



LAW COMMISSION OF INDIA

HUNDREDTH REPORT

ON

LITIGATION BY AND AGAINST THE GOVERNMENT :
SOME RECOMMENDATIONS FOR REFORM

May 1984

Justice K.K. Mathew

D.O. No. F.2(3)/84-LC.

Dated, the 8th May, 1984.

My dear Minister,

I am forwarding herewith the Hundredth Report of the Law Commission on "Litigation by and against the Government : Some recommendations for reform".

As has been explained in Chapter I of the Report, the subject owes its origin to the discussion that took place within the Law Commission on a few topics included in the Questionnaire issued by the Law Commission some time ago.

The Commission is indebted to Shri P.M. Bakshi, Part-time Member, and Shri A.K. Srinivasamurthy, Member-Secretary, for their valuable assistance in the preparation of the Report.

With regards,

Yours sincerely,

Sd/-

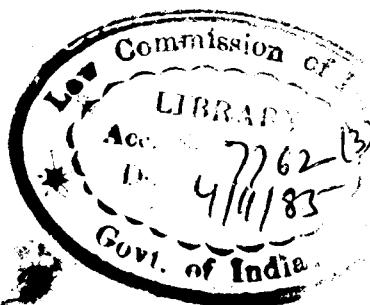
(K. K. MATHEW)

Shri Jagannath Kaushal,
Minister of Law, Justice
and Company Affairs,
New Delhi.

Encl. : 100th Report.

CONTENTS

CHAPTER	PAGE
1. Introduction	1
2. Section 80, Code of Civil Procedure, 1908, and Cognate Provisions	2
3. Litigation Ombudsman—Proposal For	6
4. Limitation in Suits by the Government	9
5. Conclusion and Summary of Recommendations	10



CHAPTER 1

INTRODUCTORY

1.1. This Report deals with certain areas of the law relating to litigation by **Scope and genesis.** and against the Government. Without purporting to embark upon a comprehensive survey of the entire field of such law, this Report will confine itself to certain aspects of the subject which call for urgent attention. The recommendations made in this Report owe their origin, in part, to the discussions that took place within the Law Commission on a few of the topics that were included in the Questionnaire issued by the Commission some time ago, dealing with certain matters concerning the structure and functioning of the higher courts.¹

Q. 19 of that Questionnaire read as under:—

“Are over-zealous departments of the Government responsible for increase in the court’s calendar?”

This question has provoked some thinking relating to Government litigation. There are also a few other aspects of Government litigation, deserving of serious attention.

1.2. A pretty large bulk of litigation in the courts, including, in particular, writ petitions before the Supreme Court and the High Courts, consists of cases to which the Government is a party. The hardship that is caused to parties in such litigation, and also the delay experienced in its disposal, are largely due to some defects in the law and in the administrative apparatus. This was the impression which the Commission has formed.² Some of the replies received on the questionnaire issued by the Commission (referred to above) also confirm this impression.³ It would seem that over-zealous Government Departments, or officers who are not properly oriented or guided, often miss the point of the matter, thereby unknowingly contributing to a sizeable mass of litigation against the Government which could have been avoided.⁴ It is to remedy this situation that the Commission has considered it proper to deal with certain specific aspects of such litigation which (as stated above) seem to need urgent attention. **Departments’ approach.**

1.3. The succeeding Chapters of this Report focus attention upon the **Contents of the following specific topics relevant to litigation by or against the Government:— Present Report.**

- (1) Section 80 Code of Civil Procedure, 1908 (notice required for suit against Government or public officers) and cognate provisions contained in other enactments.⁵
- (2) Litigation Ombudsman—need for.⁶
- (3) Limitation in suits by the Government.⁷

1.4. It may be mentioned at this place that several aspects of litigation **Earlier Reports.** against the Government have been dealt with in earlier Reports of the Commission. These include, in particular, the Reports of the Commission relating to the Code of Civil Procedure, 1908, the law of limitation, Governmental privilege in evidence, statutory provisions requiring notice to be given of intention to file a suit against the Government, public officers or public authorities (apart from section 80 Code of Civil Procedure, 1908), and the like. It is not necessary for the present purpose to give an exhaustive enumeration of these Reports. The present Report has sought to focus upon some important aspects of litigation by and against the Government, in view of their urgent and pressing importance in the context of court congestion, justice to the citizen and the concept of the welfare State.

