

# Programme & Scheme

## THE MIZORAM STATE LITIGATION POLICY, 2010.

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The Mizoram State Litigation Policy is as follows :-

1. **THE VISION / MISSION**

1.1. The Mizoram State Litigation Policy is based on the recognition that State Government and its various agencies are the pre-dominant litigants in courts and Tribunals in the country. Its aim is to transform the Government into an Efficient and Responsible litigant. This policy is also based on the recognition that it is the responsibility of the Government to protect the rights of citizens, to respect the fundamental rights and those in charge of the conduct of Government litigations should never forget this basic principle.

1.2. "EFFICIENT LITIGANT" MEANS –

1.2.1 Focusing on the core issues involved in the litigation and addressing them squarely;

1.2.2 Managing and conducting litigation in a cohesive coordinated and time-bound manner;

1.2.3 Ensuring that good cases are won and bad cases are not needlessly persevered with; and

1.2.4 A litigant who is represented by competent and sensitive legal persons competent in their skills and sensitive to the facts that the State government is not an ordinary litigant and that a litigation does not have to be won at any cost.

1.3. "RESPONSIBLE LITIGANT" MEANS –

1.3.1 Not resorting to litigation only for the sake of litigating;

1.3.2 Not resorting to false pleas and technical points, and ordinarily discouraging the same;

1.3.3 Ensuring that the correct facts and all relevant documents are placed before the court; and

- 1.3.4 Suppressing nothing from the court and making no attempt to mislead any court or Tribunal.
- 1.4. The State Government must cease to be a compulsive litigant. The philosophy that matters should be felt to the courts for ultimate decision has to be discarded. The easy approach, “Let the court decide, “ must be eschewed and condemned.
- 1.5. The purpose underlying this policy is also to reduce Government litigation in courts so that valuable court-time would be spent in resolving other pending cases so as to support the National Legal Mission in its goal to reduce average pendency-time from 15 years to 3 years. Litigators on behalf of the Government have to keep in mind the principles incorporated in the National Mission for Judicial Reforms, which include identification of bottlenecks which the Government and its agencies may be concerned with and also reduction of or even weeding away unnecessary Government cases. Prioritisation in litigation has to be achieved with particular emphasis on welfare legislation, social reforms, weaker sections and senior citizens and other categories requiring assistance must be given utmost priority.
- 1.6. The Stakeholders :
- 1.6.1 In ensuring the success of this policy, all stake-holders will have to play their part – the the Department of Law and Judicial, Heads of various Departments, Law Officers and Government Counsels, and individual officers all connected with the concerned litigation. The success of this policy will depend on its strict implementation. Nodal Officers have been appointed by Heads of the Departments, for time-to-time and regular monitoring and effective management of Government – litigations in the Supreme Court, High Court and Subordinate Courts.

Explanation :

“Head of Department” for the purposes of this policy means the administrative person ultimately responsible for the working of the Department or Agency, as the case may be.

- 1.6.2 The Nodal officer has a crucial and important role to play in the overall and specific implementation of this policy, including but not limited to the references made hereinafter. Every Department must be mindful of the responsibility to appoint proper Nodal Officers who have legal background in case there is, and if not, those who have an experience and expertise. They must be in a position to pro-actively manage litigation. Whilst making such appointments, care must be taken to see that there is continuity in the

incumbents holding office. Frequent changes in persons holding the position must be avoided. Nodal Officers must also be subjected to training so that they are in a position to understand what is expected of them under the State Litigation Policy.

- 1.6.3 Accountability is the touch-stone of this Policy. Accountability will be at various levels – at the level of officers in charge of litigation, at the level of those responsible for defending cases, at the level of all the lawyers concerned and at the level of Nodal Officers. As part of accountability, there must be critical appreciation on the conduct of cases. For Good cases which have been lost must be reviewed and subjected to detailed scrutiny to ascertain responsibility, suitable action will have to be taken. Complacency must be eliminated and replaced by commitment.
- 1.6.4 There will be State Empowered Committee to monitor the implementation of this Policy and accountability. The Nodal Officer and the Heads of Departments will ensure that all relevant data is sent to the Empowered Committee. The Empowered Committee shall be chaired by the Advocate General of the State and such other members not exceeding six in number as may be nominated by the Law and Judicial Department, with a Special Secretary or an Additional Secretary of the Law and Judicial Department to be the Member Secretary. There will be District Empowered Committees to be chaired by the respective District and Sessions Judge. It shall include such number of Government Lawyer of the Judicial District and such other members as may be nominated by the Law and Judicial Department, with a Special Secretary or an Additional Secretary of the Law and Judicial Department to be the Member Secretary. There will be District Empowered Committees to be chaired by the respective District and Sessions Judge. It shall include such number of Government Lawyer of the Judicial District and such other members as may be decided by the Law and Judicial Department not exceeding 10(ten) and the Chief Judicial Magistrate of the District Headquarters shall be the Member Secretary. The District Committees shall submit monthly reports to the State Empowered Committee which shall in turn submit Comprehensive Reports to the Law and Judicial Department. It shall be the responsibility of the Empowered Committees to receive and deal with suggestions and complaints including those from litigants and Government Departments and take appropriate measures in connection therewith.

