

Conduct of the Government Litigation, Rules, 2000

SIKKIM

India

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Rule

CONDUCT-OF-THE-GOVERNMENT-LITIGATION-RULES-2000 of 2000

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Conduct of the Government Litigation, Rules, 2000Last Updated 18th February, 2020Chapter-I
Preliminary

1. Short extend and commencement.

(1)These rules may be called the Conduct of the Government Litigation, Rules, 2000.(2)They extend to the whole of Sikkim.(3)They shall come into force at once.

2. Definition.

- In these rules, unless the context otherwise requires-(a)"Advocate General" means any person appointed as an Advocate General by the Governor of Sikkim for the State under Article 165 of the Constitution and also includes Additional Advocate General.(b)"Code of Criminal Procedure" means the Code of Civil Procedure, 1908 (V of 1908);(c)"Code of Criminal Procedure" means the Code of Criminal Procedure, 1973 (II of 1974);(d)"Competent Authority" means Minister-in-Charge of the department;(e)"Constitution" means the Constitution of India;(f)"Court" means the Courts governed by the Code of Civil Procedure; and the Courts established within the State under the Code of Criminal Procedure, and the Sikkim Civil Courts Act, 1978 (No. 9 of 1978) and includes the High Court;(g)"Day" means portion of time between a midnight and the following midnight;(h)"Government" means the Government of Sikkim;(i)"Government Officer" or "Officer" means art officer of Government acting in his official capacity;(j)"Government Advocate" means an advocate appointed to that post by Government in the Law Department in relation to any Court in the State of Sikkim to conduct civil cases, appeals, applications, references, petitions including petitions for exercise of power under article 226 and 227 of the Constitution and other proceedings filed in the Court at Sikkim for and behalf of the State or its officers and includes Senior

Government Advocate, Additional Government Advocate and Assistant Government Advocate;(k)"High Court" means the High Court of Sikkim;(l)"Law Officer" means an advocate appointed by Government in the Law Department, to conduct cases on behalf of the State or its officers before any Court and includes the Advocate General, Standing Counsel for the State in Supreme Court, Government Advocate and Public Prosecutor;(m)"Legal Remembrancer" includes the Joint Legal Remembrancer in the Law Department;(n)"Public Prosecutor" means any advocate appointed as a Public Prosecutor by Government in the Law Department for the High Court and for every district in the State under sub-section (1) and (3) of section 24 of the Code of Criminal Procedure, for conducting any prosecution, appeal, application or other proceedings on behalf of the State and includes an Additional Public Prosecutor and Assistant Public Prosecutor;(o)"Special Counsel" means an advocate specially appointed by Government in the Law Department, to conduct any case, civil or criminal, anywhere in the State or outside the State for and on behalf of the State or its officers and includes a Law Officer so appointed;(p)"Special Public Prosecutor" means an advocate specially appointed by Government in the Law Department under sub-section (8) of section 24 of the Code of Criminal Procedure, to conduct any criminal case or class of cases on behalf of the State;(q)"State" means the State of Sikkim.

Chapter-II The Legal Remembrancer

3. Power of the Legal Remembrancer.

- The Legal Remembrancer shall exercise the powers as set out hereinafter.

4. References to Legal Remembrancer by Government or its officers.

- All the heads of the Departments may make references to the Legal Remembrancer for advice or opinion in respect of suits or other civil or criminal proceedings, which are actually pending in the Courts of Law and to which the State or its officers are parties or in which the interest of the State is involved.

5. Advice to be kept confidential.

- All advices and opinions tendered by the Legal Remembrancer and the Advocate General to the administrative departments are strictly confidential and, therefore, shall not be disclosed either to the public or to other Governments, including Central Government, without the permission of the Competent authority.

6. Duties of Legal Remembrancer in respect of litigation.

- It shall be the duty of the Legal Remembrancer to supervise all the State litigations, in which the State or its officers are either parties or interested in the following manner:-(1)In civil matters -(a)to give advice to a Head of Department, on any reference made to him, in case of any doubt about the defensibility of any threatened suit and also to advise on any legal point arising out of any litigation pending in the Court.(b)To examine and verify draft plaints, written statements, memorandum of appeals cross-objections, applications or their replies to be filed in the Courts on behalf of the State

or its officers.(c)To recommend whether an appeal should be filed in the appellate Courts and whether to file a writ petition in the High Court or the Supreme Court against any decision detrimental to the interest of the State.(2)In criminal matters-To examine and recommend the proposals for filing criminal appeals/revisions in the higher Court against the decision or orders of acquittal, sentence or any interim orders passed by a subordinate Court.