1. Questionnaire issued by the Law Commission of India, particularly Q. No. 19.
2. See also the observation in *D.R. Jerry V Union of India*. AIR 1974 SC 130, 135, 136 para 25.
3. E.g. Law Commission collection of comments, page 19/4 (requiring notice of intention to sue Government).
4. See cases cited in Chapter 2, *infra*, paragraphs 2. 5 to 2. 13
5. Chapter 2, *infra*.
6. Chapter 3, *infra*.
7. Chapter 4, *infra*.

CHAPTER 2

SECTION 80 CODE OF CIVIL PROCEDURE, 1908 AND COGNATE PROVISIONS

Notice under section 80(1), Code of Civil Procedure.

2.1. We first address ourselves to the statutory provisions requiring a prospective plaintiff to give a notice of suit before commencing litigation against the Government or public officers. By virtue of section 80(1) of the Code of Civil Procedure, 1908, a prospective plaintiff must give two months' prior written notice of any suit which he intends to file against the Government, or against any public officer for an act purporting to be done by the latter in his official capacity. If such a notice is not given, or the notice (even if given) is erroneous or defective, the suit must be dismissed. This is the gist of the provision contained in section 80(1) of the Code. By the amendment made in this section in 1976, some relaxation of the provisions of the section has, no doubt, been made, by inserting sub-sections (2) and (3), which will be adverted to presently.¹ But these amendments touch only the fringe of the section. The hardship caused by the section—a section which has been held to be mandatory and "to admit of no exceptions or implications"—continues substantially unabated. The hardship results not so much from the existence of a statutory provision requiring prior notice of litigation, as from the fact that the apparently harmless section has, in practice, been the source of innumerable controversies and has afforded an opportunity for the raising of technical objections by the Government on almost every conceivable ground. The frequency with which such objections are raised will be apparent from illustrative cases, discussed later in this Chapter.²

Relaxation made in section 80(2) effect of,

2.2. The Law Commission of India had, in successive Reports on the Code of Civil Procedure 1908, recommended total repeal of section 80 of the Code, but the amending Act of 1976 merely made certain modifications in the section. We have already stated above³ that the relaxations introduced in the section by sub-sections (2) and (3) touch the fringe of the problem. By sub-section (2) it is, in effect, provided that the cases of urgency, a suit may be entertained by the court without notice required under sub-section (1). However, what the sub-section gives by one hand, it takes away by another hand. For, it also lays down that if notice has then not been given, interim relief (say, by way of an interim injunction) shall not be granted by the court in such a suit.

Not only this, the proviso to sub-section (2) of section 80 goes further and enacts that if (in a suit filed without notice) the court takes the view that there was no urgency, it shall return the plaint to the plaintiff for presentation after the plaintiff has given the requisite notice. It appears to us that this sort of provision is bound to create considerable delay, expense, and trouble. A litigant, *bona fide* believing the case to be one of urgency, institutes a suit without the notice required by section 80(1). The court does not agree with him that the matter is urgent. So the court returns the plaint. The litigant must now give a notice as required by the section, go to the court again, pay further fees to counsel, incur other incidental expenses again and then present the plaint again. All this time, he would be denied the interim relief that was desired by him. What is more, the litigant would be spending his time going to and coming back from the court, without securing the substantive redress that he sought for his grievance, and without being able to secure even a firm date for an effective hearing of the controversy. Sub-section (2) of section 80 of the Code thus, when read with the proviso, is hardly an improvement on the pre-1976 position.

Section 80(3) effect of.

2.3. Take, next, the provisions of sub-section (3) of section 80, also introduced by the amendment of 1976. In effect, it provides that if a notice has been given, then the suit shall not be dismissed by reason merely of an error or defect in the notice if the relief and the cause of action are set out in the notice as given, the name of the plaintiff can be ascertained by the Government. Here again the apparently simple provision, no doubt inspired by good intentions, can still lead to controversies in practice. For, the litigant may *bona fide* believe that he has, in his notice, set out properly all that is required by the law, but the court may not agree with him. He must then take the risk of the suit being

1. Paragraphs 2.2 and 2.3, *infra*.

2. Paragraphs 2.5 to 2.10, *infra*.

3. Paragraph 2.1, *supra*.

dismissed for want of notice. Apart from that, the sub-section leaves it open to the defendant (the Government or the public officer) to take the plea that the relief and the cause of action were not accurately set out. The manner in which the provision is framed, that is to say, the great scope that it leaves for controversies, cuts down even the small benefits that the sub-section intends to confer. Above all, it leaves open the scope for technical defences being put forth by over-zealous Departments of the Government.

