proceeding with such an operation. While sufficiency of evidence is not the criterion for obvious reasons at the stage of investigation as the exercise of gathering evidence would have merely commenced, there should be minimal or prima facie evidence or material before the authority gives the nod for conducting such an operation. Businesses may not get to see such evidence as they are in the files and are not required to be disclosed. However, in cases where the taxpayer is absolutely compliant without any deviation whatsoever and the operation is a fall-out of perceived harassment, filing a writ petition in the High Court can be an option. The Courts call for records and when they find the absence of any material, the authorities are admonished.

Approval Requirements for GST Investigations

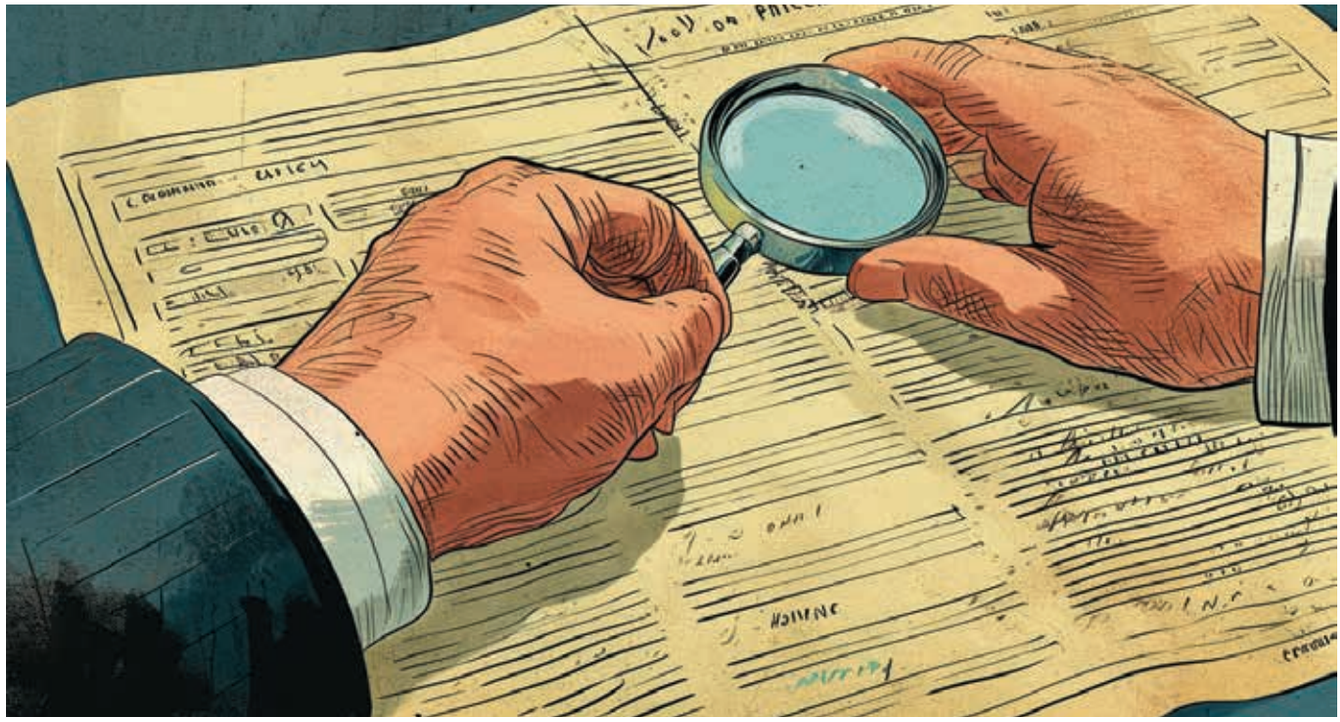
Central Board of Indirect Taxes & Customs (CBIC) has instructed that written approval of the Commissioner / concerned authority shall be required for initiation of investigation in matters involving interpretation seeking to levy tax for the first time, big industrial houses and major multinational corporations, sensitive matters or matters with national implications and matters already before the GST Council. While such approval may

SNAPSHOTS

1. The CGST Act, 2017 and their counterpart SGST Acts contain provisions to ensure that businesses have the right to a fair and transparent investigation process.

2. There is a lot of scope for amending Section 83 so that unfettered and unguided use by junior officers is reined in. As of today, Section 83 and Rule 159 do not provide for any effective safeguard.

3. GST law is still new, and the experiences drawn so far should be harnessed to make the law better. Obduracy will erode taxpayer's confidence in the law being less complicated or intended to further ease of doing business.



also be granted as a routine since the Commissioner may not be able to question his own team, businesses can, in appropriate cases, subject the same to scrutiny by Courts. Litigating at the stage of investigation is tricky as writ remedy is discretionary and Courts generally refrain from interfering with investigations except in cases of manifest arbitrariness or mala fide. The onus thus falls on the senior officers in the hierarchy of CBIC to consider the plea of taxpayers in an objective and neutral manner rather than being purely revenue-oriented.

