

Madhya Pradesh State Litigation Management Policy, 2018

1. INTRODUCTION

1.1 Pursuant to the recommendations of 13th Finance Commission and the resolution adopted at the National Consultation on "Strengthening the Judiciary towards reducing pendency and delay" held on 24-10-2009, the National Litigation Policy was framed which in turn led to the promulgation of the Madhya Pradesh 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.

1.2 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 endeavour 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 Madhya Pradesh State Litigation Management Policy-2018" brought into effect.

2. OBJECTIVE

2.1 In consonance with the National Litigation Policy, the M.P. State Litigation Management 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.

2.2 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.

2.3 The 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.

2.4 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. Grievance Redressal Forums will be established in the departments to pre-empt litigation.
- (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, Inquiry Commissions, Arbitration and Alternative Dispute Resolution forums.

3.2 It shall be mandatory for all Government departments, Public Sector Undertaking and Statutory Bodies of the State, who are directly or indirectly involved in the litigation or have interest in any matter pending before any court/tribunal etc., 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.
- 3.4 Applicable administrative regulations shall be governed by provisions of this policy.
- 3.5 The Law Department Manual shall be reviewed and updated from time to time to keep pace with changing legal scenario. A comprehensive updation within such period as prescribed by the Government would ensure that relevant portions of the manual are revised and kept in consonance with this policy and law.

4. THE STAKE HOLDERS

All stake holders i.e. Govt. Departments and their functionaries, Law Officers, Government Counsels and individual officers/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. ESTABLISHMENT OF LEGAL CELL

- 5.1 Administrative orders issued in day to day working in the respective departments are often challenged in the courts. To minimize such litigation, the administrative orders need to be in conformity with the relevant Act, Rules, Notifications and Judicial pronouncements. That apart, each department having necessity to manage the pending court cases as well as dealing with the compliance of judicial orders requires a separate 'Legal Cell' dedicated to the management of such pending court cases. Each department is expected to establish a Legal Cell to be headed by an experienced person from judicial services or legal background, who will be appointed in such manner as Department of Law & Legislative Affairs may prescribe. The State Government shall endeavour to strengthen the legal cells in various departments by providing adequate infrastructure and deploying adequate number of officers of appropriate rank depending on the quantum and quality of the litigation.
- 5.2 **The Legal Cell shall be responsible for:-**
- (i) Providing 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, history of similar cases decided finally or pending matter.

- (iii) Constant coordination with the Department of Law & Legislative Affairs and also Joint Commissioner (Litigation) appointed at Jabalpur, Indore and Gwalior.

6. NODAL OFFICERS

Each Department at State level and each District 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 and Subordinate Courts, Tribunals, Inquiry Commissions, Arbitration and Alternative Dispute Resolution forums. 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 filling reply and report such cases of repeated and unjustified adjournments to the Head of Departments. It shall be open to the head of the Department to call for reasons for such adjournments. The Head of Department or Law Officer of 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.

7. JOINT COMMISSIONERS (LITIGATION)

- 7.1 State Government shall appoint a Joint Commissioner (Litigation) at Jabalpur, Indore and Gwalior to provide necessary coordination and assistance to the Advocate General/Addl. Advocate General/Govt. Advocate for proper and efficient management and conduct of litigation.

- 7.2 The said office shall monitor the progress of cases, maintain relevant record of cases, inform the head of concerned department about receipt of notice from Courts, update data regarding appointment of Officer-In-Charge, remain in contact with the concerned Government Advocate, act promptly to obtain opinion of Government Advocate for filing appeals, ensure filing of Vakalatnama/ Affidavits, keep the senior officials informed about the progress in proceedings; ensure compliance with the court orders etc.

8. DIRECTORATE OF PROSECUTION

- 8.1 State of M.P. has a duly established Directorate of Public Prosecution headed by Director, Public Prosecution. Directorate of Public Prosecution shall be primarily responsible for conducting and managing the prosecution of criminal cases instituted by various departments of the State of Madhya Pradesh.
- 8.2 It shall be the duty of Director of Public Prosecution to ensure the presence of a full time Public Prosecutor/Additional Prosecutor/ Assistant Public Prosecutor in every court dealing with criminal cases instituted by any of the departments of the State.

