

Expediting the Disposal of Legal Cases in Government Departments

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Abstract

The number of legal cases filed in Courts is increasing day by day with an increasing realization of the public at large to resort to the Court as the ultimate means of dispute resolution. In this process, there has been a steady rise in the number of legal cases against Government and its departments as well as its constituents, which have been experiencing difficulty in dealing with the situation and the consequences of it. One of the important factors is the legal case administration delay that occurs at various stages caused by various sources. This paper discusses the reasons for the delays, analyses the process of dealing with legal cases in government departments and, finally, lists down the causes as well as consequences of their pendency. The paper suggests an action plan comprising some major interventions that would transform the current processes of legal case administration so as to expedite the legal case disposal in government departments.

1. INTRODUCTION

The State plays a major role in promoting socio-economic welfare of the citizens. In this principal role of promoting public welfare, the State has assumed more and more powers to regulate the society in order to improve physical, social and economic welfare of the people. It makes policies, executes decisions and administers the law. Thus, we have come to live in an administrative age with its functions and powers grown vastly over time. While the increased role of State meant increased responsibility for all the three organs i.e., legislature, judiciary and executive, yet the largest expansion in depth and range of functions and powers has taken place at the level of executive-cum-administrative organ.

The truth is that in democratic societies, the administration has acquired an immense accession of power and has come to discharge of functions which are varied and multifarious in scope, nature and ambit. In the words of Robson, the hegemony of executive is now an accomplished fact. Administrative adjudication has arisen largely because of the multitude of cases under the modern legislation needs and it needs to be decided expeditiously with the least formality, technicality at less cost and by persons having specialized skills to handle such cases. As the courts are not in a position to fulfill these conditions, the tribunals have come into practice, to complement the function.

Normally, the cases are filed before courts, whenever the administration fails to discharge its duties according to the provisions of Statute, Rules and Regulations made thereunder. There has been a sudden spurt of cases in the

courts, as the citizens realized that the courts are the institutions for redressal. Apart from the citizens, the government employees also take recourse to the courts regarding service matters. This led to conflicting claims and frequent resorting to courts of law, thereby, resulting in the proliferation of litigation. The litigation starts from the date of filing petition before the courts.

In the chronicles of judiciary reforms and legal justice to citizens, it is well documented that the judiciary should be able to dispose the legal cases efficiently within the apparatus of its functioning through some process innovations. While adjudicating the legal cases in a fair manner assumed primacy of the legal systems, it is now increasingly recognized that the speedier disposal of legal cases is equally important in the legal system that laid down the principle that justice delayed is justice denied. This brings to the fore the need for mechanisms (alternative institutional arrangements) not only for speedier process of adjudication¹ but also for speedier and appropriate action by the concerned parties. It is, therefore, increasingly argued that legal cases would require to be handled effectively by the concerned parties, which in most cases is the government i.e., departments of the government machinery.

Also, speedier disposal of legal cases is not only an important element of the judiciary system but also integral to the provision of services by concerned government department. Speedier disposal of legal cases not only benefits the parties filing affidavit, which are typically private parties and citizens, but also the government department, as it can demonstrate efficient functioning. It can implement projects or deliver services without any hindrance to these functions that arise from the uncertainty of outcomes of legal cases. It is increasingly felt now that this requires taking stock of the quantum of legal cases handled by departments and their status at various stages of legal process, then attempt to address the delays/ pendency of cases after identifying reasons for the same.

2. PENDENCY OF LEGAL CASES

Government departments have to face litigations filed by citizens, department officials, contractors and others from time to time during the regular course of working. Complying with the legal process, Government is required to be in constant interaction with the Government Pleaders (GPs) who represent the Government in Courts. The concerned department needs to give proper information concerning the matter before the Court, to keep the GP informed of all aspects, and to ensure that an informed effective representation is made on his/her part. Figure 1 shows the process/flow of legal cases and the various processes/sub-processes involved in it.

Government litigation process is very slow due to various factors, such as delay in the filing of replies, provision of concerned documents etc. The delay

¹ The effectiveness of this reform is well documented in the case of Pakistan Sindh province.

can be attributed to lack of proper working interaction between concerned departments and GPs, and it may result in the cases disposed off without the government availing its option of effective representation before the Court. The lack of timely and appropriate response results in the cases disposed off *ex parte*; thereby, adversely affecting the Government. Sometimes the Government departments are taken totally unaware until they get contempt notice.

