



**Government of Rajasthan**

# **State Litigation Policy**

## **2011**

**Law & Legal Affairs Department**

# State Litigation Policy

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**Government of Rajasthan**  
**Law & Legal Affairs Department**

**STATE LITIGATION POLICY**

The Constitution of India guarantees to secure to all its citizens **JUSTICE**, social, economic and political. State of Rajasthan honours the rights of all citizens and endeavors to protect them. Speedy, time bound justice at all level is the policy and priority of the State.

In the prevailing system litigation once initiated culminates to conclusion in decades. Sometimes it takes generations to reap the fruits of litigation. What so ever may be the reason for the delay but fact remains that pendency is huge and ever increasing.

Number of courts established in our country is not adequately proportionate to the population in comparison to the developed countries. Establishment of courts is a regular process and requires time to achieve the targeted ratio. Fewer courts for larger population result in over burdening of the courts and average time of disposal increases. The State shall endeavor to increase the number of courts to achieve the targeted ratio in phased manner.

The statistics of the litigation reveal that the State is the pre-dominant litigant in the courts contributing the major share of the pending litigation. The Litigation Policy is an endeavor to manage the State Litigation in an efficient and responsible manner to minimize the State contribution to pendency so that Honourable Courts may get more time for other pending cases.

Government of India has launched National Litigation Policy on 23<sup>rd</sup> June 2010 and the States are expected to fall in line and frame their own State Litigation Policy.

Law and Legal Affairs Department, State of Rajasthan for smooth and efficient management kept issuing circulars as and when the occasion arose. All such prevailing circulars issued in the past relating to State Litigation were consolidated, reviewed and revised to cater the present need and then published in March 2010 in the form of a booklet to make it known to all concerned official. This was the stepping stone for further streamlining the State litigation and laying the foundation for the State Litigation Policy.

The consolidated circular booklet, based on circulars in force since long, primarily addresses vivid aspect of the State Litigation with due reference to landmark judgments of the Honourable Courts. In this backdrop, vivid aspects of State Litigation in consonance with the spirit of the National Litigation Policy are further taken care of in the State litigation Policy.

The consolidated circulars shall remain in force to the extent this document is silent and shall be followed in the spirit of this policy.

## CHAPTER I

### Pre Litigation Monitoring

Prior to initiation of litigation against the State either notice as a statutory requirement or for demand of justice is served. This is an opportunity for the State to redress the genuine grievance and avoid unnecessary litigation.

Notices need to be considered with a view that every claim against the State is not illegal and it is not always necessary to resist the same. The Administrative Department shall take decision on the notice with this spirit instead of avoiding the decision and leave the matter for the courts to decide.

Notices when received shall be entered in a separate register by the receipt clerk and shall be immediately placed before the nodal officer.

The nodal officer shall forward the same within 7 days to the Law Department along with the relevant record for legal opinion. Simultaneously the nodal officer shall inform the concerned person that his notice is under consideration and he will be apprised of the ultimate decision.

Special cell comprising of retired District Judges and required supporting staff shall be created in the Law Department to examine and opine on the points raised in the notice. Reasoned opinion shall be communicated to the Administrative Department on file within five working days for further necessary action.

Special cell shall act as the Grievance Redressal Cell for the employees and while examining the case for opinion on the notices regarding service matters, shall be at liberty to call for the relevant service record for verifying the correctness of facts averred and relief sought in the notice. Special cell shall examine and opine on the points raised in the notice, thereafter communicate well reasoned opinion to the Administrative Department for further necessary action.