9. OFFICER- IN-CHARGE OF THE CASE

- 9.1 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 Collector concerned to appoint a suitable officer as in-charge of the case who will be authorized to sign Vakalatnama/ Affidavits etc., provide précis 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.

Provided that in cases involving policy matters the secretary of the department concerned may appoint a different officer-in-charge of the case.

- 9.2 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 return/reply is filed within time. The Law officer concerned shall extend full cooperation to officer-in-charge of the case and ensure timely preparation and submission of reply.
- 9.3 While appointing an officer as in-charge of the case, copy of such order shall be necessarily marked to the Joint Commissioner (Litigation), Legal Cell and the Nodal Officer of the concerned department. 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. Pleader/Public Prosecutor should conform to the norms as are mentioned in the Annexure-I to this policy.

10. INSTITUTION OF ADVOCATE GENERAL

- 10.1 The office of Advocate General of the State shall be responsible for overall control, management and conduct of the litigation pending before

the High Court and Tribunals pertaining to the State. Necessary infrastructure and manpower will be made available to it to discharge the aforesaid responsibility. The Advocate General may constitute Committees for streamlining the work of drafting, performance appraisal of the Law Officers, monitoring and managing the litigation and matters related to his administrative and managerial responsibility. A software platform will be developed for monitoring and managing litigation at the district and state level under his guidance.

10.2 In the office of Advocate General, a help desk will be set up for providing assistance to the officer in charge of the cases.

10.3 An officer of the rank of Secretary from the Higher Judicial Service of the State shall be appointed in the Office of the Advocate General, Jabalpur and an Additional Secretary shall be appointed in the office of Additional Advocate General, New Delhi, Gwalior and Indore for proper administration and management of office & litigation work of the office of the Advocate General/Additional Advocate General.

10.4 Adequate number of Law Officers shall be appointed to assist the Advocate General for efficient conduct of the cases. The strength of Law Officers in the office of the Advocate General shall be revised from time to time keeping in view the requirement. The Law Officers shall be provided with modern tools and appropriate infrastructure for proper preparation, presentation and conduct of the litigation.

10.5 As soon as a case is reflected in the Case Management and Tracking System of the Advocate General's Office, it shall be assigned to a Law Officer by the Office of Advocate General. The office of the Advocate General shall also appoint a Link Law Officer for every Law Officer in order to ensure that the State is duly represented in case the Law Officer is not available.

10.6 There shall be a MONITORING COMMITTEE to oversee and monitor the functions of the office of the Advocate General as follows:-

- (i) Advocate General- Chairman.
- (ii) Secretary from Law Department to be nominated by Principal Secretary – Member.
- (iii) Director of Prosecution - Member.
- (iv) Additional Advocate General New Delhi/Indore/Gwalior as nominated by Advocate General-Member.
- (v) Secretary/Addl. Secretary appointed in the office of the Advocate General, - Secretary of the Committee.

- 10.7 The Advocate General shall appoint appropriate Draft Committee(s) at Jabalpur, Indore and Gwalior comprising of suitable Law Officers so as to facilitate preparation of returns and other proceeding, to be submitted in the High Court, through the officers-in-charge of the case. Adequate number of Stenographers, other staff and IT/software support shall be provided to the Office of Advocate General for the proper functioning of the Draft Committee(s).

11. APEX COURT LEVEL LITIGATION

- 11.1 An office of Additional Advocate General has been established at New Delhi to supervise, manage and conduct litigation pending in the Apex Court.
- 11.2 The work of the office of Additional Advocate General and Advocates on record New Delhi shall be managed under guidance of the Advocate General and under general supervision and administrative control of the Law Department.
- 11.3 Whenever any senior private lawyer is to be engaged in any important case with heavy stakes or in public interest by the Administrative Department concerned, the case can be entrusted to a senior private lawyer as per terms and conditions approved by the State. The Advocate General/Additional Advocate General may be consulted by the concerned department/Law Department for engagement of senior private advocates and settling terms and conditions for their engagement.