Administrative adjudication of legal cases is expected to be expeditiously executed with less formality/ technicality, at low cost and by the persons with specialized skills to handle them. With the rising number of conflicts and claims, frequent resorting to the courts of law is increasingly being done by the citizens, resulting in the proliferation of litigation. Although it is argued that addressing the pendency of legal cases can be better dealt with at the initiation stage itself by ensuring effective dispensation of grievances² and disputes at department level and by using alternative dispute resolution methods like *citizen forums*, the remedial measures through legal institutions also assume importance when other institutions have failed in redressing grievances/ disputes that lead to litigation³.

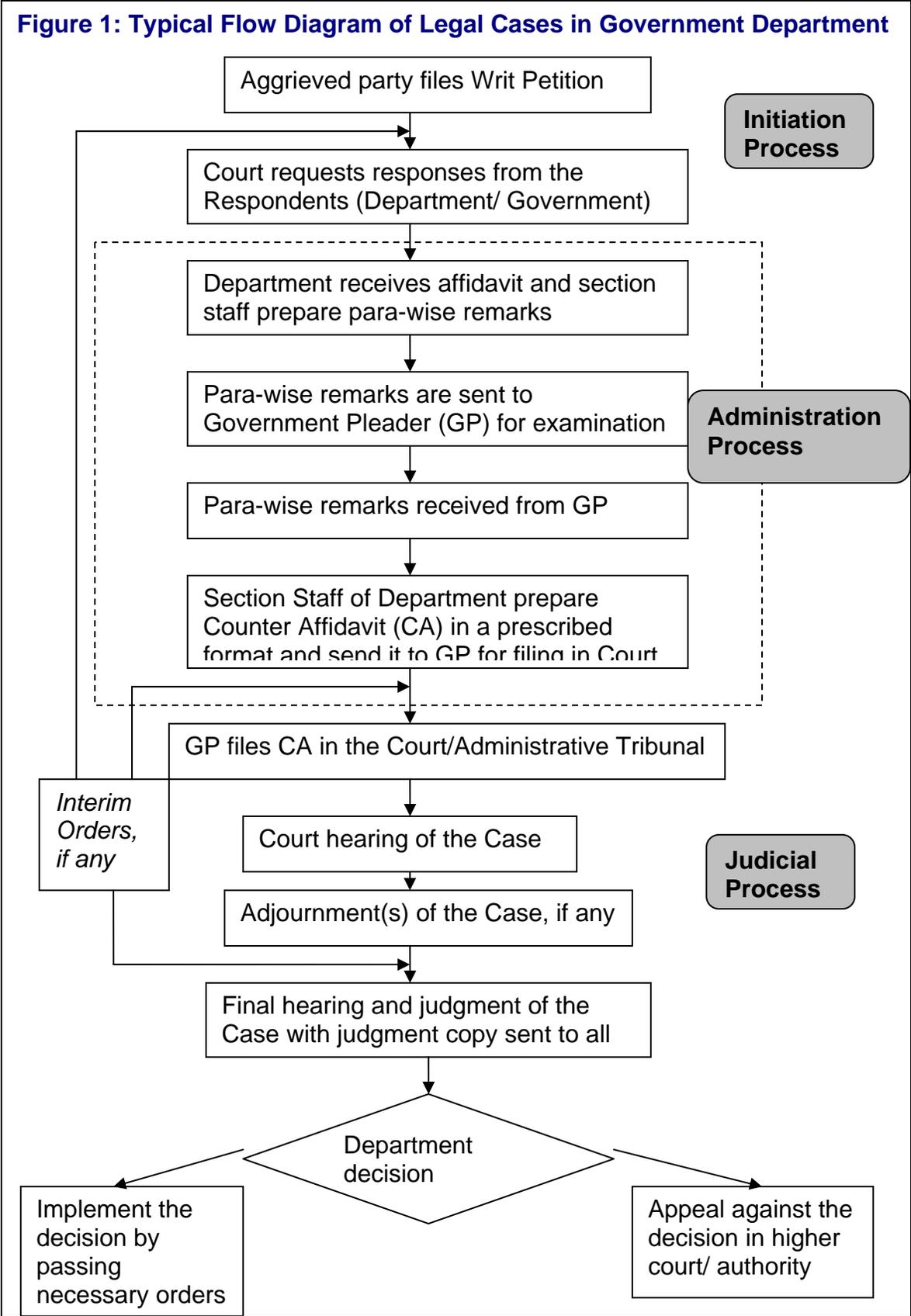
The judicial sub-process is an important means of speedy redress of legal cases as the court/tribunal holds key to the trial and decision on the case within the provisions laid down under Constitution and established under legal jurisprudence. It is to address the pendency of legal cases that courts/tribunals are inventing new means of quick dispensation e.g., special courts like family courts or terrorist courts for fast track justice in those cases, *lok ayukta* (public hearing)⁴ and the use of software systems with strong database applications. It needs to be noted that the expeditious disposal of legal cases is an important element of not only judiciary system but also integral to the provision of services by concerned government department. Therefore, addressing the pendency of legal cases at department level has become a necessary step.