Nodal officer of the Administrative Department / Member Secretary shall place the opinion of special cell along with entire record for final decision before the standing committee comprising of:

- |  |                  |
|--|------------------|
| a. Principal Secretary/ Secretary<br>of the Administrative Department  | Chairperson      |
| b. Jt.L.R. nominated by Pr. Secretary Law                              | Member           |
| c. Dy. Secretary DOP (in service matters)                              | Member           |
| d. Dy. Secretary Finance<br>(in matters having financial implications) | Member           |
| e. Dy. Secretary /Nodal officer of the Administrative<br>Department    | Member Secretary |

➤ The standing committee shall:

- examine thoroughly every case on merit and shall pass speaking order after due consideration of legal opinion, relevant rules, notifications, circulars, Act, precedence and other relevant material;
- consider genuineness of the claim keeping in mind principles of natural justice ;
- consider accepting the claim partially to the extent found genuine while refusing the rest;
- take a decision within the time stipulated by the governing laws:

➤ The member secretary shall ensure:

- availability of opinion of special cell and all relevant material to the members at least 5 days in advance;
- to place on record reference of all cases decided earlier on the same point with reference to any other party / same party and also the cases pending in Courts on the point in issue;
- that meeting is convened at the earliest but not later than 10 days from the receipt of opinion of special cell.

Members from DOP & Finance shall examine and seek approval up to appropriate level prior to meeting, regarding the department's stand and should be prepared to express authenticated opinion.

The reasoned decision taken on the notice shall be communicated to the concerned person without delay and in all eventualities prior to the expiry of the notice period.

The Administrative Department shall ensure quick compliance of accepted claims.

Administrative Department shall maintain the record, on the prescribed format, of every notice so received, meetings held, decision taken and communication of the result to the person concerned.

The nodal officer shall be responsible for immediate necessary action on the notice received.

Every in-action or delay by an official in dealing with notices shall attract disciplinary action under the rules applicable to him.

The State shall consider compensating the concerned person for the inconvenience caused to him because of compulsive litigation for want of due, effective and timely consideration of notice, if he finally succeeds in getting relief, sought in the notice, from the court. The compensation so paid shall be recoverable from the defaulting official in the disciplinary proceedings.

## CHAPTER II

### Pre Appeal Monitoring

After almost every decision by the Court the course of appeal or revision or review is available to the State. The final decision regarding appeal / no appeal in Honourable Supreme Court or in division bench of Honourable High Court; writ / no writ against judgment of service tribunal is taken by the Law Department. Prior to sending the file to Law Department every such matter will be placed before the standing committee constituted for the purpose and comprising of the following:

- |   |                  |
|---|------------------|
| a. Principal Secretary/ Secretary<br>(of the Administrative Department) | Chairperson      |
| b. Jt.L.R. nominated by Pr. Secretary Law                               | Member           |
| c. Dy. Secretary DOP (in service matters)                               | Member           |
| d. Dy. Secretary Finance<br>(in matters having financial implications)  | Member           |
| e. Dy. Secretary /Nodal officer<br>(of the Administrative Department)   | Member Secretary |

➤ The standing committee shall:

- examine thoroughly every case on merit and shall pass speaking order after duly considering relevant rules, notifications, circulars, Act, precedence and all other relevant material;
- take and convey the decision at least 15 days prior to expiry of the limitation period stipulated by the governing laws to the Law Department on file along with the relevant records, on the prescribed format, for final decision;
- not recommend appeal only for the reason that:
  - (i) it will cast heavy financial burden on the exchequer,
  - (ii) it is safer to take the verdict of the appellate Court,



(iii) it will affect other similar cases pending in the courts, though otherwise not fit for agitating in appeal,

- examine the case considering that:
  - a. against ex-parte orders instead of preferring appeal efforts to get the ex-parte order vacated should be preferred;
  - b. against order of the service tribunal higher court should be moved only where (i) the order is contrary to Service Rules and /or in violation of settled principles of law or (ii) there is apparent error of facts or (iii) the order will have impact on other cadres and create huge financial burden or (iv) the order will adversely affect the discipline in the services or lower down the morale of the services;
  - c. against order of the service tribunal higher court should not be moved in routine where case of an individual employee does not have any major repercussions and does not set a precedent, only on the ground that it has financial implications;
  - d. instead of approaching Apex Court in the first instance intra-court appeal should be preferred;
  - e. appeals to Supreme Court should be preferred only where: (i) important law point is involved or (ii) judgment adversely affects the public finances or public conscience at large or (iii) the High Court exceeds its jurisdiction, declares any enactment ultra-virus or takes an erroneous interpretation of statute;
  - f. in case of concurrent and reasoned findings of two courts appeal should be preferred exceptionally on sound reasoning only;
  - g. In revenue matters appeals will not be filed (i) where the stakes are not high and are within the limits fixed by the competent revenue authority (ii) where the case is covered by settled principles of law.

