

अति आवश्यक

राजस्थान सरकार  
निदेशालय समेकित बाल विकास सेवाएं

क्रमांक: एफ.15(6)(13)/विधि/आईसीडीएस/17/

जयपुर, दिनांक

उपनिदेशक,  
महिला एवं बाल विकास विभाग,  
समस्त

विषय:- नई राज्य लिटिगेशन पालिसी 2018 के लिए सुझाव देने के क्रम में।

विषयान्तर्गत विधि एवं विधिक कार्य विभाग के पत्र क्रमांक एफ.12(8)राज/वीएडी/10 दिनांक 7.09.2018 के साथ राज्य लिटिगेशन पालिसी 2018 का प्रारूप संलग्न कर लेख है कि उक्त पालिसी के सम्बंध में आपके सुझाव से तीन दिवस में निदेशालय को अवगत करावें।

संलग्न - उपरोक्तानुसार

Sd/-  
अति निदेशक  
समेकित बाल विकास सेवाएं  
राजस्थान जयपुर

क्रमांक: एफ.15(6)(13)/विधि/आईसीडीएस/17/18/432- जयपुर, दिनांक 11/10/18  
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प्रतिलिपि:-1. वरिष्ठ उप शासन सचिव, महिला एवं बाल विकास विभाग, राजस्थान, जयपुर को उनके पत्र दिनांक 13.09.2018 के क्रम में सूचनार्थ प्रेषित है।  
2. एसीपी, कम्प्यूटर प्रोग्राम को भेजकर लेख है कि उक्त पत्र को विभागीय बैवसाईट पर अपलोड करावे।

Sd/-  
अति निदेशक  
समेकित बाल विकास सेवाएं  
राजस्थान जयपुर

Most Urgent

**Government of Rajasthan  
Women & Child Development Department**

No. F.13(3)WCD/2018

Jaipur, dated :- 18-09-2018

✓ 1- Director, I.C.D.S.,  
2, Jal Path, Gandhi Nagar,  
Jaipur-3020015

ADI  
[Signature]

17671AD  
2- Commissioner,  
Women Empowerment,  
J-7, Jhalana Institutional Area,  
Jaipur-302004

3646  
20.9.18.

Sub:- Suggestions regarding New State Litigation Policy-2018

Ma'am,

I am directed to enclose herewith a copy of the U.O. Note No. F.12(8)Raj/VAD/10 Pt. dated 7th Sept., 2018, received from Secretary, Law & Legal Affairs Department (Litigation Division) along with a copy of the draft of new comprehensive **State Litigation Policy-2018** and request you to kindly send your suggestions in this regard within a period of three days positively.

Encl: as above.

Yours Sincerely,

[Signature]

(N.L.Jewaria)

Senior Dy. Secretary to Govt.

DLR  
19, 25/9/18

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Government of Rajasthan  
Law & Legal Affairs Department  
(Litigation Division)

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Subj. Suggestions regarding New State Litigation Policy-2018

Received through G-Post  
Dated 10-09-18

I would like to draw your kind attention towards the Order dated 27.7.2018 passed in S.L.P (C) D-4941 of 2018. State of Rajasthan Vs. Man Singh Das (copy enclosed). Hon'ble Supreme Court of India vide its Order dt. 27.7.2018 directed the State Government as under:-

*The State has now filed an affidavit wherein it is indicated that there are some executive instructions with regard to the litigation policy. We feel that this may not be quite sufficient.*

*It is only in the interest of the State that they should have a comprehensive litigation policy in which they should also be able to have the liability fixed on the persons who cause the delay. Appropriate steps should also be taken to avoid unnecessary delay and such things should be reflected in the litigation policy.*

*We direct the State to frame such a policy codifying all the instructions issued and incorporating the safeguards, some of which we have indicated above, within a period of twelve weeks."*

In view of the above, after due deliberations with the Law Officers of the State, the new comprehensive State Litigation Policy-2018 has been drafted codifying all the instructions of the Hon'ble Apex Court. A soft copy of the State Litigation Policy-2018 is being sent to you through your E-mail address for seeking your suggestions within a week's time positively.

