ALTERNATE MECHANISM FOR RESOLUTION OF DISPUTES BETWEEN SOVEREIGN AND ITS INSTRUMENTALITIES – TIME TO RETHINK

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ABSTRACT

There is a lot of litigation pending between the Central/ State Governments/ Statutory corporations with its own instrumentalities i.e., Public Sector Banks and vice versa. These parties often tend to go for litigation, instead of availing other options such as Alternative Dispute Resolution, which includes conciliation, mediation and other options. The Sovereign and its instrumentalities are considered as two sides of the same coin. Still, in many situations, they engage in litigation, instead of more amicable methods of dispute resolution, ultimately contributing to docket explosion.

Keywords: Government, Public Sector Banks, Conciliation, Mediation, Alternative Dispute Resolution.

Introduction:

1. State Bank of India v. Tax Recovery Officer Madras High Court W.P No 6686/2016 & 5992/2016.[3]

2. State Bank of India Stressed Assets Management Branch v. Assistant Commissioner of Income Tax and Another[4]

3. Corporation Bank v. Commissioner of Income Tax[5]

4. Punjab National Bank v. Union of India[6]

5. Union of India v. SICOM[7]

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[3] 2022 Madras High Court
[4] 2022 SCI C.A.No 8181 of 2022
[5] 2002 SCI 254 ITR 791
[6] 2022 SCI C.A No 2196 of 2012
[7] 2008 SCI C.A No 7132 of 2008

Is there anything amiss above? What is that significant observation that one can make by referring to the above citations?

Yes.

The cases decided would reveal that these are matters fought by the Central/ State Governments/ Statutory corporations with its own instrumentalities i.e., Public Sector Banks and vice versa.

The most intriguing part of the litigation is that it involves the behemoths or bigwigs i.e., banks on one hand and the Central /State Government represented by the Income Tax/ Excise/Customs Department and the like on the other side.

What is to be taken with disconcert is that the Government of India and its instrumentalities are fighting from all the fora available to them. The legal tussles are fought in Tribunals, Appellate Tribunals and the Higher Judiciary. It may be true that the statutes governing them may make it necessary to go through this process of litigation.

On a reference to the provisions of the Constitution of India and the decisions that were pronounced by the Apex Court, time and again it has been held that the Government owned banks and widely known and described as Public Sector Banks are instrumentalities of State within the meaning of Article 12 and thereby, they become amenable to the writ jurisdiction of the High Courts.

What is worrisome for the academicians, practitioners of law and others in the legal fraternity is the fact that the two sides of the same coin are agitating for their rights before the courts overlooking the fact that these kinds of disputes are also one of the major contributory causes for cases piling up in courts and adding to the pendency of the court cases and the eventual the strain and burden on the judicial system.

One can legally argue that the juristic personality is not one and the same, and both the parties before the courts have separate personality in the eyes of law and it is inevitable to avoid the litigation by each one asserting for its rights.

If the disputes between the Government and its instrumentalities are to be resolved, is it that the only solution that one can think of is of adjudication by courts and there is no other way of resolving or at least attempting and trying to resolve such disputes?

Is there a common thread and a common purpose between the Sovereign and the Banking Institutions i.e., its instrumentalities:

A probing question which one will be tempted to pose is that "Is there any commonality of interest or commonality of purpose between the Sovereign and its instrumentalities created by the use of Sovereign power or are they existing in a competing sphere and space?" This question is to be answered for finding and working on an appropriate solution.

In so far as the commonality of interest and purpose is concerned, at a very fundamental level itself the functions of the Sovereign and its instrumentalities are vastly different and are guided by different considerations and objectives. For example, the Sovereign exercises its powers keeping the welfare of its citizens as paramount, and the commercial considerations may or may not be a very critical factor. On the other hand, the instrumentalities of the State are set up for promoting business and trade and therefore commercial considerations are very vital.

Scope of the Paper:

The article is an attempt to understand the legal position of the disputing parties, their concern for assertion of their respective rights and their attempts to resolve the disputes through formal channels of adjudication i.e. through tribunals and courts.