2. **GOVERNMENT REPRESENTATION:**

- 2.1. While it is recognized that appointment as Government Lawyer(s) is a broad-based opportunity for a cross section of lawyers, it cannot be vehicles for sustaining incompetent and inefficient persons. Persons who recommend names for inclusion on the panel are requested to be careful in making such recommendations and to take care to check the credentials of those recommended with particular reference to legal knowledge and integrity.
- 2.2. Screening Committees for constitution of Panels will be introduced to assess the skills and capabilities of people who are desirous of becoming Government Lawyers(s) before their inclusion on the Panel. The Law and Judicial Department shall ensure that the constitution of Screening Committees will include representatives of the Departments concerned. The Screening Committees will make their recommendations to the Law and Judicial Department. Emphasis will be on identifying areas of core competence, domain expertise and areas of specialization. It cannot be assumed that all lawyers are capable of conducting every form of litigation.
- 2.3 Government Lawyers must be well equipped and provided with adequate infrastructure. Efforts will be made to provide the agencies which conduct Government litigation with modern technology, such as, computers, internet links, etc. Common research facilities must be made available for Government lawyers as well as equipment for producing compilations of cases.
- 2.4 Training programs, seminars workshops and refresher courses for Government Lawyers must be encouraged. There must be continuing legal education for Government lawyers with particular emphasis on identifying and improving areas of specialization. Law schools will be associated in preparing special course for training of Government lawyers with particular emphasis on identifying and improving areas of specialization. Most importantly, there must be an effort to cultivate and instill values required for effective Government representation.
- 2.5 Government Lawyers shall be deputed for National and Regional Conferences of Government Lawyers as may be organized so that matters of mutual interest can be discussed and problems analysed.
- 2.6 Government Lawyers who head the civil or criminal side must play a meaningful role in Government litigations. They cannot continue to be merely responsible for filling appearances in Court. A system of motivation has to be worked out for them under which initiative and hard work will be

recognized and extraordinary work will be rewarded. This could be in the form of financial benefits.

- 2.7. It will be the responsibility of the Law and Judicial Department to train Government lawyers and to explain to them what is expected of them in the discharge of their functions.
- 2.8. Subject to Sections 24-25 of the Code of Criminal Procedure, 1973, Panels will be drawn up of from amongst willing, energetic and competent lawyers to develop special skills in drafting pleadings on behalf of Government. Such Panels shall be flexible. More and more advocates must be encouraged to get on to such Panels by demonstrating keenness, knowledge and interest.
- 2.9 Nodal Officers will be responsible for active case management. This will involve constant monitoring of cases particularly to examine whether cases have gone “off-track” or have been unnecessarily delayed.
- 2.10 Incomplete briefs are frequently given to Government Lawyers. This must be discontinued. The Advocates-in-charge will be held responsible if complete in briefs are given. It is the responsibility of the person in charge of the department Agency concerned, to ensure that proper records are kept of cases filed and that copies retained by the Department Agency concerned are complete and do tally with what has been filed in Court. If any Department or Agency has a complaint in this regard, it can complain to the Empowered Committee concerned.
- 2.11 There should be equitable distribution of briefs so that there will be broad based representation of the Government. Complaints that certain Government Lawyers are being preferred in the matter of briefing will be inquired into seriously by the Empowered Committee concerned.
- 2.12 Government lawyers are expected to discharge their obligations with a sense of responsibility towards the court as well as to the Government. If concessions are made on issues of fact or law, and it is found that such concessions were not justified, the matter will be reported to the Empowered Committee concerned and remedial action would follow.
- 2.13 While the Government cannot pay fees which private litigants are in a position to pay, the fees payable to Government lawyers will be suitably revised to make it remunerative. Optimum utilization of available resources and elimination of wastage will itself provide for adequate resources for revision of fees. It should be ensured that the fees stipulated as per the Schedule of Fees should be paid within a reasonable time. Malpractice in relation to release of payments must be eliminated.