Encl. As above

(Chanchal Mishra)  
Secretary to Government

All Addl.Chief Secretaries/  
All Pr.Secretaries,  
All Secretaries  
Government of Rajasthan, Jaipur

No F12(8) Raj/VAD/10 Pt.  
Jaipur dt. 7<sup>th</sup> Sept. 2018

W.W.C.D

10/9/18

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## State Litigation Policy

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**Rajasthan State Litigation Policy, 2018**

**1. INTRODUCTION**

- 1.1. 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.
- 1.2. Pursuant to the recommendation of 13<sup>th</sup> Finance Commission and the resolution adopted at the National Consultation on "Strengthening the Judiciary towards reducing pendency and delay" held on 24.10.09, the National Litigation Policy was framed which in turn led to the promulgation of the Rajasthan State Litigation Policy, 2011. However, it has been observed in the last few years that comprehensive review of the policy is needed to ensure that its objectives are met.
- 1.3. The statistics of the litigation reveals that the State is the pre-dominant litigant in the courts contributing the major share of the pending litigation. This Litigation Policy is an endeavor to manage the State Litigation in an efficient and responsible manner to minimize the State's contribution to pendency so that Hon'ble Courts may get more time for other pending cases. Upon a critical preview of present litigation scenario and a comprehensive deliberation on various issues related thereto, it is felt that a clear, comprehensive, efficacious and cohesive Policy is needed for effective management of litigation pertaining to the State at various levels from District to State and National level. It is with the above purpose that the existing Policy was reviewed and a new Policy, "The Rajasthan State Litigation Policy, 2018" brought into effect.
- 1.4. The circulars issued by the Law Department from time to time, shall remain in force to the extent this document is silent and shall be followed in the spirit of this policy.

**2. OBJECTIVE**

- 2.1. In consonance with the National Litigation Policy, the Rajasthan State Litigation Policy, 2018 aims to evolve a comprehensive Scheme and mechanism along with effective strategies to bring about desired improvement in the manner litigation is managed and conducted by the

State Government and to transform the State Government into an efficient and model litigant.

This Policy reflects the resolve of the State Government to bring about a visible and enduring qualitative and quantitative improvement in the manner in which litigation is perceived, managed and conducted in the State. It embodies the national concern that pendency and delays in our Hon'ble Courts should be proactively reduced by the Government.

The Hon'ble Supreme Court has repeatedly expressed the view that Government and statutory authorities should be model litigants and should not put forth false, frivolous, vexatious and technical contentions to obstruct the path of Justice. Vexatious and unnecessary litigations have been clogging the wheel of justice for too long, making it difficult for courts and tribunals to provide easy and speedy access to justice to bona fide and needy litigants. Statutory authorities exist to discharge statutory functions in public interest, therefore, they should be model litigants.

With a view to become an efficient and model litigant, the State shall be guided by the following principles:

- (i) The State shall manage and conduct its litigation in responsible, sensitive and efficient manner.
- (ii) Cases which can be resolved by having recourse to alternative dispute resolution mechanism i.e. mediation, arbitration, Lok Adalats etc. will be resolved through such mechanism only. The alternative dispute resolution mechanism will be encouraged as cost effective and time saving mode of settling legal disputes.
- (iii) Management and conduct of litigation shall be done in coordinated, time bound and cohesive manner.
- (iv) Objections on extremely technical points will be avoided by the State unless the same goes to the root of the matter.
- (v) Litigation shall not be resorted to, for the sake of litigation.
- (vi) Endeavour shall be made to withdraw infructuous and petty cases by periodical scrutiny of the pending cases.
- (vii) State should be represented by competent counsels

### **3. APPLICABILITY**

- 3.1 This Policy shall apply to any claim, dispute and litigation involving the State or its functionaries before Courts, Tribunals, Arbitration and Alternative Dispute Resolution forums.
- 3.2 It shall be mandatory for all Government departments to follow this Policy.
- 3.3 The Policy shall serve as the authoritative reference for all questions of procedure, norm and interpretation in relation to management and conduct of litigation at all stages & forums.

