

Vol 1 Issue 8 Feb 2012

ISSN No :2231-5063

International Multidisciplinary
Research Journal

Golden Research
Thoughts

Chief Editor
Dr.Tukaram Narayan Shinde

Publisher
Mrs.Laxmi Ashok Yakkaldevi

Associate Editor
Dr.Rajani Dalvi

Honorary
Mr.Ashok Yakkaldevi

Welcome to GRT

RNI MAHMUL/2011/38595

ISSN No.2231-5063

Golden Research Thoughts Journal is a multidisciplinary research journal, published monthly in English, Hindi & Marathi Language. All research papers submitted to the journal will be double - blind peer reviewed referred by members of the editorial board. Readers will include investigator in universities, research institutes government and industry with research interest in the general subjects.

International Advisory Board

Flávio de São Pedro Filho Federal University of Rondonia, Brazil	Mohammad Hailat Dept. of Mathematical Sciences, University of South Carolina Aiken	Hasan Baktir English Language and Literature Department, Kayseri
Kamani Perera Regional Center For Strategic Studies, Sri Lanka	Abdullah Sabbagh Engineering Studies, Sydney	Ghayoor Abbas Chotana Dept of Chemistry, Lahore University of Management Sciences[PK]
Janaki Sinnasamy Librarian, University of Malaya	Ecaterina Patrascu Spiru Haret University, Bucharest	Anna Maria Constantinovici AL. I. Cuza University, Romania
Romona Mihaila Spiru Haret University, Romania	Loredana Bosca Spiru Haret University, Romania	Ilie Pinteau, Spiru Haret University, Romania
Delia Serbescu Spiru Haret University, Bucharest, Romania	Fabricio Moraes de Almeida Federal University of Rondonia, Brazil	Xiaohua Yang PhD, USA
Anurag Misra DBS College, Kanpur	George - Calin SERITAN Faculty of Philosophy and Socio-Political Sciences AL. I. Cuza University, IasiMore
Titus PopPhD, Partium Christian University, Oradea,Romania		

Editorial Board

Pratap Vyamktrao Naikwade ASP College Devrukh,Ratnagiri,MS India	Iresh Swami Ex - VC. Solapur University, Solapur	Rajendra Shendge Director, B.C.U.D. Solapur University, Solapur
R. R. Patil Head Geology Department Solapur University,Solapur	N.S. Dhaygude Ex. Prin. Dayanand College, Solapur	R. R. Yaliker Director Managment Institute, Solapur
Rama Bhosale Prin. and Jt. Director Higher Education, Panvel	Narendra Kadu Jt. Director Higher Education, Pune	Umesh Rajderkar Head Humanities & Social Science YCMOU,Nashik
Salve R. N. Department of Sociology, Shivaji University,Kolhapur	K. M. Bhandarkar Praful Patel College of Education, Gondia	S. R. Pandya Head Education Dept. Mumbai University, Mumbai
Govind P. Shinde Bharati Vidyapeeth School of Distance Education Center, Navi Mumbai	Sonal Singh Vikram University, Ujjain	Alka Darshan Shrivastava Shaskiya Snatkottar Mahavidyalaya, Dhar
Chakane Sanjay Dnyaneshwar Arts, Science & Commerce College, Indapur, Pune	G. P. Patankar S. D. M. Degree College, Honavar, Karnataka	Rahul Shriram Sudke Devi Ahilya Vishwavidyalaya, Indore
Awadhesh Kumar Shirotriya Secretary,Play India Play,Meerut(U.P.)	Maj. S. Bakhtiar Choudhary Director,Hyderabad AP India.	S.KANNAN Annamalai University,TN
	S.Parvathi Devi Ph.D.-University of Allahabad	Satish Kumar Kalhotra Maulana Azad National Urdu University
	Sonal Singh, Vikram University, Ujjain	

Address:-Ashok Yakkaldevi 258/34, Raviwar Peth, Solapur - 413 005 Maharashtra, India
Cell : 9595 359 435, Ph No: 02172372010 Email: ayisrj@yahoo.in Website: www.aygrt.isrj.net

Research Paper

IMPORTANCE OF THE LITIGATION POLICY AND STUDY OF THE NATIONAL LITIGATION POLICY

Shri.Suhasrao Shripatrao Jagatap
"Vijayashri", Ganesh nagar,
A/t postIslampur, TalWalwa,
DistSanqli415 409

ABSTRACT

In order to have a check over the the act of the government officers and the government pleaders and to assure the public at large about proper exercise of their powers and duties ,the framing of National litigation policy was necessary. It also puts responsibility over officers and the government pleaders in respect of the litigation in which the Government is party.