12. ACCOUNTABILITY

- 12.1 Strengthening accountability of all the stakeholders/ duty holders in the management and conduct of litigation shall be of key importance for successful implementation of the policy at various levels. The Head of the Department, District Heads of various departments, Law Officers, members of the Monitoring Committees, members of the empowered committees must ensure that any laxity/negligence on the part of any officers/advocate entrusted with any case is taken seriously and appropriate action taken in prompt manner. Any imposition of cost and adverse observation of the Court with regard to conduct of any officer/official or the lawyers must not be brushed aside lightly.
- 12.2 As part of accountability, there must be critical appreciation of the conduct of cases. Good cases which have been lost must be reviewed and subjected to detailed legal scrutiny to ascertain responsibility and to take action accordingly.

**CONSTITUTION OF MONITORING COMMITTEES AND
THEIR FUNCTIONS**

13. STATE LEVEL EMPOWERED COMMITTEE

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

(i)	The Chief Secretary of the State	-	Chairman
(ii)	Principal Secretary, Home	-	Member
(iii)	Principal Secretary, Law	-	Member
(iv)	Principal Secretary, G.A.D.	-	Member
(v)	Principal Secretary, Finance	-	Member
(vi)	Principal Secretary, Revenue	-	Member
(vii)	D.G., Police	-	Member
(viii)	Director, Prosecution	-	Member
(ix)	Additional Advocate General as nominated by Advocate General	-	Member
(x)	Secretary Law	-	Secretary

13.2 The Chief Secretary may invite any other head(s) of Department or expert to participate in the meeting.

Functions of the committee:-

13.3 To oversee implementation of the Policy and management of litigation at all levels, formulate policies/guidelines for scrutiny, conduct, settlement of cases out of court or withdrawal of petty and infructuous cases.

13.4 To encourage and strengthen Alternative Dispute Resolution mechanism as cost effective and time saving method of settling disputes/grievances.

13.5 To advice Government on important policy matters relating to class of cases, and all other matters incidental to proper management and conduct of litigation.

13.6 To enhance accountability on the part of stakeholders, individual officials and Government pleaders/public prosecutors / Government Advocates.

- 13.7 To recommend action in cases of gross misconduct or dereliction of duty or impropriety in any administrative decision of individual officer 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.
- 13.8 To consider the major causes of litigation and recommend suitable measures to reduce litigation.
- 13.9 To lay down minimum standard for selection of Government Advocates, public prosecutors and suggest measures to strengthen accountability on their part.
- 13.10 To evaluate impact of the present policy, recommend improvement in the litigation management policy and strengthen institutions concerning monitoring, management and conduct of litigation.
- 13.11 This Committee will meet at least once in six months.

14. DEPARTMENT LEVEL EMPOWERED COMMITTEE

- 14.1 There shall be a Department Level Empowered Committee in each department with the following composition:-
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| (i) | Secretary of the Department | - | Chairman |
| (ii) | Law Officer if any | - | Member |
| (iii) | Nodal Officer | - | Member |
| (iv) | Other officers, as
may be nominated by the Secretary | - | Member |

The Committee shall monitor and review all litigation concerning the Department. The Committee shall have power to make recommendation for withdrawal of class of cases or any case in which no administrative or financial implication is involved. It may also refer to the State Level Empowered Committee/Competent Authority any policy matter for decision.

- 14.2 Any litigation involving policy matter of a department should be dealt with by the Secretary concerned. Officer-in-charge in such cases should normally be an officer either from the office of the HOD or department and should not be below the rank of Deputy Secretary.
- 14.3 This committee will meet at least once in three months or as and when deemed necessary by the head of the department.

15. DISTRICT LEVEL MONITORING COMMITTEE

15.1 There shall be a District Level Monitoring Committee in each district of the State with the following composition:

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| (i) | The District Magistrate of District/Collector - | Chairman |
| (ii) | Superintendent of Police - | Member |
| (iii) | Public Prosecutor & Govt. Pleader - | Member |
| (iv) | Dy. Director Prosecution/D.P.O. - | Member |
| (v) | Officer not below the rank of Dy. Collector to be nominated by Collector - | Member Secretary |
| (vi) | District Head of any Department/Expert - | Special Invitee as and when required by the District Magistrate. |

15.2 Deputy Director (Prosecution)/D.P.O. shall assist the District Magistrate in controlling, coordinating, managing and conducting criminal cases in the district and shall also provide other administrative assistance including legal advice if required by the District Magistrate. He will also act as district coordination officer between the Directorate of Prosecution and the District Magistrate.