### **4. THE STAKE HOLDERS**

- 4.1 All stake holders i.e. Govt. Departments and their functionaries viz Law Officers, Government Counsels and officials entrusted with any responsibility relating to control, supervision, management or conduct of litigation, will have to play their respective part with utmost sincerity and commitment in effectively implementing this Policy.

### **5. LEGAL CELL**

- 5.1 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 Service shall be deployed in 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 officer of Legal Service not below the rank of Joint LR shall be posted in the Administrative Department where number of Court cases are more than 1000.
- 5.2 The post of Dy. Legal Remembrancer is senior post of Legal Service and equal to rank of Dy. Secretary, so for speedy decision and effective monitoring of litigation, the officers of Legal Service above the rank of Assistant Legal Remembrancer shall be directly subordinate to the Head of the department and Secretaries of Administrative Department concerned.
- 5.3 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 of the department including preparation of factual matrix of case, brief notes relating to relevant laws, departmental rules and history of similar cases decided finally or pending matter.
- 5.4 The Administrative Departments, who do not already have Legal Cell, will create so.
- 5.5 Necessary Infrastructure and man power including Stenographer, IT Software support etc. will be made available by the Administrative Department concerned, to the Legal Cell to discharge their functions and aforesaid responsibilities.

### **6. NODAL OFFICERS**

- 6.1 Each Department at Government level and each head of the departments shall appoint a Nodal Officer. The duties and responsibilities of the Nodal Officers shall inter alia include regular monitoring, coordination and effective management of litigation pending before the Supreme Court, High Courts, Subordinate Courts and Tribunals. He will pay special attention to curb delay in filing appeals/petitions in time. He will in particular identify cases in which repeated adjournments are being taken for instructions or filing reply and report such cases of repeated and unjustified adjournments to the Head of Departments.
- 6.2 The Head of Department or Officer of the Legal Service posted in the Department shall examine relevant records and ensure that the record of the case reflects reasons for adjournments, if there are repeated adjournments. Serious note will be taken of cases of negligence or default on the part of officer- in -charge concerned and the matter will be dealt with appropriately by the competent authority. It shall be open to the head of the Department to call for reasons for such adjournments.
- 6.3 The Administrative Department shall ensure appointing an efficient officer not below the rank of Deputy Secretary, capable of managing litigation as Nodal Officer. If the number of cases of an Administrative Department exceeds 500 the work of Nodal Officer shall be assigned to an officer independently.

- 6.4 The Nodal Officer shall 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.
- 6.5 The Nodal officer shall ensure that the relevant record is provided to the Advocate without delay. 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.
- 6.6 The factual reports and brief note shall be placed on the file in the formats prescribed by the Law Department
- 6.7 The Nodal Officer shall get the web site of LITES (Litigation Information Tracking and Evolution System) updated regularly. Nodal Officer shall be provided adequate staff (including an IT personnel for LITES updates) for keeping the records update and facility of internet and phone for proper communication and gathering necessary information.
- 6.8 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.
- 6.9 The Nodal Officer shall also perform such other duties as specified from time to time, by the Law Department.
- 6.10 Law Secretary shall hold meetings of the nodal officers at least once in six 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.
- 6.11 The Nodal Officer will not be changed frequently.
- 6.12 Any reluctance in the discharge of duties shall be viewed seriously and shall be a valid reason for initiating disciplinary action against the delinquent officer.

**7. OFFICER- IN-CHARGE OF THE CASE**

- 7.1 As soon as an information of institution of case against the State is received by the Department or it decides to institute a case or prefer an appeal etc., it will be incumbent upon the Administrative Department Head of the Department concerned to appoint an efficient officer as in-

charge of the case who will be authorized to sign Vakalatnama Affidavits etc., provide precis of defence/facts of the case to be presented before the court, relevant documents, departmental Laws and Rules/ instructions/ circulars etc. having bearing on the matter in dispute to the counsel.

7.1 The officer in charge will be 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 justice to be delivered in the case hinges on his performance.

7.2 Officer in-charge of the case shall obtain the information regarding the present status and the next date of hearing of the case. He shall also collect all necessary information and ensure that necessary pleadings is filed within time. The Law officer/Government Counsel concerned shall extend full cooperation to officer-in-charge of the case and ensure timely preparation and submission of necessary pleadings.