INTRODUCTION

Due to today's lifestyle the litigations are increasing and it is casting heavy burden on the Judicial system. The constitution has given the task, to the judiciary as one of its important pillar, to have a constitutional check over the functions of legislation and the executives. The Government is trying to frame the policy to curtail the litigation and also to reduce present litigation. The Judicial role in respect of the reduction of the pendency is always a basic ground of attack by the politicians. Many cases against the Government are pending in the Court. The Government has appointed Government Pleaders and Attorneys to defend their side before the Court. Now, it is a time to fix the liabilities of the Government Officers and Government Pleaders, as they play very vital role before the Court, while preserving the State interest. The Central Government has framed National Litigation Policy. It is a positive move made by the Central Government so as to have a proper check over the role of Government Officers and Government Pleaders. The attempt is made here to study the importance of the National Litigation Policy and necessity of the State Litigation Policy.

NATIONAL LITIGATION POLICY

The National conference was held on 24th and 25th October, 2009 for the strengthening of judiciary towards reducing pendency and delays. The Union Minister for law and Justice had presented resolution and same was adopted by the entire conference unanimously. The basic object of said resolution was to create responsible litigation by the Central Government and it also urges every State Government to frame such policies. The aim of the National Policy is to transform the Government into an efficient and responsible litigant. The basic vision for such policy is based on the recognition of responsibility of the Government to protect the rights of citizens, to respect fundamental rights of the Citizens, and to cast the accountability on the concern Government Officers and the Government pleaders about their act before the Court.

The policy also defines "efficient litigant" and "responsible litigant" as

under: The "efficient litigant" means :1

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

2 Managing and conducting litigation in a cohesive, coordinated and timebound manner.

3 Ensuring that good cases are won and bad cases are not needlessly persevered with.

4 A litigant who is represented by competent and sensitive legal persons; competent in their skills and sensitive to the facts that Government is not an ordinary litigant and that a litigation does not have to be won at any cost. Similarly the "responsible litigant" means: 1

That litigation will not be resorted to for the sake of litigating.

2 That false pleas and technical points will not be taken and shall be discouraged.

3 Ensuring that the correct facts and all relevant documents will be placed before the Court.

4 That nothing will be suppressed from the Court and there will be no attempt to mislead any court or Tribunal.

So from the definitions of "efficient litigant" and "responsible litigant" it becomes clear that the persons acting on behalf of Government must act in good faith, and not only to preserve the rights of Government but, also to protect the rights of the citizens. It is observed that the various litigations are filed against the Government due to the inactivity of the such Government Officers, and due to the violations of the rights of the citizens. The purpose underlying the policy is also to reduce Government litigations in the Court, so as to save the valuable time of the Court and that such valuable court time would be spent in resolving old pending cases. It is expected that the litigators on behalf of the Government have to keep in mind the principles incorporated in the National Mission for judicial reforms. It is also expected that such officers should identify the bottlenecks concerning the Government and its agencies. This will help to remove unnecessary Government cases. The priority is given for the

welfare litigation, social reform, consideration of weaker sections and senior citizens and also acquire assistance from the other categories. In order to have a check in respect of the Government litigation or in which the Government is starting, the nodal officers are appointed by the Head of the department. The policy also defines that head of the department means the administrative person, who is ultimately responsible for the working of the department or the agency. The nodal officer should have legal background and expertise. He must be in position to manage litigation pro actively.