- 2.14 The State shall make all efforts to set up the Directorate of Prosecution after applying section 254 of Cr. P.C. in letters.

### **3. ADJOURNMENTS**

- 3.1 Accepting that frequent adjournments are resorted to by Government lawyers, unnecessary and frequent adjournments will be frowned upon and infractions dealt with seriously.
- 3.2 In fresh litigations where the Government is a Defendant or a Respondent in the first instance, a reasonable adjournment may be applied for, for obtaining instructions. However, it must be ensured that such instructions are made available and communicated before the next date of hearing. If instructions are not forthcoming, the matter must be reported to the Nodal Officer and, if necessary, to the Head of the Department concerned.
- 3.3 In Appellate Courts, if the paper books are complete, then adjournments must not be sought in routine course. 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 this, instructions have to be obtained.
- 3.4. One of the functions of the Nodal Officers will be to coordinate the conduct of litigation. It will also be their responsibility to monitor the progress of litigation, particularly to identify cases in which repeated adjournments are taken. It will be the responsibility of the Nodal Officer to report cases of repeated and unjustified adjournments to the Head of Department and it shall be open to him to call for reasons for the adjournment. The Head of the Department or Agency shall ensure that the Records of the case reflect reasons for adjournment, if there are repeated adjournments. Serious note will be taken of cases of negligence or default and the matter will be dealt with appropriately by referring such cases to the Empowered Committee. If the advocates are at fault, action against them may entail suspension/removal of their names from their duties.
- 3.5 Cases in which costs are awarded against the Government as a condition of grant of adjournment will be viewed very seriously. In all such cases, the Head of Department must give a report to the Empowered Committee of the reasons why such costs were awarded. The names of the persons responsible for the default entailing the imposition of costs will be identified. Suitable action must be taken against them.

#### **4. PLEADINGS/COUNTERS**

- 4.1 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 in the grounds.
- 4.2 Appeals will be drafted with particular attention to the Synopsis and List of Dates which will carefully crystallize the facts in dispute and the issues involved. Slipshod and loose drafting will be taken serious note of. Defaulting advocates may be suspended/removed.
- 4.3 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.
- 4.4 It is noticed that Government documentation in court is untidy, haphazard and incomplete, full of typing errors and blanks. Special formats for Civil Appeals, Special Leave Petitions, Counter Affidavits will be formulated and circulated by way of guidance and instruction as per Legal Remembrancer's Manual. This will include only contents but also the format, design, font size, quality of paper, printing, binding and representation. It is the joint responsibility of the Drafting Counsel and the Advocate in-charge of either Civil or Criminal side to ensure compliance.
- 4.5 Counter Affidavits in important cases will not be filed unless the same are shown to and vetted by the Legal Remembrancer of the State. This should, however, not delay the filing of counters.

#### **5. FILING OF APPEALS**

- 5.1 Appeals will not ordinarily be filed against ex parte ad interim orders. Attempt must first be to have such order vacated. An appeal must be filed against an order only if the order is not vacated and the continuation of such order causes prejudice.
- 5.2 Appeals must be filed intra court in the first instance.
- 5.3 Given that Tribunalisation is meant to remove the loads from Courts, challenge to orders of Tribunals should be an exception and not a matter of routine.

- 5.4 In Service Matters, no appeal will be filed in cases where :
- (a) the matter pertains to an individual grievance without any major repercussion on the Government policy;
  - (b) the matter pertains to a case of pension or retirement benefits without involving any principle and without setting any precedent or financial implications.
- 5.5 Further, proceedings will not be filed in service matters merely because the order of the Administrative Tribunal affects a number of employees. Appeals will not be filed to expound the cause of one section of employees against another.
- 5.6 Proceedings will be filed challenging orders of Administrative Tribunals only if
- (a) There is a clear error of record and the finding has been entered against the Government.
  - (b) The judgment of the Tribunal is contrary to a service rule or its interpretation by a High Court or the Supreme Court.
  - (c) The judgment would impact the working of the administration in terms of morale of the service, the Government is compelled to file a petition; or
  - (d) If the judgment will have recurring implications upon other cadres or if the judgment involves huge financial claims being made.
- 5.7 Appeals in Revenue matters will not be filed :
- (a) if the stakes are not high and are less than the amount to be fixed by the Revenue Authorities;
  - (b) if the matter is covered by a series of judgments of the Tribunal or of the High Courts, which have held the field and which have not been challenged in the Supreme Court;
  - (c) where the assessee has acted in accordance with long standing industry practice;
  - (d) merely because of change of opinion on the part of jurisdictional officers.