7.4 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.

7.5 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.

7.6 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 filed.

7.7 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.

Duties of the Officer-In-charge shall be clearly mentioned in the letter of appointment. Functions and duties of the officer in-charge of the case and their conduct in the office of Advocate General/Govt. Counsel should conform to the norms as are mentioned in the Annexure-I to this policy.



an opportunity of personal hearing, if so required, to the concerned, prepare a report and shall place it before the State Level Empowered Committee for consideration.

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

### **9. STATE LEVEL EMPOWERED COMMITTEE**

- 9.1 There shall be a State Level Empowered Committee with the following composition:

(i)	The Chief Secretary of the State	Chairman
(ii)	ACS/Principal Secretary, Finance	Member
(iii)	Principal Secretary, Law	Member
(iv)	Pr. Secretary/Secretary, Deptt. of Personnel	Member
(v)	Advocate General or Additional Advocate General as nominated by the Advocate General	Member
(vi)	Secretary, Law	Member Secretary

- 9.2 The Chief Secretary may invite any other ACS/Pr. Secretary/ Secretary to participate in the meeting.

- 9.3 Functions of the committee:-

- (i) To oversee implementation of the Policy and management of litigation at all levels, formulate policies/guidelines for scrutiny, settlement of cases out of the court or withdrawal of petty and infructuous cases.
- (ii) To encourage and strengthen Alternative Dispute Resolution mechanism as cost effective and time saving method of settling disputes/grievances.
- (iii) To advice Government on important policy matters relating to class of cases, and all other matters incidental to proper management and conduct of litigation.
- (iv) To enhance accountability on the part of stakeholders, Officials and Government Counsels/Public Prosecutors/ Government Advocates.
- (v) To recommend action in cases of gross misconduct or dereliction of duty or impropriety in any administrative decision of individual office, in respect of any class of cases or any individual case of

importance and take suitable measures to enforce accountability on the part of all stake holders.

- (vi) To consider the major causes of litigation and recommend suitable measures to reduce litigation.
- (vii) To review the performance of Government Counsels and suggest measures to strengthen accountability on their part.
- (viii) To evaluate impact of the present policy, recommend improvement in the litigation policy and strengthen institutions concerning monitoring, management and conduct of litigation.

9.4 The meeting of the committee may be convened at any point of time, if the situation requires so but shall be convened at least once in six months.

9.5 The Law Department may place any matter related to monitoring of litigation or implementation of the litigation policy before the State Level Empowered Committee for their decision.

**10. PRE APPEAL MONITORING**

10.1 There shall be a Pre Appeal Monitoring Committee/ Standing Committee in each Administrative Department with the following composition:-

- |    |   |                  |
|----|---|------------------|
| 1. | ACS/Pr.Secretary/Secretary of the Administrative Department   | Chairman         |
| 2. | Nominee of Pr. Secretary Law not below the rank of Jt.LR  | Member           |
| 3. | Nominee of ACS/Pr.Secretary, Finance not below the rank of Dy. Secretary (In matters having financial implications) | Member           |
| 4. | Nominee of Pr.Secretary/Secy., DOP not below the rank of Dy. Secretary (In service matters)                         | Member           |
| 5. | Jt. Secretary/Dy. Secretary/Nodal Officer of the Admn. Department   | Member Secretary |

10.2 Functions of the committee:-

- (i) To take final decision regarding SLP/No SLP before Hon'ble Supreme Court or Appeal/No Appeal before Division Bench of Hon'ble High Court.

- (ii) To take final decision regarding Appeal/No Appeal against the judgment of Civil Services Appellate Tribunal.