15.3 The Committee shall meet at least once a month to monitor and review progress of all classes of cases. The Committee shall receive and deal with complaints and suggestions and take appropriate measures. The committee shall also recommend action against erring officials and Government advocates, public prosecutors for any misconduct/negligence and monitor the progress of disciplinary action to ensure that it is taken to logical conclusion. In matters not within its purview or those requiring policy clarifications, the Committee shall make a reference to the Department Level Empowered Committee/ State Level Empowered Committee/Competent authority as the case may be.

15.4 The committee may also scrutinise and identify petty and infructuous cases which may be withdrawn in public interest and send

the list of such cases to concerned Department of the Government for further action.

15.5 The committee may consider any matter relating to implementation of policy at district level, accountability of stakeholders in the administration of justice and take further appropriate action.

15.6 The committee will also function as scrutiny committee and identify the cases which may be disposed of in Lok Adalats. Due procedure will be followed for approval of competent authority for withdrawal or settlement of cases out of court.

16. PROMOTION OF USE OF I.T. FOR EFFICIENT MANAGEMENT OF THE CASES

Effective monitoring of litigation is vital to the proper management of cases. A software with data of all cases concerning all departments, directorates and State functionaries along with details of nodal officer, in-charge officer, advocates in the Supreme Court, High Court, District Court, as well as all relevant information in respect of Advocate General's office, Law Officers etc. should be developed with web-enabled management information system to access cases and monitor their progress. It shall be binding on all the departments to adopt this system within such time limit as may be prescribed by the Government.

17. GOVERNMENT REPRESENTATION

17.1 The Law Department in consultation with Advocate General/Director Prosecution will decide case-law officer ratio and court-public prosecutor/ Govt. Pleader ratio. Panel for appointment of government advocates should be prepared after checking the credentials and assessing the legal knowledge and integrity of the lawyers concerned.

17.2 Government Lawyers must be well equipped and provided with adequate infrastructure. Efforts will be made to provide adequate office infrastructure including tools of modern technology i.e. computers with printers, photocopiers, internet links, and adequate funds to meet contingency requirements. Common research facilities as well as equipments may be made available for Government lawyers for producing compilations of cases.

17.3 The offices of Government Pleaders/Public Prosecutors who represent the Government in Labour Courts should be strengthened by providing sufficient infrastructure, staff, IT facilities and proper fee structure.

18. TRAINING

- 18.1 Training programs, seminars, workshops and refresher courses for Public Prosecutors/Government Pleaders will be encouraged. There shall be continuous legal education for Government Lawyers with particular emphasis on identifying and improving areas of specialization. Law Department in consultation with experts and all concerned will prepare special courses. Most importantly, there shall be an effort to cultivate and instill values required for effective Government representation. The training programme will be conducted at regular interval and for this necessary co-operation and help will be rendered by all other Departments/State Academies whenever needed.
- 18.2 A working manual may be prepared for the Government Lawyers to explain them what is expected of them in the discharge of their functions and to make them more accountable.

19. FEE STRUCTURE AND PAYMENT

The fees payable to Government Lawyers should be suitably revised from time to time to make it remunerative. It should be ensured that the stipulated fee is paid within a reasonable time preferably through electronic transfers.

20. PREVENTION/CONTROL OF AVOIDABLE LITIGATION BY SETTING UP OF GRIEVANCE REDRESSAL SYSTEM

- 20.1 In most cases relating to service matters, the cause of action arises out of relief not being given as per the rules, instructions or policy decisions as are in force. It is further seen that in most cases before the matter reaches the Court, the affected party undeservedly spends a lot of time and effort over redressal of grievance through normal administrative channels. In this situation, all Departments of the State Government shall set up effective Internal Grievance Redressal Committee in order to preempt a large number of avoidable litigation. Further, grievances must be attended to in a time bound just and fair manner to be prescribed in this behalf by the Govt. by a separate circular.
- 20.2 Such Grievance Redressal Committees shall be set up in each Department at the State Level as well as District Level. All cases and issues at the request of the aggrieved party shall be reviewed to redress genuine grievances.