7. Conduct of Litigation by the department.

(1)Each Department shall nominate a senior officer not below the rank of Joint Secretary or equivalent who shall maintain close liaison with the Law Officer conducting the case in the Court, for keeping close and constant watch on its progress and for taking steps as may be required during the proceedings;(2)He shall attend the Court whenever case is fixed in Court and assist the Law Officer for the efficient and effective conduct of the Government assist the Law Officer for the efficient and effective conduct of the Government cases. He shall also ensure that whenever the Law Officer in-charge of the case is not available for the conduct of the case, for one reason or other, the case is not dismissed for default or otherwise.(3)The nominated officer shall maintain a file containing all case papers including copies of orders passed by the Court.(4)He shall provide the Law Officer with all the relevant papers and materials required for the case. Parawise statements/instructions in writing with prior approval of the competent authority shall be given to the Law Officer.Chapter-III Duties of Law Officer(Government Advocates and Public Prosecutors)

8. Duties.

(1)It shall be the duty of Government Advocate or Public Prosecutor:(a)To advise the Government department or its officers in respect of any case which he has or may have to conduct for the State or its officers.(b)To appear in the Court in any Civil suit proceedings, appeal, application for review, or revision, or reference, or injunction application, petition of a Civil nature, etc. including petition for exercise of powers under articles 226 and 227 of the Constitution, as the case may be, to which the State or its officers are parties and to take appropriate steps as may be required in accordance with law.(2)Duties of Public Prosecutor in the High Court;Unless otherwise provided in these rules, it shall be the duty of the Public Servant in the High Court to appear on behalf of the State or its officers or any other Public Servant in the High Court:-(i)In connection with Writs of Habeas Corpus;(ii)In every case submitted to the High Court under section 366 of the Code of Criminal Procedure for confirmation of a sentence of death;(iii)In every appeal for enhancement of sentence under section 377 of the Code of Criminal procedure;(iv)In every appeal under section 378 of the Code of Criminal Procedure;(v)In every appeal against a conviction heard by the High Court under section 386 of the Code of Criminal Procedure, if in such appeal the accused person (or when there are several accused persons, any one of them) is represented by a counsel;(vi)In all cases for transfer and bail applications;(vii)In every application in criminal case filed in the High Court on behalf of the State for the exercise by the High Court of its powers of reference and revision;(viii)In all cases of contempt of court in which he is required to appear;(ix)In any other case in which he is required to do so by the Legal Remembrancer.(3)Duties of Public Prosecutor in the Sessions Court-(i)To appeal and conduct the prosecution in every trial before the Sessions Court; and for that purpose, he shall at the earliest opportunity examine the records of the proceedings before the committing

Magistrate and ensure that any defect, such as the omission to summon a necessary witness is, if possible, remedied before the date fixed for hearing in the Session Court;(ii)To appear and contest for the prosecution before the Session Court or any appeal against a conviction or application for revision of sentence or an order (not being one of discharge or acquittal) against which no appeal lies or against any other order when notice of such appeal is served upon him or when he is directed by the Sessions Judge so to appear.(iii)To conduct the prosecution in any trial before the Chief Judicial Magistrate or Judicial Magistrate, as the case may be, when so required by the Legal Remembrancer, Law;(iv)Not to withdraw any serious cases from prosecution under section 321 of the Code of Criminal Procedure without consulting the Government through the Law Department;(v)To perform such other duties as may be assigned to him by the Government in the Law Department;(vi)Where the accused person is a Government servant, to intimate the head of the department to whom the Government servant is subordinate about the final order passed by the concerned Court immediately after the said order is passed.(4)Duties of public Prosecutors in Magistrate's Court: - The duties of Public Prosecutor as specified in this rule shall mutatis mutandis apply to the Public Prosecutor attached to the Magistrates' Court except the provisions relating to appeal and revision.(5)Duties for other Governments: - It shall be the duty of the Government Advocate or Public Prosecutor to appear on behalf of other Governments in the case, whether civil or criminal, filed in Court when required to do so by the Legal Remembrancer, Law.(6)Duties at or outside the headquarters: - The duties of the Government Advocate or Public Prosecutor are ordinarily confined to the Courts to which he is attached. However, it becomes his duty to attend other Courts in or outside the State also to conduct cases as may be required by the Government in the Law Department.(7)General Duties. - Unless otherwise provided in these rules, it shall be the duty of the Government Advocate or Public Prosecutor-(a)To finalize pleadings or memoranda of appeals or replies or applications or affidavits or counter affidavits or other documents in the proceedings filed in the Court or the proceedings filed in the Courts of other States;(aa)To ensure that no case is heard by the Court without filling the necessary pleadings or submissions or replies or affidavits or counter affidavits or other documents indicating clearly the contentions of the Government, both on questions of law and facts;(b)To see that no case is conceded before the court, such as granting of bail to any accused or any question of fact not conceded in the affidavit or counter affidavit or any claim against the State without obtaining previous permission of the competent authority;(c)To appear in any case, whether civil or criminal, in which the Court desires him to appear or expresses its opinion that he ought to appear;(d)To assist the Advocate General in civil or criminal cases of special importance, whenever such assistance is required by him;(e)To submit monthly report regarding pending cases to Law Department;(f)As soon as a matter of which the State or its officers are parties is decided by the Court;(i)To communicate the nature of the decision to the administrative department and the Legal Remembrancer, Law, giving brief statement of the reasons on which the decision is based;(ii)To apply immediately for a certified copy of the judgement and order or decree and take all the necessary steps;Where the order or decree has been passed under which any amount is due to the Government or its officers, to take all the necessary steps, with all possible expedition, to realize the moneys and cost so awarded; andWhere the order of decree has been passed against the State or its officers, to see that the order or decree is satisfied, if the Government decides not to challenge the said order or decree;(g)To report to the Legal Remembrancer, Law, any of the following matters arising out of any civil or criminal case decided by the Court:-(i)Any case in which the Court in confirming or imposing the minimum legal