2.4. The real objection to such provisions making a notice mandatory is that they divert the attention of the court and the parties from the essential issues in controversy, and force them to spend their time on merely secondary issues. The cause of justice is thus defeated and procedural provisions, which should really help justice, become obstacles in its achievement. Procedural provisions should be so framed as to facilitate justice, and not to hinder it. Unless there exist adequate countervailing factors to justify such provisions which bar a suit, they ought not to find a place in the law. True approach.

2.5. In this context, it is relevant to mention that experience of the practical working of section 80 shows that it creates more problems than it solves. In fact, the section solves no problems at all. This was emphasised by the Law Commission in its earlier Reports on the Code.^{1 2} Lest it should be thought that the amendments of 1976 have improved the position, let us record here that a perusal of the case law of recent years does not show any substantial improvement. By way of illustration, we refer in the next few paragraphs to a few reported decisions of the last few years on the section. Recent case law.

2.6. Thus, in a Madras case³ the objection was raised by the Government that in a suit against the Central Government relating to railway, the notice should have been served personally on the officer concerned. The contention, of course, did not succeed, the court finding that it was enough to leave the notice at the office of the General Manager of the Railway in the hands of a responsible senior officer. The defence put forth was hyper-technical, to put it at the lowest. A case from Kerala⁴ shows that State authorities still persist in raising in litigation, pleas which are purely technical. In fact, the plea of the State in the Kerala case was not only technical, but also totally misconceived. The plaintiff had sued the State of Kerala and its employee, the driver of a police jeep, for damages in tort, for injuries sustained by the plaintiff on account of the negligence of the employee in driving the jeep. However, the plaintiff had not given to the employee the requisite statutory notice under section 80, Code of Civil Procedure, 1908. This failure of the plaintiff to comply with the mandatory requirement of the procedural law was relied upon a defence, not by the employee, but by the State, even though the notice to the State had been duly given. The State took the plea that the suit was not maintainable, because notice had not been given to the employee. Fortunately, the High Court rejected the plea. The facts of the case are not material, though it should be added that the plaintiff succeeded on the merits also. It is surprising that a defence of want of notice should have been raised by a party (the State), which itself had due notice of the suit and whose liability was, in any case, distinct from that of the other defendant. That the plea of want of notice was ultimately rejected was a stroke of good fortune. But one is pained by the harshness caused by the restrictive provision in section 80, Code of Civil Procedure, 1908. This provision has, in practice, found to be productive of serious injustice. The provision has been adversely commented upon, more than once, by the courts.⁵ Its continued retention on the statute book in disregard of the strong and well-reasoned plea for its repeal made by the Law Commission of India in successive reports on the Code of Civil Procedure, 1908, not only causes injustice (as stated above), but is also responsible for considerable expenditure of judicial time and labour, thereby increasing delay in the disposal of civil cases. Formal defects in the notice, or in its service. Madras and Kerala cases.

1. Law Commission of India, 27th Report.

2. Law Commission of India, 54th Report.

3. *Union of India v. T.N. Small Industries Corpn. Ltd.* A.I.R. 1981 Mad. 316, 317, (1981) 2 M.L.J. 189.

4. *N.S. Jayanandan v. State*, A.I.R. 1983 Ker. 46 (February).

5. See, for example *State of Punjab v. Geetha Iron & Brass Works*, A.I.R. 1978 S.C. 1608; (1978) 1 SCC 66.

A Rajasthan case.

2.7. The same hyper-technical approach by the Government is illustrated by the defence taken (though unsuccessfully) by the State of Rajasthan in a Rajasthan case.¹ In that case, the plaintiff had given a combined notice under section 106 of the Transfer of Property Act, 1882 (notice to a lessee to quit) and section 80, Code of Civil Procedure, 1908. The contention of the State was that such a combined notice cannot be given. Fortunately, the contention did not succeed. But it is painful to have to refer to such cases and to point out that the defence taken was a totally untenable one. Neither section 106 nor section 80 provides anywhere that the notice under the provision in question must contain nothing else. Nor does there exist, in the statutory or decisional law of India, any provision that if two statutory provisions require or contemplate intimation of two different matters, the person bound to give such intimation must embody each matter in a separate document. In fact, an earlier Bombay case had specifically held that the notices could be combined.² Nor is there any principle of justice, equity and good conscience that necessitates a pedantic approach. That the defence did not ultimately succeed in the Rajasthan case is poor consolation to the litigant who must have spent sufficient time, energy and money in combating the defence. It is also a poor justification for the wastage of judicial time. In the Rajasthan case, the Government Advocate was unable to point out how Government was prejudiced by a combined notice.