Section 67(5) of the CGST Act requires officers to provide copies of seized documents to the person from whose custody they were seized. While the law grants certain leeway to the officers to withhold the same if sharing of documents is considered detrimental to investigations, such perception cannot be purely subjective and there should be objective material to entertain such notion. These are areas where the law does not provide any remedy to the taxpayer if such a request is rejected in genuine cases and writ remedy remains the only option since at the stage of investigation, in the absence of any notice, the adjudication process has not commenced, and appellate remedy does not exist. Provisions to escalate the issue to a higher authority if copies are not provided and penalty on officers if the same is deliberately withheld may have to be explored for insertion in the CGST Act.

The law provides for the release of seized goods on a provisional basis on execution of a bond and furnishing of security but the same is discretionary, Getting the seized goods released provisionally is not an absolute right though the law conveys it is. An amendment to unequivocally convey the intent of the law is required so that this right becomes inviolable.

The provision of timeframes is another area where the law seemingly guarantees certain rights. For instance, Section 67(2) states that seized goods must be returned within 30 days if they are not required for further proceedings. Businesses have the right to expect adherence to these timeframes but in practice, such provisions are not implemented. The decision as to whether all or some part of the goods are required for investigations is not taken immediately and only at the time of issuance of show cause notice, this issue becomes clearer. Such deviant implementation effectively

Central Board of Indirect Taxes & Customs has instructed that written approval of the Commissioner / concerned authority shall be required for initiation of investigation in matters involving interpretation seeking to levy tax for the first time, big industrial house and major multinational corporations, sensitive matters or matters with national implications and matters already before the GST Council

frustrates the objective of the introduction of timelines.

Article 20(3) and Self-Incrimination

It is settled law that advocates cannot be present when a person is interrogated and while recording a statement, but Courts have held that such representatives can remain at non-audible distance. This needs to be codified so that extra-legal or third-degree methods are not adopted during such a process since, in several cases, statements are challenged as obtained under duress and threat. Even when statements recorded before GST officers are admissible as evidence, the value is lost when they are retracted later. The whole system of recording statements, using them against businesses and Courts rejecting them needs to be overhauled by re-visiting the decades-old provision. The provision in CGST law is from the Customs Act which is age-old and meant to be an anti-smuggling measure.

Either such provision itself can be omitted or otherwise amended to provide for the recording of statements only if the taxpayer opts to record the same voluntarily. Nobody gains by having a provision which is prone to abuse where all statements are stated as recorded voluntarily while taxpayers can hardly be said to come forward to tender such confessional statements. Article 20(3) of the Constitution protects individuals from being compelled to be witnesses against themselves i.e., the right against self-incrimination. The provision on statements in GST law is neither in sync with the Constitutional principles nor can have a place in a law claimed as progressive and modern.

> Provision of timeframes is another area where the law seemingly guarantees certain rights. For instance, Section 67(2) states that seized goods must be returned within 30 days if they are not required for further proceedings

Summonses precede statements and time and again, instructions are issued by CBIC emphasising the need to refrain from issuing them frequently and calling CEOs and other top management personnel, but they hardly percolate down to the field formations. The power to call a person during an investigation using summons has the great potential for harassment as experiences in the past decades demonstrate. The police powers of GST authorities are meant for netting the hardcore evaders and not for use against general businesses who may be non-compliant in certain aspects but not per se evasionary or habitually tax delinquent in nature. To distinguish such finer points, sensitising tax bureaucracy every now and then through periodical orientation programmes may be explored. They should be made to hear the other side in such programmes to understand the pain and to make mends in the manner in which such provisions are implemented.

Cross-Empowerment and Multiple Authorities

The intended purpose of Section 6 of the CGST Act / SGST Acts is to protect a taxpayer from being subjected to proceedings initiated by multiple authorities on the same subject matter, even while simultaneously empowering the officers under the CGST Act or State GST Acts to take appropriate action not confined to jurisdictional allocation termed as cross-empowerment. Numerous disputes can be seen from various orders of High Courts on this issue, particularly at the stage of investigations and audits. From the interpretation of the term 'subject matter' to the notification on cross-empowerment, a whole range of issues have been litigated.