➤ The member secretary shall ensure:

- availability of all relevant material to the members at least 5 days prior to the time fixed for the meeting in the prescribed format;
- that meeting is convened within 10 days from the date of receipt of certified copy in the office.

Members from DOP & Finance shall examine and seek approval up to appropriate level prior to meeting, regarding the department's stand and should be prepared to express authenticated opinion.

The learned advocate appearing on behalf of the State shall ensure to apply for and obtain certified copy of the judgment promptly.

The nodal officer shall be responsible for immediate procurement and submission of the certified copy of the decision.

The Law Department shall ensure to take a decision within 7days of the receipt of the proposal in Law Department.

The decision of appeal or no appeal once taken shall be final and shall not be re-opened except on discovery of new facts or there is an error apparent on the face of the record.

Every in-action or delay by an official at any/every stage shall attract disciplinary action under the rules applicable to him.

**CHAPTER III**  
**SPECIALISED LITIGATION, PUBLIC INTEREST LITIGATION**  
**AND**  
**PUBLIC SECTOR UNDERTAKING LITIGATION**

**SPECIALISED LITIGATION**

Proceeding seeking judicial review of contract and tenders shall be defended in view of good governance and Constitutional mandates. Where the progress of project is held up in judicial proceedings the case shall be taken up vigorously in public interest, however, in case where proceedings are founded on the allegation of breach of natural justice and there is substance in the allegation the case may not be proceeded, order may be set aside and reviewed after proper hearing.

**PUBLIC INTEREST LITIGATION (PIL)**

PILs must be seriously defended. Several PILs are filed for collateral reasons including publicity or for the individual benefit of third party; such litigation should be exposed as not bona-fide. In the PILs where projects are stayed by interim orders imposing condition to pay compensation in case the PIL is rejected, should be insisted.

**PUBLIC SECTOR UNDERTAKING LITIGATION**

All matters between different Departments of the State, between Government Department and Public Sector Undertaking and between Public Sector Undertakings shall be referred to a High Powered Committee consisting of:

- Chief Secretary
- ACS Finance or his representative not below the rank of Secretary
- Principal Secretary Law
- Principal Secretaries / Secretaries of the concerned Departments / Public Sector Undertakings
- AAG nominated by the Principal Secretary Law
- Director Litigation

No case shall be filed in court by any Department or Public Sector Undertaking without prior approval of the High Powered Committee. It shall be the duty of the Principal Secretaries / Secretaries of the concerned Departments / Public Sector Undertakings to refer the matter to the High Powered Committee.

## **CHAPTER IV**

### **Management within Department**

The State shall endeavor to minimize State litigation but shall diligently contest good cases on merit. Within department this need to be managed methodically.

#### **CONTESTING CASES WITH PROPER AVAILABLE DEFENSE**

The Administrative Departments shall in every case place complete facts before the standing committee and ensure that only such cases in which legally tenable defense is available are contested. The points on which law is settled and chances of success are feeble need not be contested. This will minimize unnecessary State litigation and attention will be focused on cases sound on facts and law.

#### **CO-ORDINATION BETWEEN OFFICER IN CHARGE**

**AND**

#### **GOVERNMENT COUNSEL**

The institution of Nodal Officer to bridge the gap between the officer in charge and the advocate for the State exists in the State. The Administrative Department shall ensure appointing an efficient officer, not below the rank of Dy. Secretary, capable of managing litigation as Nodal Officer. If the number of cases of an Administrative Department exceeds 250 the work of Nodal Officer shall be assigned to an officer independently.

Nodal Officer shall be provided adequate staff for keeping the records update and facility of internet and phone for proper communication and gathering necessary information.