² Grievance redressal mechanisms can indeed reduce the citizens resorting to the Courts for their suffering. However, the provision of such service is not a core service but an optional service, which comes with a cost. Also, the government departments need to establish systems for grievance handling (either manual or Information Technology Enabled Services based) and maintain them at a good amount of cost. Yet, they are a good option for the departments that are in a position to afford such solutions.

³ Sri N Chandrababu Naidu, Former Chief Minister of Andhra Pradesh, has used the media – press and electronic media – as a means for taking citizens’ complaints and redressing them through appropriate channels of government departments. Such systems may be established by government departments as well as the corporations/ authorities of government and the complaint handling system can be generated either internally or in collaboration with private parties.

⁴ In some cases like the Hyderabad Metro, it has been attempted to move the Lok Ayukta to some of the localities of the city for effective participation of the citizens and disposal of the complaints with respect to one major service – water supply and sewerage.

Figure 1: Typical Flow Diagram of Legal Cases in Government Department



3. CAUSES AND CONSEQUENCES OF PENDENCY

Of the three processes mentioned above, the pendency of legal cases takes place due to a variety of reasons. One of the important processes is the administration process of legal cases, which is often condoned but it has some important and serious implications. Understanding the reasons for/causes of pendency of legal cases in administration process is very useful and the knowledge of the same shall render concerned government department to take an appropriate action for the redressal of legal cases

Delays/pendency of legal cases in administration process may arise from a number of factors, which we shortly discuss hereunder. A considerable time is taken by the departments to prepare para-wise remarks, counter affidavits to defend the cases in various courts. In certain cases, para-wise remarks have to be obtained for the preparation of counter affidavits at Government level. In this process, delays occur at Government level in the filing of counter affidavits in courts. Diagnostics reveal that the major reasons of pendency are:

- Late receipt of petitioner's affidavit from the Court/Tribunal.
- Late submission of draft para-wise remarks by department section staff.
- Delays occurring due to the process followed in finalizing and sending para-wise remarks to the Government Pleader (GP).
- Section staff/officers not being able to devote enough time and attention to the details of case
- Section staff being not fully competent in preparing para-wise remarks
- Section staff not enclosing support documents and material with draft para-wise remarks
- Inadequate staffing of the Sections of department.
- Concerned Section in Department acting slow in making the copies of affidavit available to GP
- GPs not fully accountable in terms of returning affidavits within reasonable time frame
- GPs taking longer time in filing counter affidavit in courts

An importance consequence of pendency of legal cases in administration process is the escalation of time and the departmental effort due to prolonged case hearing. This hampers the department functioning on one hand and may even halt the implementation of some of the important projects undertaken/decisions taken by it. It also increases the uncertainty of the case due to periodic changes in judges, prosecutors and administrative officers in their positions. In high profile cases, when the department fails to file counter affidavits in time, interim orders are being passed in several cases and in some cases, personal appearance of higher officials are being ordered by the High Court/Administrative Tribunal. One of the important reasons for the pendency of legal cases is the fact that timelines are not known to and adhered to at various stages

of legal case flow. There is also lack of effective administration and monitoring system to deal with in a more effective manner.