Section 6 remains immune from any amendment so far. The right sought to be ensured is effectively frustrated when DGGI, jurisdictional CGST officers, SGST officers and even audit teams of CGST or SGST officers pounce on taxpayers and Courts are crowded with segregating the issues involved and whether such multiple proceedings can or

cannot continue. Businesses have to spend a considerable amount of time and effort away from the core business in responding to different authorities. Instead of watching the courtroom battles and trying to douse through circulars, prudence lies in a possible amendment of Section 6. GST law is still new, and the experiences drawn so far should be harnessed to make the law better. Obduracy will erode taxpayer's confidence in the law being less complicated or intended to further ease of doing business.

Provisional attachment – Recovery Before Determination

Section 83 of the CGST Act allows the GST authorities to provisionally attach property/ bank accounts of the taxpayer to protect revenue interests. Rule 159 of the CGST Rules provides for the post-decisional opportunity of hearing in such cases. There is no requirement to issue notice apparently to pre-empt the taxpayer from taking any other measure. At the ground level, indiscriminate use of such provision continues to the extent that it is seen as a tool for recovery of tax even before liabilities are determined by due process of adjudication. Though a one-year time limit has been provided for such attachments, ever-greening is resorted to by extending the same once the first year expires. At the investigation stage, the tax administration may have genuine apprehension that the taxpayer may part with the assets or liquidate the bank balance and when the demand is raised, funds may not be available to satisfy the liabilities. However, placing an embargo on the operational accounts has a debilitating effect on the continued operation of businesses. From the salary of employees to payment to suppliers to meeting other overheads, everything gets stuck.

While the Commissioner is the proper officer to sanction such action, in reality, these decisions are taken based on the recommendations of junior officers without any meticulous scrutiny of such proposals. Ideally, a provision like Section 83 should not have a place in a law claiming to be modern though it may be justified as only an extension of similar provisions in pre-GST laws. There is a lot of scope for amending Section 83 so that unfettered and unguided use by junior officers is reined in. As of today, Section 83 and Rule 159 do not provide for any effective safeguard against misuse of such provision.

Rule 86A and Potential Demands

Blocking the utilisation of electronic credit ledger to bar the use of input tax credit for upto one year is a power used frequently and courts are also divided on whether even a negative balance can be frozen. Rule 86A of CGST Rules may require changes based on such judgments so that only that amount of credit balance is frozen which is expected to cover the potential demand since such action is taken during investigation and businesses find it insurmountable to discharge liabilities in the absence of ITC. These are provisions where the taxpayer has no right as there is neither any requirement to issue any notice nor pass any order. Even when statute seeks to build certain safeguards, the gulf between the book and the practice is so wide and in the absence of any such requirement, taxpayers have to face loss of reputation and uncertainty during this period

when they are apparently under investigation.

Detention of Goods and Vehicles – Justice on Road

Section 68 of the CGST Act and Rule 138 of CGST Rules contribute the most number of petitions filed in High Courts since the inception of GST. Detaining vehicles and goods on the road and seizing them for trivial reasons leaving no opportunity or time for the taxpayer to explain can be seen from most of the orders. Roving squads of SGST officers make the

transportation of goods a Herculean exercise. Left with no time or option as goods are urgently required and vehicles belong to transporters, taxpayers are compelled to pay a penalty of 200% to get them released. No effective investigation takes place post such release also. Everything from chargesheet to conviction happens on the road within a matter of a few hours. Replacing check posts with e-Way bills followed by on-road harassment has been one of the biggest drags of GST law. The e-Way bill should be abolished and the power to intercept and check vehicles in transit should be worded in such a manner that hanging the taxpayer on the road cannot be resorted to.

> The power to call a person during investigation using summons has the great potential for harassment as experiences in the past decades demonstrate. The police powers of GST authorities are meant for netting the hardcore evaders and not for use against general businesses who may be non-compliant in certain aspects

Right to Confidentiality

Section 158 of the CGST Act dealing with the disclosure of information by a public servant mandates that all information obtained during an investigation must be kept confidential. This protects businesses' trade secrets and commercially sensitive information. However, this confidentiality can be waived in certain circumstances, such as court proceedings or with the consent of the person who provided the information. Any information provided by businesses during investigations must be treated with utmost confidentiality by tax authorities. This right protects sensitive business information from being disclosed to unauthorised parties. However, in practice, one finds reproduction of agreements and contracts in several adjudication orders and orders-in-appeal. Even Tribunal orders contain such recitals which are not otherwise permitted to be disclosed. In certain proceedings, non-confidential versions of responses are shared and the same are used in orders. This practice can be explored for use in GST law by amending Section 158 so that replies filed by taxpayers are not reproduced extensively by the authorities passing orders.

