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Notification
Legal Department
Sachivalaya, Gandhinagar
Dated the 29th December, 2011

No. GK/33/2011/BRT/102001/2117/D, the 29th December, 2011, Whereas the Resolution presented by the Union Minister for Law & Justice in the 'National Consultation strengthening the Judiciary towards reducing pendency and delays which was held on the 24th and 25th October, 2009 acknowledged the Initiative undertaken by the Government of India to frame a National Litigation Policy with a view to ensure conduct of responsible litigation by the Central Government and also urged every State Government to evolve similar policies;

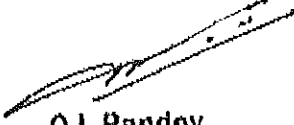
Whereas the Government of India in the Ministry of Law & Justice, Department of Legal Affairs, has already launched the National Litigation Policy, 2010 by their O.M. No. 44(03)/2010-Judl. Dt. 30th June, 2010;

AND Whereas the Government of India has called up on all the States to frame similar State Litigation Policy by their letter dt. 30th June, 2010;

AND Whereas the purpose underlying the State Policy is also to reduce government litigations in Courts so that valuable court-time would be spent in resolving other pending cases so as to achieve the goal to reduce average pendency time from 15 years to 1 years, in comparison of 15 years to 3 years proposed the National Legal Mission;

Now, therefore, the Governor of Gujarat, after due consideration of the National Litigation Policy, 2010 and of the State Scenario in the matter of pending Court-cases and its resultant impact on the State as well as the social life of the residents of the State, in exercise of his powers under Article 162 of the Constitution is pleased to notify and launch the Gujarat State Litigation Policy, 2011 as enclosed hereto as ANNEXURE-1, with immediate effect.

By order and in the name of Governor of Gujarat.


O.L. Pandey
Secretary to the Govt. of Gujarat,
Legal Department

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Gujarat State Litigation Policy

Preamble

The State of Gujarat frames a policy which reflects a system of Governance wedded to the principle "for the people" and more importantly "for the welfare of the people" through having reformed Justice Delivery System by the Executive Activism under the National Legal Mission to reduce average pendency time from 15 years to 1 years.

Vision

The State of Gujarat aims to transform Government into an Efficient and Responsible Litigant State by :-

- i. ensuring protection of the rights of citizens;
- ii. respecting fundamental rights;
- iii. saving all avoidable costs on unproductive litigation;
- iv. reducing load (backlog of old cases) on judiciary whenever the government is a litigant (party to the proceedings)

Now therefore, State Government hereby lays down the State Litigation Policy as follows:-

1. Objectives:

The Policy outlines the broad guidelines on litigation strategies to be followed by the State Government or its agencies with a view to reduce litigation, saving avoidable costs on unproductive litigation, reducing avoidable filing in courts with respect to government induced litigation

The State of Gujarat shall aim to

- 1.1 become an efficient litigant by focusing on the core issues involved in the litigation, managing and conducting litigation in a cohesive, coordinated and timely manner, ensuring the successful outcome of good cases;
- 1.2 With a view to enhance harmony amongst residents of the State of Gujarat inter se, and to see that disputes or differences between citizens and public sector undertakings, so also with government and other companies, are sorted out in good ambiance and to promote such ideals for overall development of the State of Gujarat;
- 1.3 To avoid litigation and to promote Alternative Dispute Redressal mechanism. It shall follow the dictum, Let's not litigate, if

- required, let's opt for alternative dispute resolution, as the first preference to resolve the Issue;
- 1.4 resort to litigation when it is essential only; avoid all times false pleas and technical points; bring only correct facts and relevant documents before the Court and provide all relevant information required by the Court.
 - 1.5 To promote litigation free villages on the pattern of Pawan Gram and Tirth Gram scheme .

2. Nature and Applicability of the Policy

- 2.1 This Policy shall apply to any claim and litigation involving the State or its agencies including litigation before courts, tribunals, inquiries and in arbitration and other alternative dispute resolution processes.
- 2.2 The Policy shall have the force of an administrative regulation.
- 2.3 The Policy shall bind all participant, stakeholders, personnel to enforceable performance, which may be prescribed.
- 2.4 The Law Officers Rules, which is an evolving collection of guidelines, instructions, clarifications and information would continue to serve as a reference document in matters connected with litigation.
- 2.5 The Law Officers Rules is to be constantly reviewed and updated due to the changing legal scenario. A comprehensive updation will be done within the period prescribed by Government which would incorporate relevant portions of the Policy.