One of the basic tenets of dispute resolution teaches that instead of resorting to litigation as first resort and in the first instance itself, efforts should be made to resolve the disputes in an amicable manner and litigation is to be resorted only as a last resort after failing in resolving the disputes through other modes.

Is the above tenet being followed by the Government and its instrumentalities? The obvious answer to this question seems to suggest that the answer is to be in the negative.

Enough literature exists to draw conclusions that the Government is often considered to be the biggest litigant and adds to the judicial delays. The criticism is not without valid reasons because the Tribunals, Appellate Tribunals, High Courts and Supreme Court have been overloaded and overburdened with petitions filed by the Central/ State Government and its instrumentalities and the judiciary has been deciding and adjudicating the disputes between the Government and its instrumentalities.

It is rather painful to note that no efforts in resolving the disputes through other Channels such as conciliation and mediation are found to be made by the Government and its instrumentalities before approaching the Tribunals and Courts.

A reference to Civil Procedure Code and some other statutes will reveal that parties may amicably settle their disputes. In some statutory frameworks such as the Industrial Disputes Act 1947, statutory provisions and mechanism is created for resolution of disputes through conciliation and mediation. Unfortunately, there is no such mechanism found either in the statutes applicable to the instrumentalities of State in their banking activities nor are there any administrative instructions issued by the Sovereign itself for resolving such disputes through conciliatory channels instead of adjudication when it comes to matters where Public Sector Banks are involved.

As a result, due to lack of statutory mandates for resolution of disputes by way of conciliation and mediation, often the parties viz. Banks and the Governments (Both Central and State) are engaged in litigation before Courts of Law.

This is particularly evident in the matters of claiming priority to the sale proceeds arising out of the sale of assets of a Defaulting entity. The Default will necessarily involve default to the Sovereign (for Tax Dues) and to Banks (for the debts availed). The sale may have been conducted by the Sovereign itself in terms of powers conferred by them under the Relevant Statue or the Public sector Banks themselves (under Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002) or by an Authority Functioning under the Relevant statutes such as under the Recovery of Debts and Bankruptcy Act 1993.

Article 12 of the Constitution of India:

Article 12 of the Indian Constitution states that-

“In this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.”

In other words, for the purposes of Part III of the constitution, the state comprises of the following:

1. Government and Parliament of India i.e., the Executive and Legislature of the Union.

2. Government and Legislature of each State i.e., the Executive and Legislature of the various States of India.

3. All local or other authorities within the territory of India.

4. All local and other authorities who are under the control of the Government of India.

The meaning of the word 'State' has assumed lot of constitutional and judicial importance due to the fact that the rights that are granted by the Constitution to its citizens/subjects are available and enforceable against the State. The expression 'State' has acquired wider meaning due to the liberal and harmonious interpretation made by the Courts from time to time. The definition did not end with the entities specified at 1 to 4 above but has found many other entities coming under its ambit due to the interpretation made by courts having regard to the issues that came up for consideration. It is necessary to examine a few of the judgments rendered by courts in order to understand the legal philosophy and the rationale attached to it.

Rajasthan State Electricity Board v. Mohanlal[8]:

The Supreme Court ruled that a state electricity Board, set up by a statute, having some commercial function to discharge, would be an authority under Article 12. The court emphasized that it is not material that some of the powers conferred in the concerned authority are of commercial nature. This is because under Article 298, the government is empowered to carry trade or commerce. Thus, the court observed, the circumstances that the board under the Electricity Supply Act is required to carry on some activities of the nature of trade or commerce does not, therefore give any indication that the board must be excluded from the scope of the word 'State' used in Article 12.

Sukhdev Singh v. Bhagat Ram[9]:

[8] 1967 AIR 1857

The Supreme Court following the test laid down in Electricity Board Rajasthan case held that Oil and Natural Gas Commission, Life Insurance Corporation and Industrial Finance Corporation are authorities within the meaning of Article 12 of the constitution and therefore they are state. All three statutory corporations have the power to make regulations under their statues for regulating conditions of service of their employees, the rules and regulations framed by the above bodies have the force of law. These regulations are binding on these bodies. The employees of these statutory bodies have a statutory right and they are entitled to a declaration of being in employment when their dismissal or removal is in contravention of a statutory provision. The employees are entitled to claim under Article 14 and Article 16 against the corporation.