The e-mail address and phone numbers of the Nodal Officer shall be available and accessible to the Advocates for the State and vice-versa. The Law Department shall also maintain record of all the nodal officers and Advocates for the State.

The Nodal Officer shall perform the duties as prescribed by the Law Department.

Director Litigation shall hold meetings of the nodal officers at least once in three months to get feedback on the status of state litigation, share the experiences of individuals, pin point the genuine difficulties and evolve ways and means for further improvements.

The Nodal Officer shall not be changed frequently.

Any reluctance in the discharge of duties shall be viewed seriously and shall be a valid reason for initiating disciplinary action against the delinquent official.

### **PROPER BRIEFING**

The officer in charge plays a pivotal role in the State Litigation. The officer in charge is responsible for collecting the factual data, preparing a note and briefing the case accordingly to the advocate for the State. While appointing officer in charge it shall be kept in mind that the appointment of the officer in charge is not a formality but a well-considered decision because the success hinges on his performance.

The qualification, appointment and duties of the officer in charge shall be as prescribed by the Law Department.

Any reluctance in the discharge of duties shall be viewed seriously and shall be a valid reason for initiating disciplinary action against the delinquent official.

Many a times the law officers do not appear in Courts or appear without due preparation. This not only causes inconvenience to the Court but also adversely affects the State interest. The basic reason is incomplete record of pending litigation with the Administrative Department and improper briefing to advocate for the State.

The Nodal Officer shall on top priority maintain a record of the cases pending in courts and related to his department. The record shall be maintained court wise so that cases may be tracked conveniently.

The Nodal Officer shall get the web site of LITES updated regularly.

The Nodal Officer shall ensure that the updated record of the case is available with the Advocate concerned. The list of the cases of the department

shall be made available to the advocate for the State looking after the cases of the department concerned and a copy shall be endorsed to the Advocate General and the Law Department.

The Nodal Officer shall also pin point important litigation of the Administrative Department and shall be extra vigilant about the cases in that list. A copy of the list shall also be endorsed to the advocate for the State and the Law Department for additional monitoring.

The advocate for the State shall verify as per the list availability of the file and relevant record in his office and in case of non-availability shall immediately inform the nodal officer.

The nodal officer shall without delay provide the relevant record to the Advocate for the State concerned.

The factual reports and brief note shall be placed on the file in the formats prescribed by the Law Department.

The officer in charge shall arrange meeting with the advocate for the State/Additional Advocate General handling the case and brief him about the facts of the case as well as department's point of view.

The officer in charge shall remain present in court on every date of hearing and shall meet the advocate for the State on the preceding day for providing assistance, if so required.

The advocate for the State shall ensure appearance in Court with full preparation.

### **DELAY**

The State appeals / replies are often filed with delay. This not only adversely affects the image of the State but the State loses cases on technical grounds without any findings on merit. The accountability is not fixed and is shifted on officer in charge by the advocate for the State and vice versa but the fact remains that the State is the loser.

The officer in charge shall immediately, after the decision to file an appeal or contesting a case is taken, contact the advocate for the State with complete record of the case, brief him and get the appeal / reply drafted. The draft shall be vetted as per procedure prescribed by the law department.

The advocate for the State shall ensure to draft and file the appeal without delay. The record of time taken in drafting and filing each case shall be maintained and communicated to the Law Department every month. The same shall be compiled and placed before the committee constituted for review of performance of Advocates for the State.

The nodal officer shall be responsible for coordinating between the officer in charge and the Advocate for the State.

It shall be the duty of the officer in charge to inform the proceedings or orders of the court on every date fixed in the case to the nodal officer who in turn will apprise the same to the Pr. Secretary / Secretary concerned and simultaneously gets the web site LITES updated.

The advocate for the State shall inform the nodal officer / officer in charge of the direction /order of the court and shall apply for the copy of the order on the same day or latest on the next working day.

The nodal officer shall monitor speedy compliance of the directions contained in the proceedings / order.