- 20.3 It shall be mandatory for employees, including those retired, to seek redressal, at the first instance, through this system before approaching the Courts.
- 20.4 At the District level, the Committees shall be headed by the District head of the Department or his nominee. The District level Grievance Redressal Committees shall meet once every month. Where it is found that certain Government instructions require to be reviewed, it shall refer the same to the State Level Empowered Committee or the Competent authority of the department concerned.
- 20.5 The Department Level Grievance Committee shall be headed by the Principal Secretary/ Secretary of the Department concerned and shall meet once a month and review the efficiency of the Grievance Redressal System in the Department.
- 20.6 A time limit of eight weeks may be fixed for deciding such representations.

21. DEVELOPMENT OF REGULAR CADRE OF LAW OFFICERS

In order to provide professionally competent legal assistance to the Departments to manage and supervise litigation, a regular cadre of Law Officers in appropriate pay scale shall be developed under the control and supervision of Law Department. The Law Officer will also assist in the redressal of grievances in just and fair manner by the grievance redressal cells.

22. QUICK ACTION ON REPRESENTATIONS / LEGAL NOTICES

- 22.1 A legal notice is intended to alert the State to seek a just settlement. When such a legal notice is served upon any Department asking for the relief the same should be decided expeditiously in accordance with the prevalent Rules/ Instructions and by a detailed speaking order. Timely response would avoid waste of public money and clogging of the wheels of Justice.
- 22.2 While passing orders in original jurisdiction or in appeals in respect of disciplinary proceedings, a detailed speaking order should be passed. It is the bounden duty of the enquiry officer/disciplinary authority to follow the relevant rules and prescribed procedures for conducting the enquiry so that no lapse occurs in the procedural part and orders are not set aside or remanded back for fresh decision on that ground. The officers should be trained periodically in these aspects.

- 22.3 Whenever an employee of the State Government files a petition in the High Court against the Government of Madhya Pradesh, it shall be incumbent upon the Collector concerned to make an effort to settle the dispute.

23. COVERED MATTERS

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. Many 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.

24. ADJOURNMENTS

- 24.1 Unnecessary and frequent adjournments should be avoided by the Law Officer/Government Pleader. The Government Lawyers should also point out misjoinder or non-joinder of parties so that officials not connected with the matter are not harassed.
- 24.2 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.
- 24.3 If it is not possible to file return/reply in the Court on the date fixed the officer in-charge of the case shall contact the office of Advocate General/Law officer in order to file an appropriate application seeking further time to file the return/reply. However the above procedure shall not be taken recourse to in a routine manner and further time should be prayed for only on sound grounds.
- 24.4 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.
- 24.5 Cases in which costs are awarded against the Government as a condition for grant of adjournment should be seriously viewed. In all such

cases the Nodal Officer of Department must give a report to the Department Level Empowered Committee on the reasons why such costs were awarded. The persons responsible for the default entailing the imposition of costs should be identified and suitable action should be taken.

25. PLEADINGS/ COUNTERS

- 25.1 In view of the large number of cases in the High Court in which replies have not been filed by the Government as respondent, the High Court Registry and the Advocate General's office may be requested for a complete, department-wise list of such cases. These lists should be acted upon/ reviewed in the Department Level Empowered Committees and monitored periodically with the lists in the High Court Registry and the Advocate General's office.
- 25.2 Suits or other proceedings initiated by or on behalf of the Government have to be drafted with precision and clarity. There should be no repetition either in narration of facts or the grounds.
- 25.3 Appeals should be drafted with particular attention to the Synopsis and List of Dates with a view to ensure that the same will crystallise the facts in dispute and the issues involved. The drafting of Memo of Appeal, petition etc. should be done carefully.
- 25.4 Full care must be taken to include all necessary and relevant documents in the appeal paper book. If it is found that any such documents are not annexed and this entails an adjournment or if the court adversely comments on this, the matter will be enquired into by the Nodal Officer and reported to the Head of Department for suitable action.
- 25.5 It should be ensured that Government documentation in court is tidy, orderly, complete and free of typing errors. Special formats for Civil Appeals, Special Leave Petitions, and Counter Affidavits will be formulated by the office of Advocate General and circulated by way of guidance and instruction as a Government Advocates Manual. It is the joint responsibility of the Drafting Counsel & the Government Pleader to ensure compliance, with due diligence.
- 25.6 Counter Affidavits in important cases will not be filed unless the same are shown to and vetted by Law Officers. This should, however, not delay the filing of counters.
- 25.7 In the High Court and Supreme Court counter Affidavits shall be signed and filed by officers not below the rank of Under Secretary.