- 10.3 The Member Secretary shall ensure:-
- (i) availability of all relevant material to the members at least 5 days prior to the time fixed for the meeting in the format as per Annexure-II annexed to this policy. The notice of the meeting will also be sent to the members of the Committee through E-mail
  - (ii) that meeting is convened within 07 days from the date of receipt of copy of judgment in the office.
- 10.4 In urgent cases, the decision for Appeal/No Appeal may be taken by the Committee vide circulation process.
- 10.5 Members from DOP & Finance shall examine and seek approval up to appropriate level prior to the meeting, regarding the department's stand and should be prepared to express authenticated opinion.
- 10.6 The Advocate appearing on behalf of the State shall ensure to apply for and obtain certified copy of the judgment promptly.
- 10.7 The certified copy of judgment is not mandatory for convening the meeting. The copy downloaded from the website of the Hon'ble High Court is sufficient for convening the meeting of standing committee.
- 10.8 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 if there is an error apparent on the face of the record.
- 10.9 Every in-action or delay by an official at any/every stage shall attract disciplinary action under the rules applicable to him.
- 10.10 The Law Department will issue detail instructions to ensure timely filing of appeals/ review/ SLP's, from time to time.
- 10.11 Responsibility will be fixed if the delay occurs without sufficient reasons.
- 10.12 If there is no unanimous decision of the Committee regarding SLP/No SLP or Appeal/No Appeal, the matter shall be referred to the Law Department for final decision. The opinion of SLP/No SLP or Appeal/ No Appeal of every member with reasons, shall be narrated in the minutes of the meeting.
- 10.13 The Advocate or office of Legal Remembrancer, while giving their opinion for filing appeal/further appeal shall mention the substantial

question of law involved in the cases, where appeal lies only when substantial question of law is involved and not on facts.

10.14 If the Pre Appeal Monitoring Committee/Standing Committee has taken the decision of appeal/ no appeal in a particular matter, then the similar nature of cases shall not be placed again before the Committee for appeal/no appeal. The Administrative Department itself may take decision of appeal/no appeal as per earlier decision of the Committee.

- 10.15 The standing committee shall:
  - a. examine thoroughly every case on merits and shall give reasons of Appeal/ No Appeal, after duly considering relevant rules, notifications, circulars, Act, precedence and all other relevant material;
  - b. not take a decision of appeal only for the reason that:
    - (i) it will cast financial burden on the exchequer.
    - (ii) it is safe 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.

**11. PRE LITIGATION MONITORING**

11.1 Prior to initiation of litigation against the State, if notice as a statutory requirement or demand of justice is served by the person concerned is an opportunity for the State to redress the genuine grievance and avoid unnecessary litigation.

11.2 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 leaving the matter for the courts to decide

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

11.4 There shall be a Pre Litigation Monitoring Committee in each Administrative Department with the following composition:-

- 1. ACS/Pr.Secretary/Secretary/Special Secretary

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- |    |   |                  |
|----|---|------------------|
|    | of the Administrative Department  | Chairman         |
| 2. | Joint LR/Dy.LR nominated by the Pr. Secretary Law   | Member           |
| 3. | Jt.Secretary/Dy.Secretary of Finance Department nominated by the ACS/ Pr.Secy.,Finance (In matters having financial implications) | Member           |
| 4. | Jt.Secretary/Dy.Secretary of DOP nominated by the Pr.Secy./Secy.,DOP (In service matters)   | Member           |
| 5. | Jt.Secretary/Dy.Secretary/Nodal Officer of the Admn. Department   | Member Secretary |
- 11.5 Every Notice for demand of justice shall be placed before the Pre Litigation Monitoring Committee and the Committee shall take final decision with respect to the relief sought in the notice.
- 11.6 If Administrative Department considers that any legal issue involved in the matter and legal opinion is required for solving the issue prior to the notice placed before the Committee, the Administrative Department may refer the matter for legal opinion to the special cell of Law Department constituted for this purpose, after framing the question of law.
- 11.7 Special cell comprising of District Judges (retired) Joint Legal Remembrancer and required supporting staff has been created in the Law Department to examine and opine on the legal points raised in the notice and referred by the Administrative Department. Reasoned opinion shall be communicated to the Administrative Department on file within seven working days for further necessary action.
- 11.8 Nodal officer of the Administrative Department Member Secretary shall place the opinion of special cell before the meeting of the Committee for decision.
- 11.9 The **Pre Litigation Monitoring Committee** shall:
- a. examine thoroughly every case on merit and shall pass reasoned order after due consideration of legal opinion, relevant rules, notifications, circulars, Act, precedents and other relevant material;
  - b. consider genuineness of the claim keeping in mind principles of natural justice :