The advocate for the State shall ensure that the certified copy is obtained at the earliest and is dispatched to the Administrative Department with comments within three days from the date the certified copy is obtained.

The nodal officer shall act upon the certified copy as soon as it is received and complete the process prescribed by the law department as well as provided in this policy document.

## **LEGAL CELL**

Administrative orders issued in day to day working are often challenged in Courts. To minimize such litigation administrative orders need to be in conformity with the relevant Act, Rules, Notifications and judicial pronouncements. To advise

the Administrative Departments instantly, on law points, officers from Legal Services are deployed in almost every department. The State Government shall endeavor to strengthen the legal cells in various departments by providing adequate infrastructure and deploying adequate number of officers of appropriate rank as per the need of the department depending on the quantum and quality of the litigation.

The legal cell shall be responsible for:

- (i) providing instant advice on law points, in day to day administrative functions, as and when required;
- (ii) monitoring litigation of the department concerned and providing aid to the Nodal Officer in managing the State Litigation.



## CHAPTER V

### Litigation in subordinate Courts

Criminal cases up to the Court of Chief Judicial Magistrate are handled by Assistant Public Prosecutors. This wing of the Assistant Public Prosecutors is under the control of the Home Department. Appeals from judgments of Magisterial Courts are preferred to the Court of Sessions or to the Honourable High Court. Assistant Public Prosecutor's record of the case forms the basis of appeal and it is essential that all the statements recorded during trial and other relevant documents are available on record while taking a decision of appeal or no appeal. The Assistant Public Prosecutors shall ensure that the record is kept updated regularly.

The Public Prosecutors, Additional Public Prosecutors, Special Public Prosecutors shall send a monthly report of cases instituted and disposed. A copy of opinion for appeal / no appeal shall be endorsed to the Law Department.

The decision of appeal or no appeal in cases resulting in acquittal is taken at the level of District Magistrate and cases in which appeal is proposed are sent to Law Department for confirmation.

There shall be a committee in every District for monitoring the appeals comprising of:

- District Magistrate or any officer nominated by him not below the rank of Additional District Magistrate,
- Superintendent of Police or any officer nominated by him not below the rank of Additional Superintendent of Police,
- Officer of Legal Service posted in the office of District Magistrate.

The committee shall hold meetings at regular intervals and take a decision of appeal or no appeal within three weeks from the date of decision. The files of the cases which require confirmation from the Law Department shall be delivered in the Law Department within next ten days. The list of cases in which confirmation from Law Department is not required shall be sent every month, with brief reasons for the conclusion arrived at, and the Law Department shall be at liberty to call for

the record of any such case for further examination. The cases where the committee is not in agreement with the recommendation of the Assistant Director of Prosecution shall be referred to the Law Department for final decision.

Civil cases in subordinate Courts are conducted by Government Advocate. It is a common grievance of the Government advocates that officers in charge of the case do not provide the record and brief them in time, witnesses do not turn up on some or the other pretext resultantly the State loses the cases. The District Magistrate shall appoint a Nodal Officer competent to bridge the gap between the Government advocate and the officers in charge. The nodal officer shall keep a track of the pending State cases on the civil side and ensure that records are supplied, replies are submitted in time and the officers in charge and other witnesses appear in evidence whenever the Court requires. The officers in charge negligent in the discharge of their duties shall be liable for stringent disciplinary action.

The decision of appeal or no appeal in civil cases shall be taken within 15 days and in case decision to prefer appeal is taken the appeal should be filed within limitation. Delay in filing appeal shall be joint responsibility of the officer in charge and the head of the department concerned.

## CHAPTER VI

### Appointment of Advocates for the State

State litigation apart from revenue matters, service matters, matters of public importance involves other variety of cases also. It is important to select and appoint efficient Advocates to handle the State litigation and safe guard the State interest.

Advocate General is appointed under Article 165 of the Constitution of India and is a Constitutional authority with a prime duty to advise the Government on legal matters. Additional Advocate General is appointed to help and share the responsibility of the Advocate General. Appointment of Additional Advocate General as per requirement should be made on the advice and in effective consultation with the Advocate General.