penalty expresses or indicates an opinion that a lesser penalty would serve the ends of justice.(ii)Any case in which the Court has observed or expressed or indicated that imposition of any tax, cess, levy, penalty, fine or royalty under any of the enactments is unjust and would not serve the ends of justice;(iii)Any case in which the action of the lower Court or the conduct of investigation or prosecution or the conduct of the Law Officer or a State Employee, has been considered to be gravely irregular or has been severely criticized by the Court;(iv)Any case in which the Court has declared any law or statutory rule to be ultra vires or in which it has observed that a law or statutory rule has been causing inconvenience or anomaly;(v)Any defect or lacuna in any enactment or statutory rule, the removal of which he considers it necessary;(vi)Any pronouncement of the Court on a question of law which is likely to affect other cases in the State;(vii)Any other matter or circumstances which he himself or the Court desires or considers it necessary to be brought to the notice of the Government;(viii)In any case in which any important question of law is likely to affect the policy of the Government or the conduct of the Government or its employees has been the subject of comment by the Court;(h)To assist the Advocate General or Public Prosecutor in the High Court in an appeal or other proceedings relating to a case which he has conducted in the subordinate Court, when the Advocate General or the Legal Remembrancer, law requires him to do so.

Chapter-IV Civil Suit and Other Civil Proceedings

3.

(1)If the Competent Authority in the administrative department on the recommendation of the Law Department sanctions the institution of a suit, a copy of the order to that effect shall be sent to the Government Advocate of the concerned court in which the suit is to be instituted.(2)Preparation of plant-(a)After the institution of the suit is sanctioned, a draft of the plaint shall be prepared within 15 days by the Government Advocate concerned in consultation with the nominated officer of the department. The Officer concerned thereafter shall forward the draft plaint to the Legal Remembrancer, Law Department, Government of Sikkim, for examination and verification.(b)After verification by the Legal Remembrancer, the plaint shall be signed, verified as per the provisions of Order XXVII, rule 1 of the Code of Civil Procedure, by the Government Advocate or the Government Officer concerned and presented by the Government Advocate concerned to the Court.

4. Procedure for defence of suits on behalf of State or its officers. - (1) Notice of suit -Where a notice of a suit against the State, under section 80 of the Code of Civil Procedure, is received by the Secretary to Government, he shall immediately forward one copy of notice to the Legal Remembrancer, Law Department for advice as to the action to be taken.

Every endeavour shall be made by the Government Officer concerned to have the matter disposed of within the statutory period of two months, from the delivery of notice, allowed by the Code of Civil Procedure before the threatened suit can be instituted, if it is not possible to redress the grievance of the notice giver, suitable reply shall be given by the administrative department in consultation with the Legal Remembrancer and the Government Advocate concerned.(3)It any kind of lapses on the part of any Government officer concerned in dealing with the notice results in the prolonged

litigation and avoidable loss to Government, the administrative department concerned shall take a serious view of such lapses.

5. Accountability. - If any case is decided against the State Government and the failure of the case is due to inept and negligent handling of the case, the officer of the department who is engaged in handling the litigation on behalf of the department shall be held accountable.

Chapter-V Civil Appeals and Other Civil Proceedings in the District Courts and The High Court

6.

(1) If the decision of the subordinate Civil Court in any suit or any other civil proceedings, is either wholly or partially adverse to the State or its officers, the Government Advocate concerned shall at once obtain a copy of judgement and decree and shall submit the same along with his report regarding the feasibility of filing appeal/revision to the Administrative Department concerned and the Legal Remembrancer. The report of the Government Advocate concerned shall not be cryptic. It should contain his exhaustive opinion with detailed reasons in support of the stand taken by him; Note: - Under Article 116 of the Limitation Act, 1963, the period of limitation for an appeal to the District Court is 30 days and that for an appeal to the High Court is 90 days, excluding the time taken for obtaining the certified copies of judgement and decree. (2) (a) If appeal lies to the District Court or the Bench of the High Court; if the Government Advocate concerned recommends an appeal to the District Court or the Bench of the High Court, as the case may be, he shall within 15 days send his report along with copy of draft memorandum of appeal the uncertified copy of draft of judgement and decree, as stated in sub-rule (1) and also uncertified copies of such of the exhibits or the relevant portions thereof as he deems necessary to explain the grounds on which the decision is based or on which in his opinion an appeal should be made. In important cases copies of all the material exhibits or the relevant portions thereof shall be sent: (b) If appeal lies to the High Court; In case an appeal has to be filed in the High Court, the procedure as laid down in clause (s) shall be followed except that- (i) The Government Advocate concerned shall send a certified copy of judgement and decree along with grounds of appeal to the Legal Remembrancer, Law Department along with his report and uncertified copies of judgement and other exhibits and copies of translations of the same in English, if they are in regional language; (ii) The report along with all relevant copies shall be sent within fifteen days from the date of judgement. (3) The Government officer concerned shall also forward a copy of his opinion to the head of the Department concern who if he concurs with it, will merely file it, but if he differs from it, or considers it otherwise, shall submit a separate report to Government in the administrative department concerned, which in turn, if it considers it necessary, consult the Legal Remembrancer. (4) On receipt of the papers, the Legal Remembrancer shall decide in consultation with the administrative department concerned, if necessary, whether an appeal should be filed or not. In case of difference of opinion, the opinion of the Legal Remembrancer shall prevail. (5) (a) If an appeals is sanctioned and is to be filed in the District Court, the Legal Remembrancer shall send all the case papers along with Government Resolution and memorandum of appeal, duly approved and corrected, direct to the Government