Ramana Dayaram Shetty v. International Airport Authority of India[10]:

The Supreme Court concluded if a body is a government agency or instrumentality, it can be an authority under Article 12 regardless of whether it is a statutory corporation, a government company, or a registered society. As a result, the International Airport Authority of India is a State under Article 12 because it was established by an Act of Parliament.

Ajay Hasia v. Khalid Mujib[11]:

It has been held that a society registered under the Societies Registration Act 1898 is an agency or instrumentality of the state and hence a state within the ambit of Article 12. Its composition is determined by the representatives of the government. The expenses of society are entirely provided by the central government. The rules made by the society requires prior approval of the state and is completely controlled by the government. The government has the power to appoint and remove the member of the society. Thus, the state and the central government have full control of the working of the society. In view of these elements the society is an instrumentality of the state or the central government and is therefore an authority within the meaning of Article 12.

S.C. Chandra v. state of Jharkhand[12]:

[9] 1975 AIR SC 1331
[10] 1979 AIR SC 1628
[11] 1981 AIR SC 487
[12] 2001 SCI

The question which arose for decision was whether the teacher of a school not owned by BCCL and was run by managing committee and whose teachers were never appointed by BCCL although BCCL used to release non- recurring grants subject to certain condition would result in such teachers to be considered as the employees of BCCL and entitled to all benefits available to the regular employees of BCCL.

The Supreme Court judgement in this case was a common one and involved, amongst other Bharat Coking Coal Limited. Without any discussion the court approved the view taken by the division bench of the Jharkhand high court that BCCL was not instrumentality of the State.

Judiciary's View on Banking activities and their amenability to writ Jurisdiction:

On the other hand, character of the Banking Institutions in public sector category has come under judicial scrutiny in several cases and the Supreme Court and the High courts have held that the Public Sector Banks are amenable to writ jurisdiction and they are a State within the meaning of Article 12 of the Constitution of India irrespective of the fact as to whether they perform public duties or not.

As they have been found to be instrumentalities of State, the Supreme Court and many High courts of the Country from time to time have held that writ petitions are admissible against them.

A few of such judgments are given below.

Supreme Court and High Court judgments:

S. No.	Name of the case	Year	Name of the Court	Final Decision
1	A.N. Gupta v. State Bank of India[13]	1975	Delhi High Court	State Bank of India functioning under the State Bank of India Act was held to be a State within Article 12 of the Constitution of India.

[13] 1997 SCI C.A No 9943 of 1983.

2	Lachhman Das Aggarwal v. Punjab National Bank[14]	26-07-1977	Punjab & Haryana High Court.	Punjab National Bank was held to be a State.
3	P.V. Nayak v. Syndicate Bank[15]	10-08-1978	Karnataka High Court	Syndicate Bank, established under the Provisions of Banking Companies (Acquisition and Transfer of undertakings) Act 1970, is a state within the meaning of Article 12 of the Constitution of India.
4	Sukhdev Ratilal Patel v. Chairman Bank of Baroda[16]	1976	Gujarat High Court	Bank of Baroda was held amenable to writ Jurisdiction.
5	Federal Bank Ltd v. Sagar Thomas [17]	2003	Supreme Court of India	Private Financial Institutions carrying commercial activities or business would not come under the Scope of Article 12 though they are performing Public Duties. Federal bank held not to be a state under Article 12.
6	C.J. Thomas v. South Indian Bank[18]	18-12-1986	Kerala High Court	Catholic Syrian Bank and South Indian bank held not to be a State under Article 12.

[14] 1978 ILR D.H.C 192.
[15] 1979 49 Comp Cases 387
[16] 1977 IILLJ 409 GUJ
[17] 2003 SCI C.A No 106 of 2001
[18] 1987 IILLJ 193 Kerala

7	Transcon Sky City v. ICICI Bank[19]	11-04-2020	Bombay High Court	Writ petition was held not to be maintainable.
8	Universal Hospital v. Yes Bank[20]	13-07-2022	Gujarat High Court	The SC held that a writ petition is not maintainable against YES Bank as it was not serving Public Purpose.
9	Kailash Devi v. Branch Manager HDFC bank[21]	26-11-2020	Allahabad High Court	Private Bank carrying of business or commercial Activity may be performing public duties but cannot be considered to be State Under Article 12.