All other Advocates for efficient and effective discharge of the duties shall be selected through a board comprising of:

- Chief Secretary or any officer nominated by him not below the rank of Addl. Chief Secretary
- Advocate General
- Addl. Chief Secretary/ Principal Secretary Finance
- Pr. Secretary DOP
- Pr. Secretary Law
- Director Litigation

Member Secretary

The board shall screen the aspirants possessing experience of at least seven years practice in High Court / Supreme Court.

For ascertaining effective experience and competence to handle State litigation in Courts the board shall be at liberty to formulate the principles and procedure of its own.

The State Government has vivid type of litigation and services of Advocates competent to handle them are necessary. At the time of selection of the Law Officers to represent the State the specific requirements of expertise to cater the

need of different Administrative Departments shall be kept in consideration, so that State interest is safe guarded and the State may not have to look around time and again to engage some expert Advocate on higher remunerations to conduct the case.

The board shall submit the list of the selected Advocates to the Law Minister for further necessary action. The selection process shall be final only after the approval at the appropriate level.

## CHAPTER VII

### Accountability

Accountability at all levels is the touch stone of the litigation policy. Accountability of Nodal Officers and Officers In-charge is defined at appropriate places. The Nodal Officers shall ensure that monthly reports regarding the implementation of litigation policy is sent to the Director Litigation on or before 7<sup>th</sup> day of the succeeding month. The Director Litigation shall compile them and place them before the State Empowered Committee.

The Learned Advocates for the State shall be personally responsible for effective discharge of their duties. Every Advocate shall initially submit list of the State cases already with him and there after shall submit monthly data regarding the following to the Law Department on or before 7<sup>th</sup> day of the succeeding month:

- Cases allotted,
- Cases / reply filed with date
  - (i) when officer in charge contacted &
  - (ii) when case / reply filed,
- Cases argued,
- Cases in which adjournment sought by him,
- Case decided / conducted along with the ensuing result,
- Case files sent back to the Administrative Department after disposal with opinion and the date on which so sent.

The performance of the Learned Advocates for the State and the status of implementation of litigation policy shall be reviewed half yearly by State Empowered Committee comprising of:

- Chief Secretary or an officer nominated by him not below the rank of Addl. Chief Secretary
  - Advocate General
  - Pr. Secretary Law
  - Director Litigation
- Member Secretary

The meeting of State Empowered Committee may be convened at any point of time if the situation requires doing so.

The State Empowered Committee shall submit its report to the Law Minister for further necessary action.

The officers in charge of the cases express at times grievances against the functioning of the Learned Advocates on the panel of the State. There need to be a set mechanism to redress such grievances. All such grievances when brought to the notice of the Law Department shall be referred to a committee comprising of:

- ACS / Pr. Secretary / Secretary of the Administrative Department
- Pr. Secretary Law
- Director Litigation Member Secretary

The committee shall examine the grievance in the light of the explanation of the Law Officer concerned, provide an opportunity of personal hearing, if so required, to the concerned, prepare a report and shall place it before the State Empowered Committee for consideration.

The committee shall also suggest ways and means to check the recurrence.

## CHAPTER VIII

### Drafting

Drafting is the backbone of the litigation. Parties can argue their case on the basis of pleadings only.

Drafting of suits, replies, appeals, writs or SLPs should be in compliance with the settled norms of drafting and pleading.

Administrative Department is responsible for providing factual data to the counsel and vetting the draft on facts. The Administrative Department should ensure true, chronological averment of facts. No fact should be suppressed. The Administrative Department may further consult and follow the circulars issued by the law department for details.

Drafting by the Counsels for the State shall be invariably vetted on law points by the Additional Advocate General in-charge of the pool. Drafting should be in compliance with the rules of the court. The committee constituted for review of performance of counsels shall review level of drafting and take appropriate action.

The applications filed during litigation, for restoration, for condonation of delay etc. need to be drafted cautiously and not in a routine slip shod manner. The application should be drafted catering to the need of the particular case.