Mention of wrong particulars.

2.8. In a Delhi case,³ in the notice given to the railway authorities, the main station was mentioned, instead of the city booking office. An objection was raised that this defect invalidated the notice. Fortunately, the objection was overruled. Similarly, in a Patna case,⁴ the notice under section 80 mentioned a wrong number of the railway receipt, though the correct number was mentioned in the plaint. On this score, an attempt was made to invalidate the notice. However, the attempt failed.

Injustice caused by section 80.

2.9. In all these cases, the objection under section 80 was wrongly taken. Even where the objection under section 80 is correctly taken, some injustice may arise. This is illustrated by a Madras case.⁵ The claim was made against the Railway by both the consignor and the consignee of goods. The consignor had given notice under section 80, but the consignee had not. The High Court held that the plaintiff was liable to be rejected owing to failure of the consignee to give notice under section 80, and that the consignor (even though he had given notice) could not proceed with the suit, since the claim was not severable. We are not discussing here the question whether the court could have taken a different view on the particular point at issue. For the present purpose, we may assume that the conclusion reached by the court is in accordance with the terms of section. But the point to make is, that although the letter of the law was implemented, the plaintiffs must have left the court with an acute sense of injustice in their hearts. In this sense, the section, even where it is correctly applied, is bound to lead to a feeling of injustice. Besides this, rejection of the plaint for mere want of notice would mean that even a meritorious case yields no fruits. For all that one knows, the substantive claim might have been justified on the merits, and yet the section entails its dismissal.

Defects in the contents of the notice under section 80.

2.10. The judicial decisions noted above relate to defects in the form of the notice given under section 80 of the Code, or in the mode of its service. The Law Reports also furnish instances of defects in the contents of the notice. In this context, we may refer to an Allahabad case⁶ wherein the controversy related to the meaning of the expression "cause of action" as occurring in section 80. Though the High Court observed that the notice under section 80 was not to be construed in a pedantic manner and that the courts ought not to be hyper-technical in that regard, the suit was ultimately dismissed, as the reason why the order of dismissal was illegal, was not set out in the notice.

1. *Rawat Hardeo Singh, v. State of Rajasthan*, A.I.R. 1981 Raj. 280, 282, 283.
2. *Rayabai v. State of Maharashtra*, AIR 1973 Bom. 59.
3. *Vijay Automobiles, Delhi v. Union of India*, A.I.R. 1981 Delhi 51.
4. *Bishwanath Prasad v. E. Rly.* A.I.R. 1978 Pat. 223.
5. *Doom Dooma Tea Co. v. Union of India*, (1982) 1 MLJ 85, 90 (reviews case law).
6. *Gamaruddin v. Union of India*, AIR 1982 All 169, 170, 171.

2.11. The injustice resulting from section 80 becomes manifest when one bears in mind that it is not possible to grant ex parte interim relief in the form of injunction on the ground of urgency, by invoking the inherent powers of the court. Section 80 mandatory.

Notice under section 80 is a condition precedent, even for a suit for injunction.¹

2.12. It is not our intention to present here anything like a digest of recent cases on section 80 of the Code of Civil Procedure. Nor is it necessary to do so. The illustrative cases, taken above from the law reports, give a fairly accurate idea of the general approach. There must be many other cases wherein similar objections might have been taken, successfully or otherwise. The general approach on the part of Government in regard to the process of litigation seems to be this. "If there exists, on the statute book, a provision whereunder a defence about non-maintainability of the suit can be conceivably taken, then take it, whether or not the facts of the case substantiate the defence, and whether or not the justice of the case demands that the defence should be resorted to." One cannot perhaps blame the officers of Government for raising such defences, because they might be labouring under the impression that if they do not take every conceivable defence, they might be regarded as "negligent" in the discharge of their official duties. What needs to be pointed out is that the existence of a provision of the nature contained in section 80 gives rise to the urge to resort to such defences in almost every case. The case law summarised above shows that the amendment made in 1976 has not made any improvement in this regard. Attitude of Government officers.