Advocate concerned;(b)The Government Advocate concerned, shall then taken necessary steps to file appeal in the District Court. He shall not make any important additions to, or alternations in the memorandum of appeal without obtaining previous approval of the Government.Provided that, in urgent or exceptional cases he may move the court for necessary amendment to the memorandum of appeal in anticipation of such approval.(6)(a)If the appeal is sanctioned and has to be filed in the High Court, the Legal Remembrancer shall send all the case papers along with the Government Resolution to the Government Advocate concerned in the High Court;(b)The Government Advocate concerned in the High Court shall then prepare a memorandum of appeal and take all other steps that they may be necessary for filing and conducting the appeal. In important or intricate cases, the memorandum of appeal should be submitted to the Legal Remembrancer for approval before being filed in the High Court.

7. Procedure when appeal is brought by opposite party. - (1) If an appeal is brought by the opposite party against a decision, either entirely or party in favour of Government or its officer, either in the District Court or in the High Court, a notice of the appeal will be served by the concerned court either on the Government Advocate concerned or on the Administrative Department concerned;

(a)In the former case, the Government Advocate concerned shall enter on the back of the notice the date of its receipt. He shall at once obtain an uncertified copy of memorandum of appeal and forward it and the notice received by him to the Administrative Department concerned;(b)In the latter case the Administrative Department concerned shall at once send the Government Advocate concerned a Vakalatnama (unless the Government Pleader concerned already holds a general power of attorney from him) and obtain through him an uncertified copy of memorandum of appeal.(2)The Administrative Department concerned to report as to the defence-(a)The Administrative Department concerned shall, on receipt of the copies of notice and uncertified copy of memorandum of appeal, carefully compare the grounds of appeal with the court's judgement and after consultation with the Government Advocate concerned, submit his opinion to the Legal Remembrancer stating therein whether an appeal should be defended and making any explanation or remarks that may be needed with reference to the grounds of appeal;(b)The Administrative Department concerned shall also consider the question regarding the desirability of filling cross-objections, where the decision of the lower court was partially in favour of the State or its officers;(3)Security of costs: - The Administrative Department concerned shall ascertain if there is any reasonable ground for an application under order XLI, rule 10 of the Code of Civil Procedure, requiring the appellant to furnish a security for costs. If the appeal is frivolous or if it is doubtful whether the appellant has sufficient means to pay costs in the event of failure, such application shall invariably be filed.

8. Procedure when two or more Government. - When two or more Government officers of different departments are concerned in a case in which an appeal is to be filed on behalf of the State or in which an appeal is brought by the opposite party, the duties of the Government officers

specified in the foregoing rules shall devolve on the principal of such Government officers.

9. Applicability of certain rules of the civil suits to appeals.

- The provisions of the foregoing procedural rules in respect of conduct of civil suits shall apply to the conduct of civil appeal except-(1)That discretion shall be exercised by the Government Advocate concerned in meeting new points raised for the first time in appeal;(2)If possible, he shall apply for an adjournment to enable him to consult the Administrative Department concerned or the Legal Remembrancer and if necessary, on such points on which he may not have been fully instructed, or to which he is not able to furnish an immediate reply.

10. Procedure when an appeal has been decided by a District Court.

- When an appeal from an original decree has been decided by an District Court against which second appeal has to be filed or defended, the same procedure as is prescribed in the foregoing rules for filling or defending an appeal from an original decree shall be followed for filling or defending a second appeal.Note: - The limitation for filing of second appeal to the High Court, against the decision of the lower appellate court, is 90 days under Article 116 of the Limitation Act, 1963, excluding the time taken for obtaining the certified copies of judgement and decree or order.

11. Revision and Review Application.

- The procedure prescribed in the foregoing rules for appeals shall, so far as if may be applicable, apply to the application for revision or review.Note: - The limitation for filling revision application, under the Code of Civil Procedure, is 90 days from the date of the decree or order sought to be revised and that for review is 30 days from the date or decree or order as per Article 131 and 124 of the Limitation Act, 1963, respectively, excluding the time taken for obtaining the certified copies of judgement and decree or order.Chapter-VI Criminal Matters in The Session Courts and High Court

Part A

12. Service of Summons.

(1)In addition to the procedure contained in section 67 of Code of Criminal Procedure, a Police Officer in charge of Prosecution of the State shall assist the serving agency of the other State to effect the summons on the witnesses.(2)In case instituted by the Police, the Public Prosecutor shall apply to the Court for issue of summonses to all the witnesses. It shall be the responsibility of the Investigating Officer and/or the Officer-in-Charge of the Police Station within whose jurisdiction the witnesses reside, to effect service of summonses to the said witnesses. If there is any lapses for not effecting service in time, the investigating Officer of the case concerned and the Officer-in-Charge concerned shall be held accountable for the same.(3)The Investigating Officer of a case should, during the course of investigation itself, ascertain and record the permanent address of the

witnesses who may be on casual visit or for casual work at the relevant time of the occurrence of the crime in order to ensure his attendance in Court whenever required for evidence.