- c. consider accepting the claim partially to the extent found genuine while refusing the rest;
  - d. take a decision within the time stipulated by the governing laws.
- 11.10 The Member Secretary shall ensure:
- a. availability of opinion of special cell and all relevant material to the members at least 5 days in advance for final decision;
  - b. 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;
  - c. that meeting is convened at the earliest but not later than 7 days from receipt of notice and within 5 days from the receipt of opinion of special cell for final decision.
- 11.11 The reasoned decision taken on the notice shall be communicated by post or through Email to the concerned person without delay and in all eventualities prior to the expiry of the notice period.
- 11.12 The Administrative Department shall ensure quick compliance of accepted claims.
- 11.13 Administrative Department shall maintain the record of every notice so received, meetings held, decision taken and communication of the result to the person concerned.
- 11.14 The nodal officer shall be responsible for immediate necessary action on the notice received.
- 11.15 Every in-action or delay by an official in dealing with notices shall attract disciplinary action under the rules applicable to him.
- 11.16 If Administrative Department considers that representation received from any person, would convert into litigation, then such representation will be placed before the Pre Litigation Monitoring Committee. Such representation will be decided within a period of three months.

**12. COVERED MATTERS**

12.1 A good number of cases involve similar nature of claims. Each Government Department will strive to address and settle claims of the applicants/ employees/ citizens, if the claim is found covered by any final decision of the Court/Department, for example; number of service matters of similar nature can be disposed of at the level of the Department

itself without compelling the litigant to go to the Court. In this manner, the Government Departments would be acting as efficient litigants.

**13. FILING OF APPEALS**

- 13.1 Appeals will not be filed against ex-parte ad interim orders unless stakes are very high or the order is against public interest. Attempt must be made to first get the order vacated/set aside. An appeal may be filed against an ex party order only if the order is not vacated and the continuation of such order causes prejudice especially in matters of vital public importance.
- 13.2 Writ Petitions will be filed against an orders of the Service Appellate Tribunal, unless:-
  - (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 service cadre and create financial burden, or
  - (iv) the order will adversely affect the discipline in the services or lower down the morale of the members of services;
- 13.3 Writ Petitions will generally not be filed against orders of the Service Appellate Tribunal:-
  - (i) 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;
  - (ii) in cases where the matter pertains to a case of pension or retirement benefits without involving any principle and without setting any precedent or financial implications beyond Rs.5 lacs.
- 13.4 Appeals must be filed intra court i.e. in the appellate court of first instance. Direct appeals to the Supreme Court must not be resorted to except in extraordinary cases.
- 13.5 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 or declares any enactment ultra-virus or takes an erroneous interpretation of statute.

- 13.6 In case of concurrent and reasoned findings of two courts, appeal should be preferred exceptionally on sound reasoning only.
- 13.7 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, or
  - (ii) where the case is covered by settled principles of law.

#### **14. APPOINTMENT OF ADVOCATE FOR THE STATE**

- 14.1 The 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.
- 14.2 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 are appointed to help and share the responsibility of the Advocate General. Appointment of Additional Advocate General as per the requirement should be made on the advice and in effective consultation with the Advocate General.
- 14.3 All other Advocates for efficient and effective discharge of the duties shall be selected by the **State Level Empowered Committee**.
- 14.4 The Committee shall screen the aspirants possessing experience of at least seven years practice in High Court / Supreme Court.
- 14.5 For ascertaining effective experience and competence to handle State litigation in Courts the Committee shall be at liberty to formulate its own principles and procedure.
- 14.6 The State Government has multifarious 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 remuneration to conduct the case.

**15. 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 shall not appoint Additional Advocate General in a routine manner for less important matters. Assignment of an important case to 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 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.