2.13. What surprises one is the fact that the Government thinks it proper to resort to such defences, when, by the institution of the suit, the object of giving notice to Government has already been satisfied. The only object of section 80 of the Code of Civil Procedure, 1908 is to give an intimation to the Government of intended litigation, so that Government may consider the position and, if so advised, redress the wrong.² Once the suit is instituted, this object (of giving an intimation to the Government) is automatically achieved. After this, the Government should consider the legal position, rather than lay stress on the technical non-compliance with the law. The fact that the section creates a defence does not necessarily mean that the defence must be resorted to, in every case. But it appears that this has been the general approach adopted by the Government. The real object of the section—of giving prior intimation of proposed legal proceedings so that Government (if so advised) may make amendments—is hardly, if every, achieved since the notice, even in those cases where it has, in fact, been given, does not receive prompt attention. In fact, this real object has got obscured and the emphasis has shifted to the negative attitude of using the section only as a shield. Object of notice.

2.14 The futility of the present provision in section 80 has been very emphatically pointed out in a judgment of the Supreme Court.³ It states that the notice under section 80 is intended to alert the State to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted. The Court further points out that the section has become a ritual, because the administration is often unresponsive and hardly lives up to Parliament's intention in continuing section 80 in spite of the Central Law Commission's recommendation. Incidentally, it may be of interest to mention that the recommendation of the Law Commission to repeal section 80, as made in its Report on the Code of Civil Procedure (54th Report), was expressly referred to (with approval) in a judgment of the Supreme Court⁴ in 1974. Observations of the Supreme court.

2.15. In view of all that has been stated above, we very strongly recommend the repeal of section 80 of the Code of Civil Procedure, 1908. Repeal of Section 80, C.P.C. recommended.

1. *State of Tripura v. Sajal Kanti Sengupta*, A.I.R. 1982 Gauhati 76.

2. See paragraph 2-14, *infra*.

3. *State of Punjab v. Geetha Iron & Brass Works*, A.I.R. 1978 S.C. 1608 (1978) 1 S.C.C. 68.

4. *J.R. Jerry v. Union of India*, A.I.R. 1974 S.C. 130, 135, 136, para 25.

2.16. For the same reasons, we also recommend appeal of other statutory provisions requiring notice of suit against public authorities. These provisions are conveniently collected in an earlier Report of the Law Commission.

2.17 Before concluding our discussion of statutory provisions as to notice of writ petition, we would like to state that at present the existence of such provisions, in many cases, induce prospective litigants having a legal grievance against the Government to resort to writ petitions, for which no statutory notice is required. The deletion of such provisions, is therefore not only justifiable on the merits (for the reasons discussed in the preceding paragraphs), but would also indirectly help reduce the number of writ petitions in the higher courts.

CHAPTER 3

LITIGATION OMBUDSMAN—PROPOSAL FOR

3.1. We now turn to certain other aspects of litigation concerning the Government. It is a noticeable feature of the pattern of litigation in the last few years that parties think it proper to approach the higher courts (i) not only for redress regarding governmental acts which constitute an infringement of legal rights; (ii) but also for redress regarding governmental acts which, while they may or may not amount to infringement of a legal right, constitute instances of "maladministration". Official acts belonging to the latter category lie on the outer confines of "illegality". Some of these acts may not be legal wrongs, and may be found to be bordering rather on "impropriety", outside the region of "illegal acts". But all such acts, whether they represent wrongs for which legal redress can be claimed or whether they represent administrative improprieties for which the courts should not be approached for redress, often find their way to the courts. Official apathy, oppression, unimaginativeness, lethargy or misunderstanding—these and similar factors are responsible for the parties seeking redress in courts. Sometimes, one suspects, the parties venture out and seek relief in courts, even though they may be fully aware that the issue is not a justiciable one. In doing so, their object is more to give vent to their sense of injustice, than to obtain legal relief as such.

3.2. Taking due note of this background, we are of the opinion that there is need for evolving some mechanism whereby the pressure on the courts, occasioned by the present state of affairs,¹ could be relieved and grievances of citizens which are of a legal nature could be redressed quickly and cheaply. Such a mechanism would advance the cause of justice, and also check the influx of cases into the higher courts.