13. Important points respecting the conduct of cases in the Sessions Court.

(1)The Public Prosecutor in the Sessions Court shall deal with the Superintendent of Police concerned in regard to Criminal matters filed in the Sessions Court. The Superintendent of Police concerned or the Investigating Officer or some other responsible officer, fully acquainted with the case, shall be deputed to instruct and assist the Public Prosecutor in the conduct of the Sessions Trial, Criminal Appeal, revision or reference or any other criminal proceeding before the Sessions Court on behalf of the State.(2)In all cases of serious offences, before dropping eye-witnesses, who are cited in the charge-sheet, the Public Prosecutor shall, as far as possible, consult the Investigating Officer concerned or in his absence other Police Officer, who is present for instructing him. Whenever the Public Prosecutor drops the witness cited in the charge-sheet in consultation with the Investigating Officer, he shall obtain the consent of the said officer in writing to that effect.(3)The Public Prosecutor shall, ensure that he remains present in the Court throughout the trial, particularly when the prosecution witnesses are in the box at the time of he cross examination and put proper objection to the questions that are put by the defence.(4)When the decision is adverse to the prosecution:-In case the Public Prosecutor is not so inclined to recommend an appeal against the order of acquittal or an appeal for enhancement of sentence or any revision or other application to be filed in the High Court, he shall forward the certified copy of judgement along with his opinion giving reasons for the same to the Superintendent of Police concerned and the Legal Remembrancer. In such case if the Superintendent of Police or the Government Officer concerned differs from the Public Prosecutor and considers the case fit for moving the High Court he may towards the copy of judgement in that case with his remarks for consideration directly to the Legal Remembrancer, Law Department.

Part B

14. Procedure as regards filing of appeals, revisions or other applications when the decision is adverse to prosecution.

(1)(a)Where in any trial, criminal appeal, revision or any other criminal proceeding, the decision of the court is adverse to the prosecution and the Public Prosecutor proposes filing of appeal under section 378 of the Code of Criminal Procedure against the order of acquittal of the accused or an appeal under section 377 of the said Code for enhancement of sentence or any other appeal or an application for revision or any other application to be filed in the higher Court, he shall submit his proposal to that effect to the Legal Remembrancer or the Joint Legal Remembrancer Law Department along with the following informations and case papers:-(i)A copy of grounds of appeal, revision or other application;(ii)One clean certified copy of judgement;(iii)The last date of limitation period on which an appeal, revision or other application is to be filed;(iv)A list of correct address of the accused against whom appeal, revision or other application is to be filed;(v)Copies of extracts of relevant evidence and copies of depositions of important witnesses and other material record of the

case;(b)He shall, on receipt of the report from the Public Prosecutor under clause (b) of sub-rule (1) above, send his report immediately to the Legal Remembrancer or the Joint Legal Remembrancer Law Department, as the case may be.(3)Any other Government officer connected with the prosecution or the Public Prosecutor, who desires to file an appeal against the order of acquittal or for enhancement of sentence or any other appeal or to file a revision or other application against the decision of any subordinate court to the High Court in any criminal matter, shall forward his opinion along with the opinion of the Public Prosecutor concerned and all the relevant case papers, as required under sub-rule (1) above, to the Legal Remembrancer, Law Department.(4)In every case in which a Government servant, who is prosecuted for any offence in relation to his official duties, is acquitted, the head of the department, shall, as soon as possible after the case is decided and the Public Prosecutor consulted, send his report along with all relevant case papers to the Legal Remembrancer of the Joint Legal Remembrancer Law Department, stating the facts of the case and whether in his opinion an appeal should be filed against the order of acquittal.(5)If the appeal is to be filed under section 378 of the Code of Criminal Procedure, the proposal under sub-rules (1), (2), (3) and (4) along with the relevant case papers shall be forwarded to the Legal Remembrancer or the Joint Legal Remembrancer, Law Department, as soon as possible and except in special cases not later than fifteen days from the date of judgement and if the appeals is to be filed for enhancement of sentence or an application for revision or other application is to be filed in the Higher Court, the proposal to that effect, with all relevant case papers shall be forwarded as soon as possible and except in special cases not later than ten days from the date of judgement.Note: - Limitation for filing an appeal in the High Court against the order of acquittal under sub-sections (1) and (3) of section 378 of the Code of Criminal Procedure, is 90 days, excluding the period for obtaining certified copy of the judgement, under Article 114 of the Limitation Act, 1963 and the limitation for filing an appeal in the High Court against the sentence under sub-section (1) or section 377 of the said Code or against any order not being an order of acquittal is 60 days, excluding the period for obtaining certified copy of judgement, under Article 115 of the Limitation Act, 1963.(6)If an appeal is filed by a complainant under section 378(4) of the Code of Criminal Procedure, a notice is served by the High Court on the Public Prosecutor concerned in the High Court. In such cases the Public Prosecutor concerned in the High Court shall immediately forward the High Court notice and other enclosures to the Legal Remembrancer or the Joint Legal Remembrancer, Law Department and seek Government's instructions whether the State should support he appeal or not.(7)If Government in the Law Department does not consider it necessary to file an appeal, revision or other application in the High Court against the order of he lower Court, the Legal Remembrancer or the Joint Legal Remembrancer, Law Department shall communicate the decision of the Government to the Public Prosecutor concerned and all the concerned Government officers.(8)(a)If Government in the Law Department decides to file an appeal or an application for revision or any other application or to support the appeal filed by the complainant, a Government Resolution in authorizing the filing of appeal or application for revision or any other application, along with all relevant case papers, shall be sent by the legal Remembrancer or the Joint Legal Remembrancer, Law Department to the Public Prosecutor concerned in the High Court to which the appeal, revision or application lies;(b)The memorandum of appeal or application for revision or other application shall then be drawn by the Public Prosecutor concerned in the High Court and filed in the High Court within the period of limitation.