- 5.8 Appeals will not be filed in the Supreme Court unless:
- (a) The case involves a question of law;
  - (b) If it is a question of fact, the conclusion of the fact is so perverse that an honest judicial opinion could not have arrived at that conclusion;
  - (c) Where public finances are adversely affected;
  - (d) Where there is substantial interference with public justice;
  - (e) Where there is a question of law arising under the Constitution;
  - (f) Where the High Court has exceeded its jurisdiction;
  - (g) Where the High Court has struck down a statutory provision as ultra vires;
  - (h) Where the interpretation of the High Court is plainly erroneous.
- 5.9 In each case, there will be a proper certification of the need to file an appeal to be issued by the Legal Remembrancer. Such certification will contain brief but cogent reasons in support. At the same time, reasons will also be recorded as to why it was not considered fit or proper to file an appeal.

**6. LIMITATION : DELAYED APPEALS**

- 6.1 It is recognized that good cases are being lost because appeals are filed well beyond the period of limitation and without any proper explanation for the delay or without a proper application for condonation of delay. It is recognized that such delays are not always bonfide, particularly in cases where high revenue stakes are involved.
- 6.2 Each Head of Department will be required to call for details of cases filed on behalf of the Department and to maintain a record of cases which have been dismissed on the ground of delay. The Nodal Officers must submit a report in every individual case to the Head of Department explaining all the reasons for such delay and identifying the person/causes responsible. Every such case will be investigated and if it is found that the delay was not bonafide, appropriate action must be taken. Act will be such that it operates as a deterrent for unsatisfactory work and malpractices in the conduct of Government litigation. For this purpose, obtaining of the data and fixing of

responsibility will play a vital role Data must be obtained on a regular basis annually, bi-monthly or quarterly.

- 6.3 Applications for condonation of delay are presently drafted in routine manner without application of mind and presentation of underlying facts. This practice must immediately stop. It is the responsibility of the Advocate-in-charge to carefully draft an application for condonation of delay, identifying the areas of delay and identifying the causes with particularity. Drafting Advocates who fail to adhere to this may be suspended/removed.
- 6.4 Every attempt must be made to reduce delays in filing appeals/applications. It shall be the responsibility of each Head of Department to work out an appropriate system for elimination of delays and ensure its implementation.
- 6.5 Belated appeals filed beyond the period of limitation cannot be approached merely from the point of view that courts have different approaches towards condonation of delay. Since some courts liberally grant condonation of delay, a general apathy seems to have taken over. The tendency on the part of Government counsel to expect leniency towards Government for condonation of delay must be discouraged. The question of limitation and delay must be approached on the premise that every court will be strict with regard to condonation of delay.

## **7. ALTERNATIVE DISPUTE RESOLUTION ARBITRATION**

- 7.1 More and more Government departments and PSUs are resorting to arbitration particularly in matters of drilling contracts hire of services, construction of highways, etc. Careful drafting of commercial contracts, including arbitration agreements must be given utmost priority. The Law and Judicial Department recognizes that it has a major role to play in this behalf, and that the Department needs to be strengthened on priority basis.
- 7.2. The resort to arbitration as an alternative dispute resolution mechanism must be encouraged at every level, but this entails the responsibility that such an arbitration will be cost-effective, efficacious, expeditious and conducted with high rectitude. In most cases arbitration has become a mirror of court litigation. This must be stopped.
- 7.3 It is recognized that the conduct of arbitration at present leaves a lot to be desired. Arbitrations are needlessly dragged on for various reasons. One of them is by repeatedly seeking adjournments. This practice must be deplored and stopped.