Of the two categories of official acts regarding which a grievance is made in courts,² the first category constitutes a large number, speaking statistically. With the passage of time, such acts—i.e. acts where the misconduct complained of is an instance of justiciable illegality—will come more and more before the courts, either through proceedings taken by individuals in the shape of writ petitions before the higher courts, or in the form of proceedings initiated by public-spirited bodies under the category of "public interest litigation."³

3.3. In our view, there is need for evolving a device that will take of the first category of cases mentioned above.⁴ It is common experience that once litigation commences, there is considerable expense of time, money and labour in all quarters. As far as possible, the administrative apparatus should be so geared that the possibility of unnecessary litigation against the Government is avoided. It is with this end in view that we envisage the creation of an office of Litigation ombudsman. He will be a functionary to whom prospective litigant may (not must)⁵ have recourse for the redress of their grievances of a justiciable character.

1. Law Commission of India, 56th Report (Notice of suit required under certain statutory provisions).
 2. Paragraph 3.1. *supra*.
 3. Paragraph 3.1. *supra*.
 4. Paragraph 3.1. *supra*.
 5. See paragraph 3.5. *infra*.

3.4. We further envisage the enactment of a law to implement the recommendation made above regarding creation of the office of Litigation Ombudsmen. The broad scheme that we have in mind is set out in the following propositions, which seek to indicate the salient features of the scheme as envisaged by us.

Salient features of the scheme recommended.

The office, and its organisation

(i) The office of Litigation Ombudsman should be created by each State Government for the State and by the Central Government for such of the Ministries of that Government as may be specified by that Government.

(ii) The Litigation Ombudsmen should be a person who is a retired Judge of the High Court in the case of state or a retired Judge of the Supreme Court in the case of the Centre.

(iii) His appointment should be made, at the Centre, in consultation with the Chief Justice of India and in the States, in consultation with the Chief Justice of the High Court.

(iv) His appointment should be made for a term of three year and he should not be removable from his office except in the manner laid down in the Constitution for the removal of a High Court Judge or of a Supreme Court Judge, as the case may be.

(v) Where necessary, he should be assisted by such number of deputies as may be required.

The Procedure

(vi) It should be open to any member of the public who proposes to take out writ proceedings against the Government, to address a letter to the Litigation Ombudsman at the centre or in the State (as may be appropriate) setting out his grievance and requesting appropriate relief in specific terms as far as possible. No formal application for the purpose should be required. [In the succeeding subparagraphs, we are describing the member of the public as "applicant", only for the sake of convenience.]

(vii) The Litigation Ombudsman should, after due examination of the matter, inform the applicant, in writing of his recommendation in the matter, with a copy to the Ministry or Department concerned.

(viii) The reply of the Litigation Ombudsman to the applicant should be communicated to the latter, within two months of the receipt of the application. Where it is not possible to do so by reason of non-availability, or delay in the receipt, of necessary information from the Ministry or Department concerned, a communication to that effect should be sent out to the applicant within the period of two months.

Grounds of recommendation to be made by Litigation Ombudsman

(ix) The grounds on which the Litigation Ombudsman may make a recommendation should be wide enough. He should have power to make a recommendation with respect to any decision, act or omission of the Government or its officer, if he is satisfied that the decision, act or omission:—

- (a) was contrary to law; or
- (b) was unreasonable, unjust, oppressive, or improperly discriminatory, or was in pursuance of a rule of law or a provision of any enactment or a practice which itself is unreasonable, unjust, oppressive, or improperly discriminatory, wherein the circumstances legal redress could have been claimed.
- (c) was based wholly or partly on a mistake of law; or
- (d) was wrong in law; or
- (e) involved the exercise of a discretionary power for an improper purpose, or on irrelevant grounds, or by taking irrelevant considerations into account, or omitted to give reasons where reasons should have been given for the decision.

1. Paragraph 3.3. *supra*.

(x) The Litigation Ombudsman, in his discretion, may refuse to investigate or may cease to investigate, a grievance:—

- (a) if it is trivial, frivolous or vexatious or is not made in good faith, or
- (b) if the facts alleged show no legal cause of action and no impropriety of the nature mentioned above.

Administrative Matters

(xi) All Ministries and Departments of the Government should be bound to co-operative with the Litigation Ombudsman by rendering him such assistance and supplying him such information as he may require for the proper discharge of his duties.

(xii) The Annual Report of the Litigation Ombudsman shall be placed before Parliament or State Legislatures, as the case may be.

(xiii) The Annual Report of the Ministry or Department concerned shall state the action taken on the preceding year's Report of the Litigation Ombudsman.

Exemption from the Scheme

(xiv) The scheme set out above will not apply to State where an Ombudsman appointed under a State enactment for the time being in force in functioning.¹

Reason to Ombudsman not compulsory.