15. Reporting of the result of the case.

- As soon as the appeal, revision or other criminal proceeding has been decided by a Court the Public Prosecutor shall inform the result of the case to the Legal Remembrancer, Law Department. He shall also apply immediately for a certified copy of judgement. If the Court upholds the State appeal, revision or other application or passes order in favour of the State, the Public Prosecutor concerned shall send the certified copy of judgement to the Government officer concerned, who proposed the appeal, revision or other application and to the Legal Remembrancer.

16. If decision is adverse to the State.

(1) If the decision of the Court in any criminal matter is wholly or partially adverse to the State, the Public Prosecutor concerned in the Court shall within fifteen days, submit his detailed report to the Legal Remembrancer, Law Department, with copies to all the Government officer concerned, giving therein the specific reasons as to why the decision should be acquiesced in or appealed against. If he proposes to challenge the decision of the Court, his report shall be accompanied by the grounds of the appeal, the certified copy of the judgement, the Paper-Book and other relevant case papers. (2) If Government in the Law Department decided to acquiesce in the decision of the Court, the legal Remembrancer, shall communicate the Government decision to all the officers concerned.

Part C

17. Bail matters.

(1) The Public Prosecutor concerned in the Court Shall, on receipt of notice of the Court, seek instructions of the Superintendent of Police concerned for opposing the bail applications. If the time does not permit or if the Public Prosecutor concerned does not receive any instructions on time he shall use his wisdom while opposing such bail application on merit. (2) Cancellation of bail: - (a) If the Public Prosecutor is of the opinion that any person released on bail by any court should be rearrested and committed to custody, he shall immediately send his proposal for cancellation of bail to the Legal Remembrancer, who shall in turn, if considered necessary by Government in the Law Department, issue the Government Resolution and direct the Public Prosecutor concerned to take immediate steps to move the Court for cancellation of such bail. (b) The Public Prosecutor concerned shall effectively oppose the grant of bail to the accused by the Court in cases, which are non-bailable.

18. Fixation of Accountability.

- If any lapses occur on the part of any agency of the prosecution, resulting in failure of cases, appropriate severe action shall be taken against him or her for such lapses.

19. Conduct of cases in the Magistrates Court.

- The procedure prescribed in the fore going rules except the provisions relating to appeal or revision shall mutatis mutandis apply for conduct of cases in the Court of Magistrate.

Chapter VII

Writ Petitions and Appeals Arising Therefrom in The High Court of Sikkim

20. Procedure for filling of Writ Petitions on behalf of State and its officers.

(1)When a Government officer concerned is not satisfied with the orders of any Court, tribunal, Board, Commission or other body against which no other remedy is open to get redress, he shall send a proposal to file a Writ Petition under Article 226 and/or 227 of the Constitution against such an order to the administrative department concerned with the shortest possible time. The proposal shall contain the following papers:-(a)The Grounds for filing Writ Petition giving reasons thereof;(b)Rules, Orders, precedents and notifications relied upon;(c)One certified and three uncertified copies of judgement, decree or order against which the Writ Petition is to be filed.(2)The administrative department concerned on receipt of such papers shall send all the case papers along with its opinion to the legal Remembrancer or the Joint Legal Remembrancer, Law Department.

21. Procedure for the defence of Writ Petition on behalf of State and its officers.

(1)(a)Whenever a notice or notice of motion in a Writ Petition is served on the Government Advocate concerned in the High Court on behalf of the State, he shall pm the same day s far as possible, and latest by next day forward copies of the notice accompanied by the copy of Rule i.e. order, the Court and connected Writ Petition, affidavit and other annexures to the administrative department concerned and to the Legal Remembrancer or the Joint Legal Remembrancer, Law Department.(b)He shall also apprise the administrative department concerned on any of the following points:-(i)Vires or legality of any legislative enactment or statutory rule has been challenged;(ii)Executive orders or executive actions of Government and/or its officers have been challenged and the matters is such which not only affects the rights of the rival parties, but also the interest of Government;(iii)Any taxation matter has been challenged;(iv)Any application for stay or any interim order has been made.(c)He shall, on finding that the Writ Petition falls under any one or more of the above points, put in appearance in the High Court on behalf of the State, at the admission stage without waiting for instructions from the administrative department or the Legal Remembrancer or the Joint Legal Remembrancers, Law Department. Where he finds that the question is between two private parties and Government's interest is not involved, he shall in the first instance obtain instructions from the administrative department concerned and then file appearance before the High Court for bringing the facts about Government's non-involvement in the case to the notice of the High Court.(d)In other Writ Petitions he shall file appearance in which the