Cancellation of GST Registration

GST authorities are empowered to cancel registration on specific grounds as provided in Section 29 of the CGST Act. These include business discontinuation, change in the constitution of business, person/business is not liable to be registered, non-filing of returns for a specified period, etc. Right to notice is as usual provided though writ petitions in High Courts showing blatant violations where cancellation is a surprise to taxpayers. Such cancellation is made with retrospective effect right from 1st July 2017 in many cases and GST Council / CBIC is yet to take any effective step to stem this issue. Cancellation is an extreme action which was rarely used in the pre-GST regime while the same is being used routinely in the GST regime even without any investigation. The provision on cancellation should be completely rejigged so that rampant use is contained.

An article generally ends with a conclusion but, in this write-up, the need to amend and omit certain provisions along with the gravity of issues have been highlighted in respective paragraphs so that businesses are not harassed during investigations. The investigating machinery needs to be trained as incapacity results in poor treatment of persons bringing disrepute to the entire tax administration. While fake invoicing, supply without movement of goods and other modus operandi resorted to for evading payment of tax are to be dealt with strictly, placing numerous restrictions on genuine taxpayers at the investigation stage needs a relook and course correction.

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LAST WORD

REVIVING THE NATIONAL LITIGATION POLICY

PIVOTAL STEP IN JUDICIAL REFORM

Long delays and the massive backlog of pending cases are some of the most urgent challenges in India's litigation process. To address these problems and ease the judiciary's burden, the newly endorsed National Litigation Policy is now awaiting Cabinet approval

LONG delays and the overwhelming backlog of pending cases are among the most pressing concerns in India's litigation process. The National Judicial Data Grid reports that a staggering 50 million cases are currently awaiting resolution in Indian courts. To tackle these issues, Arjun Meghwal, the Union Law Minister, has approved the National Litigation Policy (NLP), signalling a renewed commitment to judicial reforms in Modi 3.0. This policy aims to unclog the strained wheels of justice by reducing government-initiated litigation, which contributes significantly to the backlog.

The policy, which has been under revision for nearly 15 years, aims to establish competent and transparent management of legal disputes by reducing unnecessary government litigation. The policy seeks to free up valuable court time and resources, which can then be directed toward resolving the backlog of cases. The ultimate goal is to reduce the average case pendency time from the current 15 years to just three years. Last year, the Bombay High Court highlighted the government as the largest litigant and noted the growing gap between the number of judges and the Indian population.

As the government pushes forward with these long-awaited reforms, understanding the history and challenges of the NLP is crucial to appreciating its potential impact on India's judicial system.With this new policy, the government aims to become an efficient litigant, ensuring proper representation in legal proceedings. The dual objectives are to win meritorious cases and avoid pursuing frivolous ones. The policy emphasises addressing core litigation issues and managing cases in a coordinated, timely manner, while discouraging frivolous tactics.

The National Litigation Policy was introduced in 2010 with the primary aim of reducing the large number of cases involving the Central government, State governments, or Public Sector Undertakings (PSUs). Although the proposal was well-received within legal circles, it was never put into action. However, the Ministry of Law and Justice revisited the idea with the 'National Litigation Policy, 2015'. In a continued effort to implement this policy and reduce government-related litigation, the Department of Justice drafted the 'Action Plan to Reduce Government Litigation' in 2017. This draft acknowledged the issue of case backlogs and noted that all states had already established State Litigation Policies, with a National Litigation Policy anticipated soon.

The Department of Legal Affairs disclosed that Union ministries are the largest litigants, with the Ministry of Finance leading the list, having 2.85 lakh pending cases. In recent years, ministries and departments such as Railways and Revenue, which are involved in a significant number of litigations, have taken various steps to reduce the number of court cases. Despite its potential to streamline litigation and ease the burden on the courts, the policy has encountered multiple delays and revisions, hindering its implementation.

The updated policy suggests appointing a law officer in each department to take a comprehensive approach when filing new cases or defending ongoing ones. Cases with a slim chance of success will no longer be pursued. Initiatives have been launched to increase public awareness of newly amended criminal laws. The Law Ministry has organised symposiums, conducted training sessions for lawyers and judges, and established educational institutions focused on forensic science to aid in the implementation of new criminal laws.The growing use of technology in courts offers a significant opportunity for improvement like by digitising court records, adopting cloud technology, and conducting online hearings over the next four years.This approach aims to foster a more conciliatory tone in the government's disputes with the private sector, ensuring that the administration doesn't continuously escalate tax and other legal conflicts by appealing nearly all cases from lower courts to the Supreme Court.

In conclusion, the National Litigation Policy is a vital initiative aimed at alleviating the judicial backlog in India by limiting unnecessary government litigation. Implementing this policy would represent a major stride in the country's judicial reforms, allowing courts to focus on more critical and significant cases. With the current government's renewed commitment to this policy, there is optimism that it will finally be put into effect, offering much-needed relief to the overburdened judiciary.

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