Casual drafting shall be viewed seriously by the committee constituted for reviewing the performance of advocates for the State.

The Advocates for the State shall be prompt in drafting and presentation. As soon as the case is assigned and the record is made available the function should start and should not take more than 7 days to conclude. In case any further information is sought officer in charge /Nodal Officer shall provide the same within 2 working days. Time is the essence of the policy and the Administrative Department as well as the Advocates for the State need to adhere to it. Deviations are to be viewed seriously and the consequences shall follow.

As per Supreme Court Rules Advocate on Record alone is recognized by the Honourable Supreme Court and are specially qualified to act on behalf of the parties.

All presentations in Honourable Supreme Court are accepted through Advocate on Record. Honourable Supreme Court has categorically expressed that services of Advocate on Record are not supposed to be taken as a signing machine only.

The drafting counsel shall within 15 days complete the drafting of the SLP/reply/application and there after shall immediately send it to Advocate on Record.

The Advocate on Record shall examine whether the presentation is in compliance with the Supreme Court Rules and if there are defects shall get them removed and then submit the same to the registry. The Advocate on Record shall retain a copy for his record and shall be responsible for any further action required by the registry. The Advocate on Record shall track the State cases and shall prompt the Additional Advocate General / Panel Lawyer conducting the case regarding the listing of the case. In case the Additional Advocate General/ Panel Lawyer is not available Advocate on Record shall appear on behalf of the State.

Deviation from the procedure shall be viewed seriously by the committee constituted for reviewing the performance of advocates for the State.

The advocates for the State shall not grant concessions, make commitments and give undertakings on behalf of the State or an officer of the State without express instructions from the State.



## CHAPTER IX

### Work Distribution

The State shall carefully select advocates to represent the State in the Courts and take maximum advantage of their experience, skill, proficiency and legal acumen. For the best results, work amongst the advocates for the State shall be distributed rationally. The expertise in any particular field of an advocate may be considered for specific cogent reasons.

Advocate General is a Constitutional authority and Additional Advocate Generals are appointed to share his responsibility and they are on a higher pedestal in the system. Administrative Department shall not demand appointment of Advocate General and Additional Advocate General in a routine manner for less important matters. Assignment of an important case to Advocate General or Additional Advocate General may be requested at the initiation of the proceedings for specific reasons to be mentioned and at a later stage opinion of advocate for the State for such assignment should be placed on record.

The frequent request for change of advocate or assigning to Additional Advocate General at a later stage shall be considered only on the mentioning of specific cogent reasons.

The Law Department shall device a system to ensure equal and rational distribution of work amongst the advocates for the State. The Law Department shall review the present distribution and take measures to rationalize the distribution.

## **CHAPTER X**

### **Remuneration and infrastructure for the advocates**

Though the remuneration to the counsels for the State cannot be as lucrative as paid by a private litigant but still the remunerations should be reasonable enough to attract more competent advocates to serve the State. The remunerations should be reviewed and revised every five years.

The infrastructure at all level should be conducive for efficient working. The State shall endeavor to provide Suitable accommodation, necessary staff and communication facility for efficient working.

Facility of access to latest pronouncements is a basic need for good performance of an advocate and the State shall endeavor to provide the same at all levels.

## **CHAPTER XI**

### **Adjournments**

Adjournments sought by the parties are the main cause for delay in disposal and ever increasing backlog in the courts.

The State has no direct control over the advocates in general to restrict the adjournments but the State by not seeking adjournments in the State cases can make its contribution in avoiding delays.

The advocates for the State should appear in courts with full preparation to assist the court and resist the request for adjournment by the other side. The advocates for the State shall not seek adjournment in any case unless it is necessary for seeking instructions. The advocates for the State shall inform the nodal officer and nodal officer shall coordinate to provide all necessary material required to assist the advocates for the State without any delay.

The adjournments on the behest of the advocates for the State are not welcomed and should be avoided. Frequent adjournments on the part of the advocates for the State shall be considered adversely by the State Empowered Committee.