3.5. We should, at this stage, repeat that it is not our intention that there should be any sort of legal compulsion against a citizen (who wishes to sue the Government) to make an application to the proposed Litigation Ombudsman, as a pre-requisite to the initiation of legal proceedings against the Government. The object of the recommendation is only to provide to the citizen a forum from which he may, if so advised, first seek relief. There should be nothing mandatory in the scheme, for the citizen.

As for the Government, it will be able to have, within its apparatus, a functionary who may be expected to furnish prompt, competent and honest advice on matters likely to lead to litigation. If carried out in its proper spirit, and not in a pedantic and bureaucratic manner, the recommendation would, we hope, advance the cause of substantive justice, improve the image of the Government and, to some extent, reduce congestion in the courts.

Approach to be adopted by the litigation Ombudsman and its likely beneficial impact on court congestion.

3.6. Although the majority of matters which will reach the Litigation Ombudsman—or, at least, a large number of them—may be expected to raise justiciable issues, some of them might raise matters which border on impropriety, rather than constitute an illegality for which relief can be claimed in the courts.²

In some cases, citizens, or groups of citizens, approach the higher courts for ventilation of their grievances even though the justiciability of the issue is doubtful. Such approach to courts is perhaps regarded as unavoidable because the citizens consider it to be the only effective way of expressing their feelings in a formal and public manner before an institution where the matter is bound to receive some hearing, even if ultimately that institution may not be able to look into the grievance. According to our recommendation, such type of cases will be outside the province of the Litigation Ombudsman as proposed. Of course, such other administrative machinery as the Government may consider proper can still be constituted, wherever necessary.

States having Lokayuktas.

3.7. We are aware that in some of the States in India Lokayuktas have been already appointed under enactments passed by the State Legislature. Our recommendation for the appointment of a Litigation Ombudsman is not intended to apply to such States. In general, cases of maladministration would be taken care of by the Lokayuktas so appointed. Of course, the Lokayukta is often viewed as a functionary primarily concerned with corruption, but the office can be easily moulded to look into cases of the nature that are to be assigned to the Litigation

1. Paragraph 3.7. *infra*.

2. See also paragraph 3.2, *supra*.

Ombudsman as proposed by us. In fact, the concept of Ombudsman, as evolved in Western countries, is wide enough to cover maladministration in all its species. If necessary, the States concerned can amend the relevant State enactment for the purpose. The creation of a separate office of Litigation Ombudsman in such States, functioning side by side with the local Lokayukta, might create some overlapping in practice and some confusion to the citizen. It is in order to avoid such overlapping and confusion, that we would, at least for the present, exclude such States from the ambit of our recommendation relating to Litigation Ombudsman.

3.8. We further recommend that appropriate legislation should be enacted by Parliament to implement the recommendations made in this Chapter. As regards Parliament's competence to enact such a law, we may state that such legislation would fall, in part, within the entries in the Seventh Schedule to the Constitution relating to "Civil procedure" and "administration of justice",¹ and, in part, within the entries relating to the substantive subjects to which the particular litigation may relate.

Legislation recommended.

CHAPTER 4

LIMITATION IN SUITS BY THE GOVERNMENT

4.1. The law of limitation in India, allows to the Government, in regard to suits instituted by it, a period of thirty years, irrespective of the nature of the cause of action.² This is provided in article 112 of the Limitation Act, 1963, which applies to all suits instituted by the Government—Central or State, with an exception of minor importance not material for the present purpose.

The law of limitation and suits by the Government.

The period allowed to Government is much longer than that allowed in respect of suits by private parties. Suits by private parties are governed by varying periods, depending upon the nature of the cause of action and other relevant circumstances. For most suits relating to causes of action not concerned with immoveable property, the period available to private parties is three years. In contrast, the Government is allowed a uniformly long period of thirty years, under article 112 mentioned above.

4.2. The disparity between the law as applicable to the Government and the law as applicable to private parties is usually sought to be justified on the ground that Government is a vast apparatus, with matters being required to be handled at different levels in different departments, and more time is, therefore, required for preparing the material for any litigation that may become necessary.

Disparity productive of hardship.

This reasoning, assuming that it is sound, misses the other aspect of the matter, namely, the hardship caused to the prospective defendant.