As stated above, the accountability is the basic touch stone of the national policy. The policy frames accountability at various levels i.e at the level of officers in charge of litigation, those responsible for defending cases, all the lawyers concerned and the nodal officers. It is their responsibility to review good cases which are lost and scrutinize the same to ascertain the responsibility. The policy assures that upon ascertainment of responsibility of such person, the suitable action will have to be taken against him. It is expected that at every level the person involved in litigation must be committed for his act.

The Government has realized that the Government advocates must be well equipped and provided with adequate infrastructures. To conduct Government litigation they should use modern technology such as computers, Internet links etc. The policy also suggest the training programs, seminars, workshops and refresher process for the Government advocates or pleaders. This is necessary to encourage them and get a special training so as to identify and improve areas of specialization for the proper and effective representation of Government before the Court. The policy says that the advocates on record should not act merely as a messengers of the Government officers while conducting the matters before the Court. In order to preserve the meritorious litigation, the policy also takes the initiative for hard work and extra ordinary work of the Government advocates. The Government advocates are expected to discharge their obligation with a sense a responsibility towards the Court as well as, to the Government. The remedial action is also provided if such Government lawyers gave some concessions on the issues of facts or law and if such concessions are not properly justified.

RESPONSIBILITY IN RESPECT OF ADJOURNMENTS

Generally it is seen that various adjournments are resorted by the Government lawyers like other private persons. The policy takes serious view in respect of unnecessary and frequent adjournments by the Government lawyers. The nodal officer is responsible to monitor the progress of litigation and is also required to identify the cases where repeated adjournments are taken. If the Government advocates are at fault then, necessary action will be taken such as suspension or removal of their names from the Government panels.

The suits, other proceedings, appeals etc. are required to be drafted with proper attention. It is expected that there should not be any slipshod and loose drafting. The drafting must be with precision and clarity.

The policy towards the activities of Government officers and the Government pleaders lays down the general rules that what should not be done and what should be done, in respect of the Court cases, in which the Government is party. The policy also frames the guide lines in respect of the matters / appeals filed in the Supreme Court. It says that the

appeals should not be filed in the Supreme Court unless 1
There is involvement the question of law,
2 In respect of question of facts if an honest judicial opinion is required regarding
conclusion of such facts,
3 When public finances are adversely affected,
4 When there is substantial interference with public justice,
5 When the question of law is arising under the Constitution,
6 When the High Court exceeds its jurisdiction,
7 Where the High Court has struck down a statutory provision is ultra vires,
8 Where the interpretation of the High Court is plainly erroneous.

This shows that the Government has tried to remove the unwanted litigations by casting necessary responsibility over the Government officers, nodal officers and the Government pleaders. The policy shows that unless serious question is involved the Government should not take initiative to proceed to the Court. It is also expected that when a Government is defendant or other party in any proceeding filed by other persons, the proper care should be taken by the Government pleaders so as to bring real and true facts before the Court. In order to avoid the loss of the good cases on the point of limitation, the Government pleader and the officers are required to take the proper care to give proper explanation for condonation of delay. The Government expects that its counsels should have proper approach and presentation on the question of limitation and delay before the Court.

GOVERNMENTS VIEW IN RESPECT OF THE SPECIALIZED LITIGATION

The matters in which the judicial review is necessary in respect of any award of contracts or tenders, then the Government officers or the Government pleaders are expected to defend such matters considering the constitutional imperatives and good governance. The matters in which the public projects are held are required to be dealt with as expeditiously as possible. The cases in which statutes, rules and regulations are involved then, the proper explanation between statute or regulation be made considering the legislative competence. The public interest litigations in which public contracts are challenged then such matters be defended seriously. The government by way of this policy understands that increase in public interest litigations is from by perceptions that there is governmental inaction. The Government officers must prevent the litigation between public sector undertakings interse. The policy also expects that there should be review of all pending cases so as to consider the meritorious cases from the frivolous and vexatious litigations.

STATE LITIGATION POLICY

The State Government is also trying to frame the state litigation policy on the basis of the National Litigation policy framed by the Central Government. The object of the such policy is to reduce the pendency of cases in various courts. The national litigation policy supplies the guide lines for framing of the state litigation policy. The framing of such policy is requirement of the present time. It is necessary to cast the responsibility on the Government officers and the Government pleaders.