3. Scope of Application:

- 3.1 All stakeholders shall play a proactive role in ensuring to uphold the objectives and implementing the provisions of the policy in true letter and spirit. Such as Ministry of Law, Heads of Departments, Law Officers, and Government Pleader, Assistant Government Pleaders and any officer or employee associated with the concerned litigation.

"Head of Department" means the administrative person ultimately responsible for the working of the Department or Agency, as the case may be.

3.2 Nodal Officers: Each Department of The State of Gujarat may, if found necessary, appoint a nodal officer. These nodal officers shall pre-empt and pro-actively pursue the litigation of his/her department. The appointment must be done carefully. The Nodal Officer has a crucial and important role to play in the overall and specific implementation of this Policy, including but not limited to the references made hereinafter. Every Department must be mindful of the responsibility to appoint proper Nodal Officers who have legal background and expertise.

They must be in a position to pro-actively manage litigation. Whilst making such appointments, care must be taken to see that there is continuity in the incumbents holding office. Frequent changes in persons holding the position must be avoided.

Nodal Officers must also be subjected to training so that they are in a position to understand what is expected of them under the State Litigation Policy.

4. Implementation/ Control Structure

There shall be three-tier Committee;

1. State level Committee,
2. Department level Committee,
3. District level Committee.

4.1 The Gujarat State Litigation Policy Empowered Committee (GSLPEC):

4.1.1. Composition:

The Chief Secretary (Chair), Secretaries of, Home, G.A.D., Finance, Legal, , Government Pleader of High Court or his representative. The Committee may invite Secretaries of government departments concerned and an experts on the need basis to attend the meetings and obtain expert viewpoints;

4.1.2 Powers and Functions:

- i. To streamline the litigation and grievance redressal system;
- ii. to take decisions in respect of policy content and changes in the procedures to be adopted;

- iii. If decisions involving core policy changes, GSLPEC shall refer the same to the Government.
- iv. GSLPEC shall oversee the state level implementation and monitoring of the policy.
- v. GSLPEC shall be supported by adequate number of legal and administrative staff members to draft reports, analyze and prepare trends, coordinating meetings, organizing logistics, and such other duties as may be given by the GSLPEC.
- vi. GSLPEC may interact periodically with Registrar General of High Court regarding speedy disposal of cases and issues related with pendency and arrears.

4.2 The Gujarat State Departmental Empowered Committee (GSDEC)

4.2.1 Composition:

Addition Chief Secretary, Principal Secretary/ Secretary of the concerned department, Representative not below the rank of Dy. Secretary from Finance Department, Concerned Assi. Government Pleader and Addition Chief Secretary, Principal Secretary/ Secretary may invite any other concerned Officer to participate as a member.

4.2.2. Powers and functions: GSDEC shall

- i. make recommendations in cases involving more than 10 lakh rupees and less than 20 lakh rupees;
- ii. make recommendations to the GSLPEC with regards to recommendations on policies and rules and shall initiate and implement the rules and procedures;

4.3. The Gujarat State District Level Empowered Committee (GSDLEC)

4.3.1 Composition:

Collector, Supt. Of Police, District Development Officer, District Government Pleader and Collector may invite any other district level Officer to participate as a member.

4.3.2 Powers and functions: GSDLEC shall:

- i. implement and monitor the cases of respective district like GSLPEC;
- ii. make recommendations to the GSLPEC/GDLEC with regards to recommendations on policies and rules and shall initiate and implement the rules and procedures;
- iii. may interact periodically with District Judges, Principal Judge and Chief Metropolitan Judges;
- iv. make recommendations in cases involving less than 10 lakh rupees; and
- v. perform any other duties as required by the State Government and GSLPEC.

5. Covered matters:

Many cases are covered or governed by a similar point of law. In such cases, each department shall consider and settle the claim, if the claim is found to be covered by any decision of the Tribunal or Court. Many service matters of this nature, can be disposed of at the level of the department itself without compelling the litigant to go to the Tribunal or Court.