4. FRAMEWORK OF ACTION PLAN

The framework for addressing the pendency of legal cases at department level comprises the following actions for speedier disposal:

- *Streamlining/re-engineering the procedures currently followed*
- *Setting guidelines/checklists for various officers in charge*
- *Ensuring that the counter affidavits are filed*
- *Ensuring that the timelines are adhered to and met by each unit*
- *Preventing adverse responses from courts*
- *Improving the internal and external coordination and communication*
- *Improving the capacity, retraining and skill-building of staff*
- *Strengthening the administration system by establishing new structures*
- *Establishing the system of prioritization of court cases*
- *Establishing a monitoring system of legal cases.*
- *Utilizing computers and e-tools in handling legal cases*

✦ Streamlining/re-engineering the procedures currently followed

The procedure followed in some of the sub-processes of legal cases administration is ridden with inherent delays due to the way the file movement and initiation takes place. This provides an opportunity to streamline these sub-processes – by either re-organizing or reducing the steps involved. The streamlining of sub-processes has to be done while keeping in mind the objective of speedier disposal of legal cases and while understanding that some of the structures are difficult to disturb in current settings. For example, in the preparation of para-wise remarks, the procedure of junior staff preparing the draft and sending to the officer for approval/comments can be re-structured such that the officer prepares para-wise remarks with assistance from junior staff. The process can also be streamlined by using either communication tools such as e-mail/ file sharing in LAN environment or online tools such as web-based application accessible to the concerned heads of department and the GP.

Re-engineering of the current administration process needs to be given a serious thinking. Alternative structures such as creating a separate Legal Cell in each of the units within the department are an option. This cell shall comprise one Legal Advisor supported by few Section Officers/ Assistant Section Officers which could work exclusively on legal cases – both pending and upcoming cases – for speedy disposal. However, this involves re-structuring some of the procedures currently followed in the department(s) with respect to file flow and origination, and the merits and demerits of the proposal need to be carefully evaluated before proceeding further.

✦ **Setting guidelines/checklist for various officers in charge**

The legal case file has to pass through, before finalization, several officers in a hierarchy and all of them may end up in going through it. If certain guidelines are provided by the department in finalizing draft para-wise remarks, it would make the process easy to follow. It is pertinent to mention that both accuracy in preparing parawise remarks and the filing of counter affidavits in court within time are crucial factors determining the outcome of the case. In many cases, the staff and officers may not respond in the appropriate manner due to lack of understanding of the jurisdiction and powers of the court/ tribunal and the knowledge of appropriate action. Box 1 provides some general guidelines/ checklist, which can be detailed out and/or customized further.

Box 1 General Guidelines/ Checklist

- Check whether the WP/OA was filed within the limitation period as per the relevant rules prescribed by the High Court/Administrative Tribunal.
- Check whether the doctrine of Res judicata i.e. whether the applicant has challenged the same identical issues before any court of law, applies in a given case.
- Check whether the applicant availed of all the remedies available to him under the relevant Service Rules as to redressal of grievances.
- Check whether the para-wise remarks are expressed in brevity and precise without repetition and prolonging with unnecessary things.
- The para-wise remarks should be only relevant to the facts raised by the petitioner and should have clarity in expression.
- Check whether all the support documents are enclosed along with the draft para-wise remarks, before dispatching to concerned GP.
- Each averment made by the petitioner should be traversed with reference to the provisions of the Statute, Rules, Regulations made there under and the State and Subordinate Service Rules, Civil Services (Classification, Control and Appeal) rules, Civil Services (Conduct) Rules etc.

✦ **Ensuring that the Counter Affidavits are filed before High Court/Tribunal**

According to High Court/Administrative Tribunal rules, every respondent should file counter affidavit in any event within a stipulated time period from the date of service of notice in the Writ Petition or the service of Rule Nisi on the said respondent along with authorized copies of documents on which the party relies. In this connection, it is pertinent to mention that it is mandatory to file counter affidavits by all the respondents impleaded in WP/OA irrespective of the fact, whether a particular respondent is concerned with the averments made by the petitioner in WP/OA.

In a majority of cases pending before Courts/Tribunals, non-filing of counter affidavits as prescribed in rules is an important reason. Where the respondent does not file counter affidavit, it shall be treated that there is no opposition to the petition and the return of the respondents need not be taken into consideration. Yet, Counter Affidavits are not filed in time, which results in the situation of the case being held up from disposal and, as a matter of fact, Counter-Affidavits are not filed in first instance and are filed only after successive adjournments. Therefore, it is important to file counter affidavit within stipulated time laid down by Court/Tribunal along with the support documents.