The cases in which cost is awarded against the State for adjournment shall be viewed seriously and the reasons with the name of the person responsible for the same shall be communicated by the Administrative Department to the Member Secretary of the State Empowered Committee. The State Empowered Committee shall fix the responsibility and suitable action shall be taken against the defaulter immediately by the competent authority under intimation to the State Empowered Committee.

Adjournment for want of instructions in time shall be the responsibility of the nodal officer and persistent adjournments on this count shall make him liable for disciplinary action.

## **CHAPTER XII**

### **Important cases**

The Administrative Department shall maintain a record of all important cases pending and shall notify the same to the respective advocates for the State. Extra vigilance is required in monitoring those cases and any default or negligence shall be punished exemplarily.

Contempt cases are matter of great concern and create embarrassing situations for senior officers. The nodal officer of the Administrative Department should maintain a record of Court directions, orders and judgments and ensure compliance immediately if decision of no appeal is taken otherwise must file an appeal within time and obtain the stay. In case stay is not granted by the appellate court the order appealed against shall be complied with under protest subject to the decision in appeal.

## CHAPTER XIII

### **Review of pending cases, Rules, Circulars and Notifications**

To begin with the Administrative Department must initiate review of all pending cases immediately, there after Administrative Department shall review all the cases pending litigation at least every 3 months. The cases which have become in fructuous by the lapse of time or the point involved has attained finality need not be persuaded and should be withdrawn.

The cases hinging on the settled principles of law or on principles lay down in other similar matters and have attained finality should not be re-agitated. If such cases are pending they shall be reviewed and withdrawn / conceded in the courts.

The rules, circulars and notifications shall be reviewed every six months and suitably amended to be in consonance with the established principles of law laid down by judicial pronouncements after the same have attained finality.

## **CHAPTER XIV**

### **Litigation expenses and payment of special fees**

The process of litigation requires funding also and the process should not be delayed or defeated for want of timely funding. To defray the litigation expenses a sum may be fixed for every level of litigation and the Administrative Department must provide the amount to the officer in charge in the first instance, to be paid to the advocate for the State for defraying the expenses of typing, photo copy etc. . This will save the time consumed in raising the demand by the advocate, procuring the amount by the officer in charge in due process and making the payment to the advocate. If the expenses turn out to be more than the fixed amount the advocate for the State shall submit a detailed bill strictly as per the circular of the Law Department and payment shall be ensured without delay by the nodal officer concerned. The advocate for the State shall not delay the presentation only on the ground of pendency of bill.

The advocate for the State shall ensure that a demand more than the rates prescribed in the circular is not raised and violations shall be noticed by the review committee while reviewing the performance.

Wherever the case is considered a special case and special fees is sanctioned the Administrative Department shall send the bill in triplicate after proper verification to the Law Department within 10 days after the fees becomes payable. The Law Department shall ensure payment within next 10 days.

The State shall consider rewarding counsels for the State for quality disposal achieved by them. For this guidelines shall be prepared to achieve larger quantity without compromising on quality of presentation.

## **CHAPTER XV**

### **Alternate Dispute Redressal**

The State should adopt recourse to Alternative Dispute Redressal system in the cases it is practically feasible to avoid prolonged litigation in the courts.

Arbitration clause should be invariably included in the State contracts. The State should prepare a panel of arbitrators of integrity and sound legal knowledge.

The awards of the arbitrators shall not be challenged without sound and logical reasoning.

The State shall endeavor to resolve disputes through Lok Adalat in labour cases, insurance claim cases, motor accident claim cases, cases arising out of petty contracts in which huge financial implications are not involved and other cases of individuals where they do not create precedence. The Administrative Department shall consider and take a decision about the terms of compromise and authorize a competent officer to appear and compromise the matter in the Court.

## **CHAPTER XVI**

### **Training Programs, Seminars, Workshops**

The State shall arrange for training programs for advocates / officer in charge /officers of the legal service for the State in collaboration with the Judicial Academy. Seminars & workshops at regular intervals shall be organized to enhance the quality and capability to handle State Litigation.