6. Mandatory and maximum uses of Alternative Dispute Redressal [ADR] forums

With a view to promote ADR mechanism as per the section 89 of the Code of Civil Procedure 1908, the state shall promote the use of Alternative Dispute Resolution methods in litigation

- 6.1 Each Head of department shall review all pending disputes/cases with a view to settling them before any form of Alternative Dispute Redressal Forum chosen mutually by the parties concerned.
- 6.2 The Secretary of the concerned department after obtaining approval of The Gujarat State Departmental Empowered Committee shall designate and empower an officer suitably, so that minor disputes pending in different courts can be settled through above referred forum.
- 6.3 All officers of the concerned Department or Head of Department shall examine the ways and means for disposal of pending case through Golden Goal Courts, Evening Courts and Family Courts. The first of such exercise shall take place within one month of the promulgation of the State of Gujarat State Litigation Policy.

7. Land Acquisition Litigations:

- 7.1. In cases where an Appeal is sought to be filed by The State of Gujarat before High Court of Gujarat against the awarded compensation/enhancement by the Lower Court, for land acquired by the State of Gujarat for any of its agencies like GUDA, Narmada Nigam, the Revenue Department/Concerned Department shall ensure that the Appeal is filed by the State Government only and under no circumstances there shall be duplication in filing an appeal. There cannot be any divergence of interest between the State Government and its agencies.
- 7.2. In cases of Acquisition if there is any previous Judgment applicable on the point of Law or facts same shall be accepted.

8. Public Interest Litigation:

Government of Gujarat shall take all remedial measures to do the needful and then file a status report along with the reasons on the first date of hearing where it receives notices regarding public interest litigation. Even before filing of the reply/written statement, it shall take some immediate steps to do the needful as per the averments in the writ petition. This will save the time of the Government as well as the High Court.

9. Mode of Functioning:

- i. Adjournments on behalf of State shall be minimized and pleadings completed as far as possible on first available date. This shall be overseen by responsible and accountable authority of concerned department. The tendency of seeking adjournment on first date of hearing despite notice/summons of the court having been duly served upon the department concerned months earlier must be stopped immediately and responsibility be fixed by taking suitable remedial action against the erring officials. In case of any direction given by the Court which could be complied with even before the filling the response / written statement, then such directions should be complied with forthwith. The response/ written statement must be filed within the period stipulated in the order/ notice issued by the Hon'ble Court. Earnest efforts be made to avoid the adjournments.;

- ii. IT solutions will bring out periodical report for all concerned authorities reminding them about due dates for passing orders/ filling ;
- iii. arrange for filing affidavits in cases which have been adjourned due to non-filing of affidavits;
- iv. Follow the judgments whereby ratio has been laid down in other similar cases so that new cases are not filed;
- v. arrange for monitoring of Government stand before the Courts and Tribunals to bring out consistency of policy;
- vi. Emphasis uniformity in the stand of the Government in cases of Board, Corporations, Panchayats, Municipal Corporations and in special/important cases insist for appointment of AG or AAG ;
- vii. Obtain fast disposal of cases in groups by classifying service matters; and
- viii. Produce evidence in favour of the Government before Courts and Tribunals.

10. Litigation Strategies :

The following course of action would be adopted for dealing with the cases at Pre- litigation and Pending litigation stages to achieve the objective of the Policy:-

10.1 Pre- litigation strategies:-

Quick Action on Legal Notices/ Representation

- i. As soon as Legal notice under section 80 of the Code of Civil Procedure, 1908. or other statutory provision is served upon any department asking for a relief, the same should be decided expeditiously by the concerned departments competent authority, in accordance with the relevant rules/ instructions and by passing a reasonable speaking reply.
- ii. Large number of cases comes before the Hon'ble High Court wherein grievances are that legal notice or representations are not being decided or are delayed by the Government. Generally Hon'ble High Court directs Government to decide the representation within a specific time. If Govt. disposes of the notice or representations at the first instance, it would reduce the burden of the Court.