✦ ***Ensuring that the timelines are adhered to and met by each unit***

One of the important reasons for the pendency is that timelines are not known to and adhered to at various stages of legal case flow – particularly, in the case of GP. The Government Department may request the Law Department, which is administratively the concerned one with the appointments of Law Officers, to issue suitable instructions to all GPs and Standing Counsels appearing before Court/Tribunals with the directions to follow the instructions scrupulously.

Timelines for the major activities may be developed and followed religiously. The Section Officers need to ensure that the timelines are maintained in preparing para-wise remarks, sending para-wise remarks, obtaining orders of higher officers, getting them typed and, finally, sending them to the GP. If there is more than one respondent and if it is necessary to prepare common draft para-wise remarks, then the entire process starting from para-wise remarks to GP to filing WP in the court/tribunal should be completed as per the timelines.

✦ ***Preventing adverse responses from courts***

The concerned higher officer of the department should take responsibility for getting stay order vacated as and when necessary. It has to be ensured that the arrangements do not dilute the responsibility of the officers and the heads of departments for ensuring implementation of the orders of the court. It should be the responsibility of concerned officers of the department to see that conditional orders if any passed by the court should be implemented (for example, promotion being given subject to outcome of the case).

On receipt of the judgment, the Administrative Department shall examine the facts and circumstances of the case, the likely effects of the judgment as also its implication in future and take a view as to whether it would be appropriate to implement the order or file a review against the order. The department might discover a new and important matter or evidence which was not within the knowledge or could not be produced by the departmental officers at the time when the order was made on account of some mistake or error on the face of the

record or for any other sufficient reason and obtain a review of the order made against the Government.

In the absence of grounds for filing review petition, the department needs to examine the possibilities of filing Special Leave Petition in the Supreme Court or Upper Courts. If the decision of Court or Tribunal is found to be unacceptable, then an appeal can be made to upper Courts sufficiently before expiry of the period of limitation and by following necessary statutory procedure to seek suspension of the orders appealed against or to file special leave petition.

If the Upper Court suspends the operation of the judgement or order appealed against, it is clear that the authorities are under no legal obligation to follow the suspended judgments till the matter is decided by the Upper Court. Most of the authorities are not implementing the judgments of the Court or Tribunal without filing petition in Upper Courts. Condoning the decisions of Court or Tribunal on the pretext that an appeal or judicial review is filed in Upper Court which is pending, or in the pretext that steps are being taken to file an appeal/Judicial review may leave it to be guilty of committing contempt and liable to be proceeded against.

✦ *Improving the coordination and communication*

Coordination and communication within the department and between the GP's office, Court/Tribunal and department are very vital for smooth functioning of a legal case. Legal cases disposal is also suffering from lack of coordination and communication within the department and outside of it. If the current communication channels – mailing, hand delivery and personal interaction – are not effective, the effective use of ICT tools such as internet, e-mail and mobile phone can be resorted to. However, for appropriate communication, there has to be a good definition of the responsibilities. Regular and periodic reviews by the department heads are useful in organizing the internal coordination.

Besides communication, coordination – both internal as well as external - is much more important and which appears to be lacking to a great extent. A strong team work with mutual co-operation and coordination is required between the department and GP's office. The department staff has to follow-up and update the status on the case at various stages with both GP's office as well as Court/ Tribunal e.g., approval of para-wise remarks, filing of counter affidavits, interim order / court judgment etc. The department has to provide all the material support to the GP and ensure that the case is going in the right direction, in which the department would like to. It has to establish some kind of standard coordination system between the two, so that expedient disposal takes place at department level. This may be done through creating new structures or by using e-tools and applications that minimize personal interface.

✦ ***Improving the capacity, retraining and skill-building of staff***

The department staff – which is involved in all stages starting from the preparation of para-wise remarks to the implementation of judgment - is an important and integral part of effective and efficient action on disposal of legal cases. Therefore, right staffing structures are important and so do their capacity in the delivery of goods. The staff members who are supposed to attend to the court cases should have sufficient knowledge in understanding the laws, rules, byelaws, notifications etc. connected with the subject dealt by them, so that they are in a position to dispose their work effectively. This calls for appropriate changes in the procedures and guidelines for staff induction on one hand and improving their knowledge and capacity on the other. The staff may be actively encouraged to acquire the knowledge of formal legal systems and procedures by enrolling for part time or distance based learning programmes.

