

Dispute resolution in public contracts: evidence from courts

Devendra Damle, Karan Gulati
Anjali Sharma and Bhargavi Zaveri

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Structure

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Motivation

Court judgements and anecdotes on litigation menace of the government in civil and enforcement matters.

- ▶ 46% of the total pending cases in courts have government as a counterparty.¹
- ▶ Between 2011 and 2020, the government was/ is party to 3,85,441 pending cases.²
- ▶ Low disposal numbers

Years	Pending	Disposed
2011-20	3,85,232 (81.2)	89,120 (18.8)

Source: LIMBS (2020)

¹Source: Department of Justice, 2017

²Legal Information Management and Briefing System (LIMBS), Ministry of Law and Justice (2020)

Motivation (contd.)

► Duration of pendency

Duration	% of pending cases
0-6 years	66
6-12 years	23.6
more than 12 years	10.4

Source: LIMBS (2020)

► Department wise cases:

	%
Finance	24.9
Railways	23.8
Labour & employment	17.3
Defense	13.4
Education	4.9
MHA	4.8
Others	10.9
Total	100

Source: LIMBS (2020)

Key questions

A typology of government litigation between the state and private enterprise/ individuals.

1. How much of it is public procurement linked?
2. Do we see a pattern in who is litigating and being litigated against?
3. What are the kinds of public procurement litigation?
4. How are they decided?
5. Time taken?

Approach

A case-study of the state-private enterprise/ individual litigation in the Delhi High Court.

1. We scraped the Delhi High Court website for select case-types:
 - 1.1 Arbitration
 - 1.2 Civil writ petition
 - 1.3 Civil suit (Original Side)
 - 1.4 Civil suit (Commercial)
 - 1.5 Land Acquisition Appeal
 - 1.6 Original Misc Petition
2. Examples of cases not included: bail applications, criminal, testamentary and tax matters, appeals, applications under the Companies Act.
3. Duration: 2,20,657 cases filed from 1st Jan, 2007 until 30th September, 2020.

Approach (contd.)

4. We filter for cases which have the 'state' as a counterparty:
 - 4.1 State: Autonomous constitutional bodies, union, state, CPSE, SPSE, Regulator, Municipal body/ Panchayat, Railway, statutory authorities.
 - 4.2 Quasi-state/ public authority: Education, co-operatives, labour unions, organisations (eg. AIIMS).
 - 4.3 Private: individuals, businesses, organisations.

Full sample: descriptive statistics

Table: Types of cases:1

	No.	% of total
Total	2,20,657	100
Disposed off	1,77,757	80.55
Pending	42,900	19.44

Table: Types of cases:2

Case type	No.	% of total
Writ Petitions (Civil)	1,35,002	61.18
Civil suits	35,173	15.94
Others	34,795	15.76
Arbitration cases	8,858	4.0
Land Acquisition appeals	6829	3.09
Total	2,20,709	100

Government litigation: scale

Table: Scale of govt.litigation

		% of full sample
Total	2,20,567	100
Government litigation	1,37,734	62.41
Initiated by government	18,066	8.18
% of govt.litigation	13.11	
Initiated against government	1,19,668	54.23
% of govt.litigation	86.88	

Learning: the government is suing much lesser than getting sued.

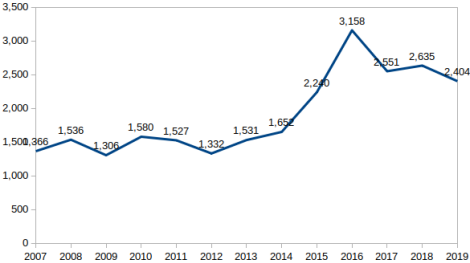
B2G and G2B litigation

Around 60% of the cases are filed by businesses against the Union government and CPSEs.

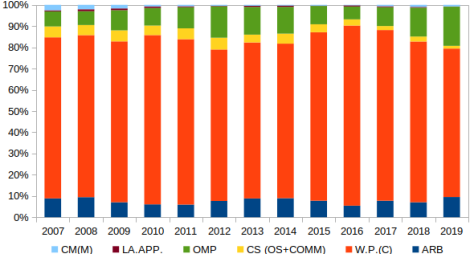
	Business as		Total	(% share)
	Petitioner	Respondent		
Union govt	12,855	1,203	14,058	(49.9)
CPSE	4,133	1,332	5,465	(19.4)
State govt	5,822	285	6,107	(21.7)
SPSE	519	141	660	(2.3)
Municipal	1,672	204	1,876	(6.7)
Total	25,001	3,165	28,166	
(% share)	(88.8)	(11.2)		

B2G litigation: case volumes and composition

► Volumes have seen an uptrend from 2015.



► Writ Petitions continue to be the bulk of the cases.



A micro analysis of cases

- ▶ A sample of 60 company writ petitions.

15 procurement related matters. Of which 10 are related to the tender and award process.

In 9 of the 15 matters, WP dismissed.

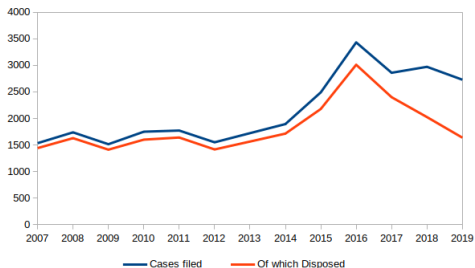
- ▶ A sample of 51 ARB matters and OMPs. 34 B2G and 17 G2B.

Government wins 25% of the cases it files. Companies win 63% of cases they file.

	B2G	G2B	Total (%)
H/F Pet	12	5	17 (33.3)
H/F Resp	19	15	34 (66.6)
Total	31	20	51
(%)	(60.8)	(39.2)	

Case status and duration

- ▶ Case disposal rates.



- ▶ Bulk of B2G cases are WP(C) – time to disposal is < 1 year
60% of the G2B cases are OMPs – time to disposal > 2 years.

Case type	B2G	G2B	Total
WP	0.78	0.85	0.78
OMP	1.01	2.63	1.61
ARB	0.47	0.51	0.47
CS	2.34	2.23	2.32
CM	0.69	0.91	0.78
LA.APP	2.12	1.57	1.87
Total	0.82	2.04	0.93

B2G cases against CPSEs: sectors and case types

Resp cat	% of category total					Count of cases	Cat as % total cases
	ARB	CM	CS	OMP	WP		
Bank/FI/Insurance	5	5	17	4	68	1,226	29.9
Railways	30	0	2	46	21	606	14.8
Oil and Gas	27	1	6	42	24	507	12.4
Telecom	32	1	3	41	23	313	7.6
Engineering	24	0	10	50	16	167	4.1
Power	17	0	2	57	24	157	3.8
Construction	6	2	56	6	30	144	3.5
Transport/freight	28	1	20	27	25	112	2.7
Natural resources	22	4	13	47	13	45	1.1
Highway/Road	14	0	11	43	31	35	0.9
Aviation	4	0	21	18	57	28	0.7
Other	20	2	10	37	31	757	18.5
Total	18	2	12	30	38	4,097	

Key takeaways

1. The state is party to more than half the commercial litigation in the Delhi HC.
 - ▶ But, this may be a feature of the Delhi High Court.
2. Bulk of the commercial govt. litigation is initiated against the state.
3. Procurement disputes appear to constitute a relatively small proportion of the commercial litigation in court against the state.
4. Government has a relatively low success ratio in procurement-related court litigation.
5. Sector-level litigation analysis: fragmented with railways, oil and gas showing relatively higher proportion.

Thank you
Questions/ comments