State is impleaded as a party, and obtain adjournment, if no instructions from the administrative department concerned are received by him in time.(2)Whenever a notice or notice of motion is served on the Government officer concerned, who is impleaded as party his official capacity, he shall without least delay, forward to the administrative department concerned, all the relevant case papers, including a copy of petition, a statement of facts, which are necessary for meeting the allegations in the Writ Petition should be opposed or not.(3)The administrative department concerned shall, on receipt of notice of notice of motion and its enclosures, make such enquiry into the facts of the case, as may be necessary and if the Rule is intended to be opposed, shall prepare or obtain parawise report on all the points raised in the Writ Petition and affidavit.(4)On receipt of or after preparing parawise replies the administrative department concerned shall forward the complete case papers, as far as possible, within two weeks from the date of receipt by it or in any case before the expiry of the date mentioned in the notice of motion to the Law Department concerned and also forward the copies of the same to the Legal Remembrancer or the Joint Legal Remembrancer, Law Department.(5)Swearing of counter affidavit:-(a)As soon as a case is filed against any Government Department, the concerned Department shall handover the case to such Officer who is well conversant with the facts and circumstances of the case.(b)The said Officer shall then prepare parawise comments and defence based facts from files and records and shall place the same before the Department Secretary who in turn shall entrust the same to the Officer concerned who has been entrusted or delegated with the duty of handling litigation of the Department.(c)Thereafter, the parawise comments duly countersigned by the Departmental Secretary shall be placed before the legal Remembrancer or Joint Legal Remembrancer.(d)The Legal Remembrancer or the Joint Legal Remembrancer shall scrutinize the facts stated by the Department for obtaining approval from the Competent Authority.(e)After all these formalities are complete, the same shall be sent to the Law Officer concerned to give final shape to the draft reply/written statement/affidavit etc. Once the draft is finalized the same shall be placed before the Advocate General for settlement.(f)Any information required by the Advocate General/Government Advocate concerned in the High Court in connection with the preparation of the counter affidavit shall be furnished by the administrative department concerned as early as possible.(g)The draft counter affidavit shall after finally settled by the Advocate General be sworn in by the Head of the department or by the competent officer authorized to do so by the Government.(h)On swearing the counter affidavit by the Head of the department or by the competent officer, the same shall be filed in the High Court.

22. Conduct of Writ Petition.

(1)Important points respecting the conduct of Writ Petition:-(a)In view of the expeditious and summary nature of the proceeding, prompt action is necessary at every stage of the Writ Petition on the part of the Government Advocate concerned in the High Court as well as the administrative department and the Government officer concerned.(b)The administrative department concerned shall depute the competent officer with all instructions and record or such other materials as may be required by the Advocate General/Government Advocate concerned in the High Court. The Government Advocate concerned shall intimate well in advance, as far as possible in writing and where there is no sufficient time then on phone, to the competent officer concerned about the date on which the part heard case is subsequently brought on the list so as to enable the competent

officer concerned to be prepared to instruct the Government Advocate concerned on the date fixed for hearing. The competent officer shall not be detained unnecessarily by the Government Advocate concerned unless his presence is essential.(c)Whenever the questions of making a concession or giving an undertaking before the High Court on behalf of the State or a Government officer arises, the Government Advocate concerned in the High Court shall obtain a suitable adjournment and refer the matter to the administrative department concerned for expeditious scrutiny and examination of the pros and cons in consultation with the Legal Remembrancer or the Joint Legal Remembrancer, Law Department if necessary. This does not, however, preclude the Advocate General/Government Advocate concerned in the High Court from conceding obvious points of law during the course of arguments. However, the invalidity or unconstitutionality or any statute, rule, Ordinance or any Government Resolution, order etc. shall never be conceded before obtaining instructions of the Legal Remembrancer, Law Department.(d)All interim orders passed by the High Court shall be communicated in writing by the Government Advocate concerned in the High Court direct to the party concerned for prompt compliance.(e)The affidavits to be filed in the interlocutory applications such as -(i)Application for grant, vacation or modification of stay orders,(ii)Expedite applications;(iii)Applications for getting the Writ Petitions dismissed on account of having been infructuous, shall be drafted by the Government Advocate concerned in the High Court after obtaining instructions from the administrative department and Government officer concerned.