SUGGESTIONS

Good governance means the policy of decision making considering the factors of transparency, public oriented decisions, accountability, responsibility and the involvement all the factors which influence such decision

making. This policy making is concerning the courts, litigants, counsels, Government and citizen. The person who are actually holding the positions in control of the litigation system or judicial system are required to be involved in such policy making. So in view of the same it is necessary to bear in mind the following principles.

- 1 That we are working for the nation and society at large
- 2 First goal is to give the benefits of our services to the nation and,
- 3 That the lawyers i.e. Government lawyers and private Lawyers accountable for state and private persons respectively.

The litigation policy must fulfill the basic aim regarding the reduction of litigations and should supply strict and perfect frame for the early and speedy disposal of the matters. The contents of the national litigation policy are helpful for preparation of the State Litigation Policy. In order to have a positive effect, the Government officers and government pleaders must be conversant with the matter in their hand. Here it will be proper to give some suggestions regarding each factor which plays an important role.

1 Court - For the proper administration of justice, there should be proper and sufficient place for the administration of justice. As most of the work of the court is based on the documentation, so there is necessity of sufficient infrastructure and the latest machinery.

2 Lawyers - If we read the National Litigation policy then it becomes clear that the Government officers and Government pleaders/advocates are made accountable for their work. Similar responsibility and accountability is also required to be cast on the other lawyers. It is necessary in order to , encourage them for speedy disposal the policy and schemes are required to be framed for the training for the strict observation of the procedure for speedy disposal. The Government has to take the first step to put limitation and obligations on the counsels. The filing false litigation is required to be dealt seriously.

3 Government officers -They are required to pay proper attention in matters of their concern departments. They should be made responsible for the loss caused to the Government due to their negligence.

Due to the active move on the part of the Government and the Apex Court and in view of Section 89 of the C.P.C. the alternative dispute resolution move is implemented in various courts. Arbitration, Mediation, conciliation and Lokadalats are the modes which can save valuable time of the Court. The Government cases are required to be sorted out for the settlement as per Section 89 of the C.P.C.. The party has to pay the fees or charges of the arbitrator but, the mediation can be more effective and cheaper than the arbitration. In order to avoid highest fees of arbitrator it will be proper to establish "Arbitration Courts" and "Mediation Courts". Trained officers or persons can be appointed as arbitrator and mediator in such courts or tribunals . If the litigation policy is framed covering private litigations then, that will certainly help to curtail false litigations. It will help to save the valuable time of the court.

CONCLUSIONS

The framing of National Litigation Policy and State Litigation Policy will certainly put the check on the role of the Government officers and Government pleaders. This will help to involve them mentally and physically in the matters of government and government agencies . It is necessary to increase the responsibility towards Nation and Society at large . Establishment of new types of "Arbitration Courts"

and "Mediation Courts" will help to reduce the burden on courts and government machinery and such establishment of courts will also reduce the burden of the heavy costs or expenses of the private arbitration agencies on the litigants .

Publish Research Article International Level Multidisciplinary Research Journal For All Subjects

Dear Sir/Mam,

We invite unpublished Research Paper, Summary of Research Project, Theses, Books and Book Review for publication, you will be pleased to know that our journals are

Associated and Indexed, India

- * International Scientific Journal Consortium
- * OPEN J-GATE

Associated and Indexed, USA

- EBSCO
- Index Copernicus
- Publication Index
- Academic Journal Database
- Contemporary Research Index
- Academic Paper Database
- Digital Journals Database
- Current Index to Scholarly Journals
- Elite Scientific Journal Archive
- Directory Of Academic Resources
- Scholar Journal Index
- Recent Science Index
- Scientific Resources Database
- Directory Of Research Journal Indexing

Golden Research Thoughts
258/34 Raviwar Peth Solapur-413005, Maharashtra
Contact-9595359435
E-Mail-ayisrj@yahoo.in/ayisrj2011@gmail.com
Website : www.aygrt.isrj.net