An analysis of the above cases shows that the Courts in India have been consistent in their stand that while Public Sector Banks are amenable to writ Jurisdiction, the Private Sector Banks are outside the purview of Article 12 and hence, they are not amenable to writ Jurisdiction.

Position of Pendency of Court cases in India:

One of the most critical problems faced by the Indian judiciary is the tardy disposal of court cases. The pendency of court cases has been a matter of concern and though several steps are being taken to reduce the pendency and improve the disposal rate, the problem continues to defy everyone connected with the legal system of the country. Increase in the number of judges, filling up the vacancies, other reforms in the administrative machinery have been on the forefront to address the problem of pendency of cases. However, the government and its instrumentalities becoming parties to the litigation in various tribunals and courts is also a factor has contributed to the delays.

Dispute Resolution:

[19] 2020 BOM HC W.P No 28 of 2020
[20] 2022 GUJ H C SCA No 16268 of 2020
[21] 2020 All H.C W.P No 18999 of 2020

The resolution of disputes in Indian Context is often a very protracted, time consuming, expensive and laborious one. The problems get more complicated when the Government and its instrumentalities become a party to the dispute or disputes. For example, disputes between Governments and Corporates and Non-corporate bodies, disputes between statutory authorities functioning under different statutes (Between a Port Authority and a Local Municipality) etc. are some of the examples which can be referred to as Disputes involving the Sovereign.

Many attempts have been made in the past and are being made to resolve disputes in an expeditious and cost-effective manner. There are various methods and stages of prevention and resolution of disputes.

The methods known to law and having legal acceptance for resolution of disputes are broadly as under.

1. Conciliation (Under Civil Procedure Code)
2. Mediation (Voluntary and Statutory)
3. Arbitration (Under a specific Act i.e., Arbitration and Conciliation Act)
4. Adjudication by courts and Tribunals (under the Constitution of India, Under Civil Procedure code and other Special and general Statutes)

Generic Expression of Recovery of Public dues:

Public dues are those which are payable to a Government Authority (be it a Central, State or Local) usually in respect of a commercial activity undertaken by an entity. Custom Dues, Excise Dues, GST etc. are all examples of money owed by an entity to a Government Authority.

The payment of charges as illustrated above are governed by specific statutory framework established for the said purpose. Each of such enactments usually contain a very well-defined procedure of recovery in case the same are not received by the Government Authorities as per the timelines. It is also marked by establishment of a machinery to realize and recover their dues. There are frameworks which have envisaged and created Separate Tribunals for recovery of their dues.

Lending By Public Sector Banks and Financial Institutions:

In the Indian scenario the lending activity is carried out by different forms of financial entities. The lending space is mainly catered by Banks and Non-Banking Financial entities and financial needs of the General Public are taken care of by entities in public, private and cooperative sector. As the scope of the present Article is confined only to disputes between entities having Government Character, lending by private and cooperative sector is not covered in the present analysis.

Current Legal Framework available to Banks and Financial Institutions for Recovery of Debts:

1: Recovery of Debts and Bankruptcy Act 1993

2 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002

3. Insolvency and Bankruptcy Code 2016

A reading of the Recovery of Debts and Bankruptcy Act 1993 and Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 will make it evident that there are no provisions contained for conciliation and/or mediation. Perhaps the law makers have envisaged these Acts as tools for recovery by way of enforcement security interest and hence, did not make provisions for conciliation and/or mediation.

During the last two decades of the implementation of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, instances are too and many when various Government claimants be it Income Tax Department, Provident Fund, Customs, Excise, sales Tax etc. have lodged and filed their claims before the Authorized officer under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002. The rejection of such claims by the Authorized officer under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 naturally results in the Government filing its claims with the Designated Tribunals under the Act. The logical conclusion of such claims ends with the adjudication of such claims by the Judiciary.

A similar procedure is also applicable in the case of the Recovery of debts due to Banks and Bankruptcy Act 1993.