**16. REMUNERATION AND INFRASTRUCTURE FOR THE ADVOCATES**

- 16.1 Though the remuneration to the counsels for the State cannot be as lucrative as paid by a private litigant but still the remuneration should be reasonable enough to attract more competent Advocates to serve the State. The remunerations should be reviewed and revised from time to time.
- 16.2 The infrastructure at all levels should be conducive for efficient working. The State shall endeavor to provide suitable accommodation, necessary staff and communication facility for efficient working.
- 16.3 Facility of access to latest judicial pronouncements is a basic need for good performance of an Advocate and the State shall endeavor to provide the same at all levels.

### **17. ADJOURNMENTS**

- 17.1 Unnecessary and frequent adjournments should be avoided by the Law Officers:Government Counsels. The Government Lawyers should also point out misjoinder or non-joinder of parties so that officials not connected with the matter are not harassed.
- 17.2 In fresh litigation where the Government is a defendant or a respondent in the first instance, a reasonable adjournment may be applied for obtaining instructions. However, it must be ensured that such instructions are made available and communicated before the next date of hearing. Where instructions are not forthcoming, the matter must be reported to the Nodal Officer and, if necessary, to the Head of the Department concerned.
- 17.3 If it is not possible to file necessary pleadings in the Court on the date fixed, the officer in-charge of the case shall contact the office of Advocate General:Law officers:Government Counsels in order to file an appropriate application seeking further time to file such pleadings. However the above procedure shall not be taken recourse to in a routine manner and further time should be prayed for, only on reasonable sound grounds.
- 17.4 In Appellate Courts, if the paper books are complete, then unnecessary adjournments must not be sought in a routine manner. The matter must be dealt with at the first hearing itself. In such cases, adjournments should be applied for only if a specific query from the court is required to be answered and for which instructions are required to be obtained.
- 17.5 Cases in which costs are awarded against the Government as a condition for grant of adjournment should be seriously viewed.
- 17.6 The persons responsible for the default entailing the imposition of costs should be identified and suitable action should be taken against him.

### **18. APPEALS**

- 18.3 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 in this behalf.
- 18.4 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 quality of drafting also and if necessary, take appropriate action.
- 18.5 The miscellaneous 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.
- 18.6 Casual drafting shall be viewed seriously by the committee constituted for reviewing the performance of Advocates for the State.
- 18.7 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 drafting work should start and not take more than 7 days to conclude. In case any further information is required, the 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.

**19. TIMELY FILING OF  
APPEALS / REVIEWS /S.L.P.s**

- 19.1 It is observed that sometimes meritorious cases are lost because appeals/Reviews/S.L.P.'s are filed beyond the period of limitation and without any proper explanation of such delay. It is provable that such delays may not be always bonafide, particularly in cases where high stakes are involved therefore timely filing of Appeals/Reviews/S.L.P.'s is important.

- 19.2 Whenever an order is passed by a court, the officer in-charge shall obtain opinion of Government Advocate on it and bring the matter to the notice of the competent authority. In case it is decided to prefer an Appeal/Review/SLP, Administrative Department shall ensure that such Appeal/Review/SLP shall be filed well within the stipulated time. If there is delay in filing Appeal/Review/SLP or failure to comply with a court order leading to filing of a contempt petition without sufficient cause, the matter shall be examined by the concerned department to find out reasons for such delay/failures and also to identify the erring officer/ employee responsible for such delay/failure and take suitable action against them if there were no reasonable and sufficient grounds for such delay/lapse.
- 19.3 If a Writ, Appeal/Review/S.L.P. is dismissed by a High Court or the Supreme Court on the grounds of laches by rejecting application for condonation of delay, the concerned department shall invariably inquire into the matter to fix the responsibility and ensure that appropriate disciplinary action is taken against the erring officer/ official/Advocate.

#### **20. ALTERNATE DISPUTE REDRESSAL**

- 20.1 The State should adopt recourse to Alternative Dispute Redressal system in the cases where it is practically feasible to avoid prolonged litigation in the courts.
- 20.2 Arbitration and mediation clause should be invariably included in the State contracts. The State should prepare a panel of arbitrators of integrity and sound legal knowledge.
- 20.3 The awards of the arbitrators shall not be challenged except upon sound and logical reasoning.
- 20.4 The State shall endeavor to resolve disputes through Alternate Dispute Resolution 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 precedents. 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.