- 25.8 Where separate replies or submissions are filed on behalf of Government departments as respondents, it shall be incumbent upon the Nodal Officer of the Departments concerned to see that there is no conflict or contradiction amongst such replies/ submissions. In case of any contradiction or inconsistency in the pleadings of departments concerned, the same should be brought to the notice of the Head of the Departments concerned who shall resolve the matter and ensure that there are no inconsistent claims, separately put forth by the departments to the disadvantage of the government in public interest.

26. FILING OF APPEALS

- 26.1 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. An appeal will be filed against an order only if the order is not vacated and the continuation of such order causes prejudice especially in matters of vital public importance.
- 26.2 Appeals must be filed intra court in the first instance. Direct appeals to the Supreme Court must not be resorted to except in extraordinary cases.
- 26.3 Given that Tribunals are meant to remove the loads from Courts, challenge to orders of Tribunals should be an exception and not a matter of routine.
- 26.4 In Service Matters, appeals will generally not be filed in cases where:
- (i) The matter pertains to an individual grievance which does not cause any major repercussion;
 - (ii) 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.
- 26.5 In each case, there will be proper and quick certification of the need to file an appeal by the Government Advocate and office-in-charge. Such certification will contain brief but cogent reasons in support thereof. At the same time, reasons will also have to be recorded as to why it was not considered fit or proper to file an appeal.
- 26.6 The offices of the Advocate General and 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.

- 26.7 No separate permission from law department would be needed in case of Review of any order passed by the Court, if Advocate General or the Department concerned considers filing it necessary. The officer in-charge shall file the same with permission of the Advocate General/Department concerned.
- 26.8 In the cases involving Government land/properties under the administrative control of the Collector/ District Authority, the Collector /District Authority will be competent to allow filing of appeals/ revisions in consultation with the government lawyer where any adverse order/judgement, disallowing the claim of the government, is passed by the court. However if the Collector /District Authority concerned on the advice of the government advocate finds that appeal/revision need not be filed he shall submit a detailed report duly supported by the opinion of the government advocate, to the Head of the Department who will consider the matter and take appropriate decision. The Collector/ such District Authority shall keep the Head of the Department concerned duly informed of the decisions taken by him with respect to filing of appeal/revision/SLPs etc. against any adverse order/judgement concerning the Government land/property.

27. LIMITATION: TIMELY FILING OF APPEALS / REVIEWS /S.L.P.s

- 27.1 It is seen that sometimes good 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 likely 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.
- 27.2 The Law Department in consultation with the Advocate General will put in place a procedure to effectively curb such delays. A detailed instruction shall be issued separately to ensure timely filing of Appeals/Reviews/S.L.P.'s in all matter where decision is taken to prefer Appeal/Review/S.L.P. Responsibility will be fixed if the delay occurs without sufficient explanation.
- 27.3 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/S.L.P. such a decision is to be taken well within the time. If there is delay in filing Appeal/Review/S.L.P. 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.

- 27.4 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.

28. ALTERNATIVE DISPUTE RESOLUTION MECHANISM

- 28.1 The resort to Alternative Dispute Resolution mechanism must be encouraged at every level. In cases of commercial nature to which a Government Department or a PSU is a party, arbitration as a mode of Alternative Dispute Resolution should be preferred. To facilitate effective and quick Arbitration, due attention should be given to arbitration clause while drafting the contracts.
- 28.2 Mediation as a cost effective and time saving mode of alternative dispute resolution should be encouraged to be resorted to in all appropriate cases arising out of individual grievances against the State or State undertakings. Similarly, settlement of disputes in Lok Adalats and grievance redressal committee of the department should also be encouraged.
- 28.3 All the departments/authorities of the State shall ensure that works contracts, executed by them, contain a clause that in the event of any dispute between the parties thereto, such disputes shall be referred for arbitration to the M.P. State Arbitration Tribunal.