Current Legal Framework Applicable to Government:

There are many statutes by which the Sovereign discharges its functions and responsibilities. To cite a few, the Customs Act, the Excise Act, the Central Sales Tax Act, now fully or partially subsumed by Goods and Services Act, the Income Tax Act, the Employees Provident Fund & Miscellaneous Provisions Act, the Employee State Insurance Act etc.

The enactments referred to above have given rise to disputes with Banking Institutions particularly in the context of realization of their respective dues out of the sale of assets. Both the Government and its instrumentalities have claimed priority over the sale proceeds.

In recent times there is enough material which shows that the Tribunals, Appellate Tribunals, High courts and the Supreme Court have been deciding and adjudicating the issues of priority claimed either by the Government or by the Public Sector Banks.

This is particularly more evident after the amendments to Recovery of Debts and Bankruptcy Act 1993 and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 were notified in 2016. The IBC also continues to pose interpretational issues vis-a-vis other enactments.

Office Memorandum for Resolution of Disputes between Public Sector Undertakings:

The Honourable Supreme Court of India in Collector of Excise v. ONGC, way back in 1991, has made a very strong observation and issued directions to the Union of India that the public undertakings of Central Government and the Union of India should not file litigation in court by spending money on counsel, court fees, procedural expenses and wasting public time.

This has resulted in issuance of Office Memorandum in 1993 whereby the disputes between the Central Public Sector Enterprise Inter se, Disputes between the Union of India and the Central Public Sector Undertakings are to be settled through a High-Power Committee in an Administrative Mechanism for Resolution of Disputes.

However, the Office Memorandum is not applicable to Taxation Disputes. The office Memorandum is confined to commercial Disputes between CPSEs inter se and between CPSEs and Government Departments / Organisations, the office memorandum shall stand extended for resolution of disputes other than taxation, between Ministries / Departments inter se and between Ministries / Departments and other Government Ministries /

Departments / Subordinate / Attached offices / Autonomous and Statutory Bodies under their administrative supervision/control.

The amendments made in the year 2016 to the Recovery of debts due to Banks and the Bankruptcy Act 1993 and the Securitisation and Enforcement of Security Interest Act 2002 has further led to matters reaching to the Higher Judiciary. The enactment of Insolvency and Bankruptcy Code in 2016 has also raised several questions of law which necessarily involved adjudication by the Tribunals and the Supreme Court of India.

Suggestions:

With the enactment of specific statutory frameworks for recovery of nonperforming assets, the litigation in the Tribunals designated for this purpose has increased manifold. While the objective of the Debt Recovery legislations is to help and expedite the banks and financial institutions to recover their nonperforming assets, it is seen that the space of the Tribunals is substantially occupied by disputes between the Banks and Financial institutions on one hand and the Sovereign on the other. In other words, while the dedicated Tribunals are to be utilised by the Banks and Financial Institutions against the defaulting borrowers, they are increasingly being used for inter se disputes between the banks and government. This is not the spirit with which these Tribunals have been created.

It is therefore necessary to find alternate means to reduce the burden of the Tribunals and facilitate the working of the Tribunals in the manner they were intended. The following suggestions are therefore proposed.

1. It may be worthwhile to consider stipulating pecuniary thresholds for entertaining disputes between the Banks and Financial institutions on one hand and the Government on the other. By way of an analogy just as the Recovery of Debts and Bankruptcy Act 1993 defines the pecuniary jurisdiction for filing original applications for recovery against the Borrowers, similar pecuniary limits may be stipulated for entertaining the disputes between the Government and its instrumentalities.

2. It is further suggested that a high-powered Institutional mechanism be created for examining the claims inter se between the Sovereign and its instrumentalities. The High-powered committee may be constituted at two or three levels depending on the amount of the Claims involved.

For e.g. a high powered committee of a large public sector bank may be constituted at two levels one at the Level of Executive Director and other at the Chairman and Managing Director's level.

The jurisdiction and powers of the High-powered committee can be defined by obtaining the approval of the Board of Directors of the Bank or Financial Institution. A similar representation of the designated officials at an appropriate level can be had from the Government. This joint institutional mechanism may meet at such intervals or frequencies or as per the exigencies of the situations.