Training plays an important role in improvement of efficiency, constant updation of knowledge, capacity and skill of government servants. Special orientation programmes need to be held on preparation of parawise remarks and allied matters by inviting the senior or retired staff of Law Department. Continuous training of the staff at various levels needs to be undertaken. Those officials at higher level in the department who are impleaded in important cases as respondents either in WP or OA by private parties or by the staff members may seek appropriate legal advice from Advocate General, Government Pleader, and Standing Counsel.

✦ ***Strengthening the administration system by establishing new structures***

The administration of legal cases is primarily handled by Section Officers/ Superintendents with a somewhat weak structure. Apart from the inputs from section staff on the para-wise remarks, they hardly receive any other support from department quarters. Also, there is no proper communication and coordination both internally and externally with GP. The department needs to think about creating some new structures which fill in the functional gap present in the department. One such innovation with structures, for example, is deployment of Legal Advisors and Liaison Officers in each department and reconstitution of their roles and responsibilities. .

✦ ***Establishing the system of prioritization of court cases***

At present, there is no system of prioritization followed by the departments in the case of legal cases, which resulted in the departments going ahead with the court cases without any importance attached to them. It needs to be understood that some of the legal cases shall have high stakes and some of them require immediate attention, for example, implementation of Interim Orders or filing of vacate petition, implementation of judgments or filing appeals,

contempt cases etc. Currently all cases are treated under one mode with no priority to impending cases. Some kind of prioritization system needs to be developed and practiced in the department. The parameters of such system are:

- Stakes of department in the case e.g., high, medium and low
- Importance of the case to department e.g., high, medium and low
- Subject matter of the case e.g., land/asset related, contract, service matters

✦ ***Establishing a monitoring system of legal cases***

An important aspect of legal case flow management within department is the monitoring of the progress/status of legal cases at various stages by responsible officers. Currently, monitoring is substituted by some procedures of accountability and reporting, and, therefore, it does not provide a good idea of where the case is stuck or where there has been some extraordinary delay. Extraordinary delays may happen regularly with all departments. The long pendency of legal cases at various stages itself is indicative of the lack of monitoring systems for legal cases in department.

The department may also issue necessary strict instructions to all the sections and HoDs under its administrative control to maintain register exclusively for legal cases pertaining to Court and Tribunal. However, the administrative system for handling legal cases needs to be complemented by an independent monitoring system, such as the one that uses computers, systems and the Information Technology (IT) tools.

Given the fact that the departments and their offices may be geographically spread out across different places, web based tools may provide an advantage of covering all the locations by accessing the systems through web browsers and communication devices. e-Tools such as Online Legal Caseload Management System (OLCMS) integrate these needs and offer a monitoring solution, as described above, to various personnel. It, however, requires that they acquire/ lease the computer hardware i.e., systems, peripherals and devices.

✦ ***Utilizing computers and e-tools in handling legal cases***

The current system of legal case handling is mostly manual, with most of the work done using type-writing instruments, copiers and stationery. The logs of the legal cases are maintained in muster rolls/ registers within respective offices without following any standardized codification structure. Likewise, maintenance of records is another major issue. Much of the communication and correspondence i.e. para-wise remarks, counter affidavits, judgment orders etc, is made through mailing systems (or, tapal), personal delivery and over telephone. However, these methods of material development and communication are outmoded in the contemporary world, and they would require more

sophistication. Even the limited use of computers is made for typing and printing purposes only.

Computer penetration has to increase in the department offices and its use has to expand to all other uses like legal cases data base generation, monitoring and management, communication through e-mail, scanning of records (including WPs/OAs) and editing of the documents sent as attachments. Also, there are several firms providing the supporting software such as Management Information Systems (MIS) that provide more customized tools for this purpose and that are widely used by commercial banks now. Such e-tools may be adopted in the medium run. The offices of departments and GPs offices need to be equipped with personal computers that can be brought under a Local Area Network (LAN)/Wide Area Network (WAN) system so that they can exchange documents and interact more frequently.