29. PUBLIC INTEREST LITIGATION (PIL)

- 29.1 PILs challenging public contracts must be defended seriously. If interim orders such as stopping the work of projects, is prayed then the prayer for payment of compensation by the petitioner if the PIL is ultimately rejected, should be made.
- 29.2 Several PILs are filed because the competent authorities do not perform their duties or redress complaints. Effective functioning of the departmental grievance redressal system would reduce such cases.

30. HANDLING OF CONTEMPT CASES

On receipt of information regarding contempt case or contempt petition, department/officer concerned, instead of pointing out technical objection, should prepare comment on the merit of the case, status of compliance and whether the order has been challenged in any appeal or revision or the same has been set aside by any other higher court or as to why compliance has not been made.

31. INTER DEPARTMENTAL / P.S.U. LEVEL LITIGATION

No litigation between Departments of the State Government inter se and/or Public Sector Undertakings should be initiated unless the matter has been examined by a high powered committee consisting of the Chief Secretary and the secretaries of the departments involved in the proposed litigation. The litigation shall be instituted only if so decided by such committee.

Annexure-I**Functions and duties of the officer in-charge of the case**

Conduct of the officer in-charge of the case should conform to the following norms:-

- (i) After receiving the letter of appointment, the officer in-charge shall study the case file, prepare a brief note of the facts and before contacting the Office of Advocate General collect all the necessary information, documents/data, circulars, notifications etc. pertaining to the matter involved.
- (ii) The officer in-charge shall also make necessary communication and coordination with the Legal Cell of the Department so as to ensure that he is well equipped with the relevant information and documents pertaining to the case.
- (iii) The officer in-charge before arriving at the office of the Advocate General shall first contact the Nodal Officer of the Department, share the details of the case and obtain the current status of the case before getting the file marked from the Office of Advocate General.
- (iv) The officer in-charge shall contact the Law Officer to whom the file is marked on the same day and shall follow the instructions given by the Law Officer in respect of the case in hand. In case, he could not get the return/ appeal/concerned proceedings prepared or filed on the same day, he shall get an endorsement about the next date from the concerned Law Officer with specific reasons.
- (v) The officer in-charge shall not keep the file of the office of Advocate General unnecessarily in his custody after leaving the office.
- (vi) The officer in-charge shall be responsible to make immediate communication to the concerned departmental authority through the Legal Cell about any instructions given by the Office of Advocate General.
- (vii) The officer in-charge shall be given direct access to the head of the Legal Cell so as to ensure that no unnecessary delay is caused in transmitting the information/documents to the Office of Advocate General to facilitate speedy disposal of cases.

- (viii) The officer in-charge shall be responsible to handle each case assigned to him till the litigation is completely set at rest. He shall constantly monitor the court proceedings in relation to the cases assigned to him and send monthly status report in this regard to the Legal Cell of concerned department.
- (ix) It shall be personal responsibility of the officer in-charge to ensure that the cases are properly defended in the courts of law.
- (x) Officer in-charge will be appointed by mentioning the Designation first and in case of transfer or retirement of such officer, he/ she shall hand over entire record of the cases before demitting his/her office to his/her successor, who shall continue to be the officer in-charge. The successor officer shall immediately report to the head of Legal Cell about such change under due intimation to the Nodal officer.
- (xi) In case any adverse order is passed in a particular case, it shall be personal responsibility of the officer in-charge to immediately contact the office of Advocate General with the certified/authentic copy of the order so as to seek necessary opinion and to act in accordance with opinion forthwith, keeping in mind the aspect of limitation.
- (xii) Any lapse on the part of the officer in-charge in respect of the case assigned to him shall be treated to be misconduct/dereliction from duties and appropriate departmental action in terms of the provisions contained under M.P. Civil Services (Conduct) Rules, 1965 and M.P. Civil Services (CCA) Rules, 1966 shall be attracted against him/her.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
ए. एम. सक्सेना, प्रमुख सचिव.