3. The Joint Institutional Mechanism so created can with the evolution of time be enlarged to include the private sector banks and other private entities entitled to exercise the original Jurisdiction of Debt Recovery Tribunals.

4. The Joint Institutional Mechanism may be empowered to decide on all questions of claims inter se having regard to the statutory principles and the principles laid down by courts from time to time. The Joint Institute may decide that except where the law is not clear or there is an interpretational issue or in cases of ambiguity, the parties may be allowed to seek legal redress by filing appropriate application before the Debt Recovery Tribunals. In short except legal matters of substantial importance, all other may be brought under the ambit of the Joint Institutional framework.

With clarity in laws emerging by virtue of the Judgments pronounced by the Higher Judiciary, issues relating to sale of the Defaulters' Assets (whether the default is to the Sovereign or to a Public Sector Bank) on all questions like valuation, confirmation of sales, priority of distribution of sale proceeds be attempted to be resolved through the Joint Institutional mechanism established for this purpose.

This will undoubtedly go a long way in saving the time of the Tribunals and Courts. It will also encourage other parties (other than the Government) to follow suit and resolve disputes through mediation and/or conciliation. This will also be in consonance with the provisions of the Civil Procedure Code.

As the Central/ State Governments normally make their claims under different statutes, it is suggested that the following process and procedure may be adopted.

Under Recovery of Debts and Bankruptcy Act 1993: It is usually seen that the Central Government files its Claims before the Debt Recovery Tribunal especially during execution of Recovery Certificate. The Current procedure envisages a reply to be filed by the Respondents to the Application filed by the Central Governments and after the pleadings are completed and matter is heard, the Orders are passed by the Recovery Officer on such application. The Orders of Recovery being appealable, invariably parties avail the appellate remedies too.

It is suggested that in case of existing and pending matters before, the Presiding officer/ Recovery Officer/ they may refer the matters to the joint Institutional framework. If the parties succeed in their attempts, the RO can accept the settlement and close the issue. On the other hand, if the parties are unable to resolve by them, the formal channel of Adjudication may be proceeded with. An amendment to the Recovery of Debts and Bankruptcy Act 1993 can be considered whereby provisions for conciliation and/or mediation may be incorporated in case of issues between Central /State Government and its instrumentalities.

Under the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act 2002:

In case of actions under this Act, usually the PSB being a secured creditor, proceeds with the steps and measures under this Act through an Authorized officer.

The Central Government being a claimant may either object to the sale or may acquiesce in the sale but may demand share of the sale proceeds for the assets sold under this Act. In such situations, the claim may be considered by the parties together (preferably at a higher level than that of the Authorized Officer) and if an amicable settlement is arrived at the matter will get resolved. On the other hand, if the parties fail to reach any settlement, the matter may be taken with Debt Recovery Tribunals. An amendment to the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act 2002 may be considered whereby provisions for conciliation and/or mediation may be incorporated in case of issues between Central /State Government and its instrumentalities.

Further it may also be considered as to whether Debt Recovery Appellate Tribunal can be made the final Authority for deciding all claims and such questions that may arise

either under the Recovery of Debts and Bankruptcy Act 1993 and under provisions of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act 2002.

In case any matter is required to be decided by the Supreme Court of India from the orders of Debt Recovery Tribunals, such petitions may be filed only with the approval of a joint High-Power Committee (consisting of members from both sides) constituted for this purpose.

Conclusion:

There is a lot of emphasis on finding alternates to the existing dispute settlement mechanism. Litigation has its own strengths and weaknesses. The need of the hour is to reduce the burden on courts so that they will be able to render justice with the objectives of the legislations by which they were created. A step in this direction may be considered by which the Sovereign and its instrumentalities are able to resolve their disputes through other means instead of the rigmarole involved in the formal and adjudicatory mechanism.

In the end it may be noted that ultimately the Sovereign and its instrumentalities have many similarities in their functional responsibilities while delivering the public cause and public good. Any success in this dimension will not only reduce litigation between the State and its instrumentalities but will also have an imprint on other players in the judicial system. This may pave the way for conciliation and mediation to finally have their place in the legal system.