The present position is often productive of hardship, inasmuch as the private party who is likely to be used by the Government must keep and preserve his documents for a long time to come. The present discriminatory provision totally disregards the considerations that underlie the law of limitation and constitute its rationale. The rationale of the law of limitation is that after a long lapse of time, the evidence that the defendant might have in his possession may get lost, that witnesses may die or their memory may suffer and that valuable evidence may perish. Further, the pursuit of stale demands is, in itself, an act likely to be productive of oppression. In the face of these considerations, which apply as much to claims of the Government as to claims of private parties, there should exist very strong counter-balancing factors in order to justify the legislature in allowing a very long period in favour of Government. We think that, on the balance, a case for such special treatment favouring Government has not been made out.

4.3. The Law Commission has given a comprehensive Report³ on the Limitation Act, 1963, but at that time attention was focussed upon the need for revision of the Act in the light of conflict of decisions and the like—the usual material for

Earlier Report of the Law Commission.

1. Constitution Seventh Schedule, Concurrent List entries 13 and 11A.

2. Article 112, Limitation Act, 1963.

3. Law Commission of India 89th Report (Limitation Act 1963), Paragraphs 39-51, 39-52.

law revision. The point now being emphasised has arisen as a result of the thinking within the Commission on the subject of litigation by Government, and has accordingly been dealt with in this Report.

Recommendation. 4.4. On an examination of the subject in the context of working of the courts and quick disposal of cases, we have considered it proper to go into this aspect more specifically.

Our recommendation is that no special treatment should be accorded to the Government in the matter of the period of limitation and that articles 112 of the Limitation Act, 1963 should be deleted so as to abolish the special treatment afforded to Government and to remove the distinction at present made in regard to suits by the Government and suits by other persons and entities. In our opinion, a long period of limitation available to the Government is, in many cases, likely to induce an attitude of indifference and apathy. In the mind of the private person, the apprehension that the claim of the Government against him can be litigated in the civil court after a long period has elapsed, is productive of a sense of insecurity and anxiety. This state of affairs is out of harmony with the concept of a Government committed to the welfare of the people.

CHAPTER 5

CONCLUSION AND SUMMARY OF RECOMMENDATIONS

Conclusion. 5.1. By way of conclusion, we may state that the subject of litigation against Government is a vast one, of which only a few aspects have been touched upon in this Report.¹ These aspects have been chosen in view of their pressing relevance to the cause of justice.

Incidentally, one of our recommendations—that for the creation of an office of Litigation Ombudsman should, we think, have the effect of relieving congestion in the higher courts and may, therefore, be considered as a measure of urgency. But we give equal importance to the other recommendations made in this Report. Not reforming the law on the matters on which these recommendations contemplate a reform would, we think, amount to perpetuating injustice.

Summary of recommendations. 5.2. For convenience, we summarise below the recommendations made in this Report:—

- (i) Section 80 of the Code of Civil Procedure, 1908, which requires prior notice of intention to sue the Government or a public officer for an act done by the latter in his official capacity, should be repealed.²
- (ii) Cognate provisions contained in other special enactments should also be repealed.³
- (iii) There should be appointed at the Centre and in the States, a Litigation Ombudsman on the lines indicated in the Report, with the functions set out therein. Briefly, the scheme envisaged is that it should be open to a citizen to approach the Litigation Ombudsman and seek redress of a justiciable grievance against the Government. The citizen need not resort to litigation—litigation which could well have been avoided if the official machinery had been more energetic, more sympathetic and more imaginative. There should, however, be no legal obligation to resort to this procedure before instituting legal proceedings.⁴

1. See also paragraph 1.4, *supra*.

2. Paragraph 2.15, *supra*.

3. Paragraph 2.16, *supra*.

4. Chapter 3, *supra*, particularly paragraph 3.4.

- (iv) The Limitation Act, 1963, should be amended by deleting the provision (article 112) allowing to the Government a period of thirty years for all suits.¹

K. K. MATHEW
Chairman

J. P. CHATURVEDI
Member

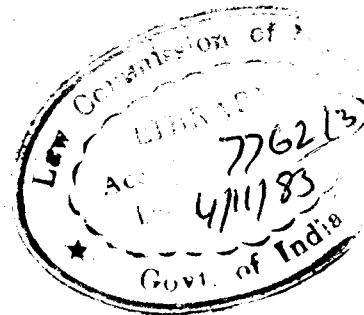
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VEPA P. SARATHI
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Member-Secretary

Dated : 8th May, 1984.



1. Paragraph 4.4, *supra*.