10.2. Pending litigation strategies:-

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- i. deal with claims promptly and not causing unnecessary delay in the handling of claims and litigation;
 - ii. Subject to prior approval of Finance Department/concerned department, pay legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be legitimately paid;
 - iii. act consistently in handling of claims and litigation;
 - iv. Cases will be grouped and categorized by concerned Departments. The practice of grouping should be introduced whereby cases should be assigned a particular identities according to the subject and statute involved. In fact, further sub-grouping will also be attempted. To facilitate this process, standard forms must be devised which lawyers have to fill up at the time of filling of cases. Panels will be set up to implement categorization, review such cases and to identify cases which can be withdrawn;
 - v. keep the litigation costs to a minimum, where the litigation is unavoidable, by ;
 - a. not requiring the other party to prove a matter which the State or an agency knows to be true; and
 - b. not take advantage of a litigant who lacks the resources to litigate a legitimate claim;
 - vi. Many Cases are pending in the Courts in which the State is a party. Many of such Cases may have become infructuous. The Government departments and offices under the administrative control of Government departments shall review all such Cases and wherever the Cases have become infructuous, the Registrar of the Concerned Court may be informed so that such Cases can be expeditiously disposed of;
 - vii. for strengthening system of conducting the legal affairs of the Government and to curb the delay in filing of appeals, instructions issued by Legal department vide their Circular No. PRC-102005-2109-H. dated 26-07-2005 and additional instructions issued by Chief Secretary vide their Circular dated 27-09-2005 shall be strictly followed;

- viii. not undertake and pursue appeals unless the State or its agency believes that it has reasonable prospects for success or the appeal is otherwise justified in the public interest. The filing of an appeal may be justified in the public interest where it is necessary to avoid prejudice to the interest of the State or its agency pending the receipt or proper consideration of legal advice, provided that a decision whether to continue the appeal is made as soon as practicable;
- ix. The obligation does not require that the State or its agency be prevented from acting firmly and properly to protect its interests. It does not prevent all legitimate steps being taken in pursuing litigation, or from testing or defending claims made;
- x. In particular, the obligation does not prevent the State or its agency from:-
- (a) enforcing costs orders or seeking to recover costs;
 - (b) relying on claims of legal professional privilege or other forms of privilege and claims for public interest immunity;
 - (c) pleading limitation periods;
 - (d) seeking security for costs;
 - (e) opposing unreasonable or oppressive claims or processes;
 - (f) requiring opposing litigants to comply with procedural obligations; or
 - (g) moving to strike out untenable claims or proceedings.
- xi. A speedy trial is an integral part of the fundamental right of life, personal liberty, as envisaged in Article 21 of the Constitution. Therefore, government and all its agencies/ agents will ensure that the litigation process is not delayed by way of seeking adjournments or not producing evidence/ witnesses in time at first available opportunity. Frequent adjournments at the request of opposite party should also be discouraged/ opposed by government lawyers in order to expedite trial/ disposal of cases;
- xii. E-filing and video-conferencing by dispensing with physical appearance to save precious time and resources, making justice more easily accessible and less expensive option shall be promoted in consultation with the Hon'ble High Court;
- xiii. Ensuring effective functioning of Legal Aid Clinics to provide counseling and guidance to people living in rural areas especially as rural litigation forms a major part of instituted court cases;

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- xiv. State shall actually promote and support holding of Lok Adalats and for this purpose shall strive to engage Civil Society Organizations/ Associations of Lawyers/ Bar etc. in this cause;
- xv. Legal training for the department officers/ officials shall be a regular feature. The officers/ officials of the different departments of the Government and offices under the administrative control of Gov't department will be imparted legal training by conducting appropriate training programmes regarding the Court procedure. It will be mandatory to impart basic knowledge of computers and internet to legal officers;
- xvi. State shall strive to promote penetration of Information Technology in the Justice Administration System and shall provide suitable funding for this purpose to all departments and also the Judiciary.

11. Amendment to Policy

The State Litigation Policy should be responsive to the changing requirements of the litigation system and its various constituents like Judiciary, Government and the Public. The State Level Empowered Committee shall consider reasonable suggestions/ proposals for amendment to the policy as may be received from stakeholders in the litigation system at various levels with the objective of achieving of objectives of the Policy more effectively. The committee may recommend modification in the Policy as and when necessary on its own motion also.