- 7.4 Every Head of Department will call for the data of pending arbitrations. Copies of the record of proceedings etc. must be obtained to find out why arbitrations are delayed and ascertained who is responsible for adjournments. Advocates found to be conducting arbitrations lethargically and inefficiently must not only be removed from the conduct of such cases but also not briefed in future arbitrations. It shall be the responsibility of the Head of Department concerned to call for regular review meetings to assess the status of pending arbitration cases.
- 7.5 Lack of precision in drafting arbitration agreements is a major cause of delay in arbitration proceedings. This leads to disputes about appointment of arbitrators and arbitrability, which results in prolonged litigation even before the start of arbitration. Care must be taken whilst drafting an arbitration agreement. It must correctly and clearly reflect the intention of the parties particularly if certain items are required to be left to the decision of named person, such as engineers, are not meant to be referred to arbitration.
- 7.6 Arbitration agreements are loosely and carelessly drafted when it comes to appointment of arbitrators. Arbitration agreements must reflect a well defined procedure for appointment of arbitrators. Sole arbitrator may be preferred over a Panel of three Arbitrators. In technical matters, reference may be made to trained technical persons instead of retired judicial persons.
- 7.7 It is also found that certain persons are “preferred” as arbitrators by certain departments or corporations. The arbitrators must be chosen solely on the basis of knowledge, skill and integrity and not for extraneous reasons. It must be ascertained whether the arbitrator will be in a position to devote time for expeditious disposal of the reference.
- 7.8 It is found that if an arbitration award goes against the Government, it is almost invariably challenged by way of objections filed in the arbitration. Very often these objections lack merit and the grounds do not fall within the purview of the scope of challenge before the courts. Routine challenge to arbitration awards must be discouraged. A clear formulation of the reasons to challenge Awards must precede the decision to file proceedings to challenge the Awards.

## **8. SPECIALISED LITIGATION**

- 8.1 Proceedings seeking judicial review including those in the matter of award of contracts or tenders :

8.1.1 Such matters should be defended keeping in mind Constitutional imperatives and good governance. If the proceedings are founded on an allegation of the breach to natural justice and it is found that there is substance in the allegations, the case shall not be proceeded with and the order may be set aside to provide for a proper hearing in the matter. Cases where projects may be held up have to be defended vigorously keeping in mind public interest. They must be dealt with and disposed off as expeditiously as possible.

8.2 Cases involving vires, or statutes or rules and regulations :

8.2.1 In all such cases, proper affidavits should be filed explaining the rationale between the statute or regulation and also making appropriate averments with regard to legislative competence.

8.3 PUBLIC INTEREST LITIGATIONS (PIL)

8.3.1 Public Interest Litigations must be approached in a balanced manner. On the one hand, PILs should not be taken as matters of convenience to let the courts do what Government finds inconvenient. It is recognized that the increase in PILs stems from a perception that there is governmental inaction. This perception must be changed. It must be recognized that several PILs are filed for collateral reasons including publicity and the instance of third parties. Such litigations must be exposed as being not bonafide.

8.3.2 PILs challenging public contracts must be seriously defended. If interim orders are passed stopping such projects, then appropriate conditions must be insisted upon for the Petitioners to pay compensation if the PIL is ultimately rejected.

8.4 PSU LITIGATIONS

8.4.1 Litigation between Public Sector Undertakings inter se between Government Public Sector Undertakings is causing great concern. Every effort must be made to prevent such litigation. Before initiating such litigation, the matter must be placed before the highest authority in the public sector such as the CMD or MD. It will be his responsibility to endeavour to see whether, then alternative dispute resolution methods like mediation must be considered. Section 89 of the Code of Civil Procedure must be resorted to extensively.

**9. REVIEW OF PENDING CASES**

- 9.1 All pending cases involving Government will be reviewed. This Due Diligence Process shall involve drawing upon statistics of all pending matters which shall be provided for by all Government departments (including PSUs). The Office of the Advocate General and the Government Advocate as well as the Public Procecutor of each district shall also be responsible for reviewing all pending cases and filtering frivolous and vexatious matters from the meritorious ones.
- 9.2 All Cases will be grouped and categorized. The practice of grouping should be introduced whereby cases should be assigned a particular number of identity according to the subject and statute involved. In fact, further sub-grouping will also be attempted. To facilitate this process, standard forms must be devised which lawyers have to fill up at the time of filing of cases. Panel will be set up to implement categorization, review such cases which are covered by decisions of courts and cases which are found without merit withdrawn. This must be done in a time bound fashion.

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