23. Decision to be communicated to all concerned.

(1)As soon as the Writ Petition is decided, the Government Advocate concerned in the High Court shall communicate the nature of the decision to the administrative department concerned and the Government officer concerned with a copy to the Legal Remembrancer or the Joint Legal Remembrancer, Law Department, giving in important cases a brief statement of the grounds on which the decision is based.(2)He shall on the very day of the decision apply for a certified copy of the judgement and after obtaining the same forward it to the administrative department concerned.(3)Where the judgement is adverse to the State, the Government Advocate concerned in the High Court shall obtain certified copy of judgement and send one uncertified copy of judgement along with his opinion in consultation with the Advocate General, whether an appeal should or should not be filed, to the administrative department concerned. He shall at the same time forward one uncertified copy of judgement along with his report to the Legal Remembrancer or the Joint Legal Remembrancer, Law Department.(4)The administrative department concerned, if it recommends an appeal shall forward the case papers along with the report received to the Legal Remembrancer or the Joint Legal Remembrancer, Law Department.Chapter-VIII Civil and Criminal Appeals and Other Proceedings in The Supreme Court

24. Appeals by State.

(1)Government in the Law Department shall consider the proposal for filling of appeal, whether civil or criminal, to the Supreme Court, either received from the Government Advocate or Public Prosecutor in the High Court or other Government Officer, interested in the case, through his administrative department and examine whether there is a strong probability of success and/or substantial question of law of general importance or interpretation of the Constitution is

involved.(2)If it is decided to file an appeal in the Supreme Court against the judgement, decree, order or sentence passed or made by the High Court, or any other court or tribunal, the Legal Remembrancer, Law Department, shall with the approval of the Government send instructions to the Standing Counsel for the State in the Supreme Court, for filing Special Leave Petition in the Supreme Court under Article 136 (1) of the Constitution, along with the following case papers:-(a)The certified copies of judgement, decree, order or sentence appealed from;(b)A Vakalatnama duly signed by the Chief Secretary in favour of the Standing Counsel;(c)Paper-Book; and(d)A detailed note explaining the law and facts of the case.The copies of the above communications shall also be sent to all concerned.Note: - Limitation period for filling of a petition for special leave to appeal to the Supreme Court is 90 days from the date judgement, decree, order of sentence to be appealed from.(3)The administrative department concerned shall then take immediate steps to prepare the parawise remarks in reply to the Special Leave Petition, Petition of Appeal and application for stay or injunction, as the case may be, and send the same along with case papers and necessary instructions, if any, to oppose the admission of petition and stay or injunction application, if any, to the Standing Counsel or Public Prosecutor concerned in the High Court, a Copy of the parawise remarks and instructions, if any, to oppose the admission of petition and stay or injunction application, as the case may be, shall also be sent by the said department to the Government Advocate for his use and also to the Legal Remembrancer. The Government Officer concerned who had been made a party in his official capacity shall send his Vakalatnama in favour of the Standing Counsel duly signed by him.(4)The Standing Counsel or Public Prosecutor concerned in the High Court shall, if the administrative department concerned so directs, prepare a counter affidavit in reply to the Special Leave Petition, Petition of Appeal and stay or injunction application, as the case may be, on the basis of parawise remarks and instructions received from the administrative department concerned. The counter affidavit shall be shorn in by the competent officer of the administrative department concerned before the Registrar or any competent officer of the High Court as the case may be. The counter affidavit then shall be sent by the administrative department concerned to the Standing Counsel in the Supreme Court so as to reach him within the time fixed for filing it in the Supreme Court. The Government Advocate or Public Prosecutor concerned shall supply a copy of the counter affidavit prepared by him to the Legal Remembrancer.Explanation: - It is, however, entirely left to the discretion of the administrative department concerned to entrust the work of drafting of counter affidavit to the Government Advocate or Public Prosecutor concerned in the High Court or the Standing Counsel in the Supreme Court.Note: - The limitation period for filing special leave to appeal to the Supreme Court in a case involving death sentence is 60 days from the date of the judgement, order or sentence under Article 133 (a) of the Limitation Act, 1963.(5)On receipt of communication under sub-rule (2), the administrative department concerned shall depute a responsible official not below the rank of Joint Secretary, having actual knowledge of the case, to contact the Standing Counsel for swearing an affidavit in support of the statement of facts and other contents contained in the petition to be filed in the Supreme Court.(6)the Standing Counsel shall file a petition for special leave in the Supreme Court within the time limit.(7)If the special leave to appeal is granted by the Supreme Court, the Standing Counsel shall send intimation thereof to the legal Remembrancer. The Standing Counsel shall then, on payment of additional court fee, if any, within the time, get the special leave petition of appeal.(8)Condonation of delay: - If for any reason the State is unable to lodge a petition for special leave to appeal in the Supreme Court within the period of limitation, the Legal

Remembrancer and the head of the administrative Department or the Government Advocate of Public Prosecutor in the High Court, as the case may be, shall send their affidavits explaining the delay caused on their part, to the Standing Counsel for being filed in the Supreme Court along with the petition for special leave to appeal. (9) Remittance of amount after grant of special leave to appeal. (a) On receipt of intimation from the Standing Counsel regarding grant of Special leave by the Supreme Court, the Legal Remembrancer, shall require the administrative department concerned to remit a sum of Rs 2,000 or such amount as the Supreme Court might have directed in a particular case, to the Standing Counsel within 30 days of the filing of the petition of appeal under rule 6 of Order XV of the Supreme Court Rules, 1966 for depositing as security for the cost of the respondent in the Supreme Court. No security is payable in respect of criminal appeals; (b) The amount of expenses for printing or cyclostyling of record, on the basis of estimate prepared by the Registrar of the Supreme Court and intimated by the Standing Counsel shall be borne and paid by the Legal Remembrancer or the administrative department concerned, as the case may be. (10) The Standing Counsel shall then take further steps as per the provisions contained in Order XV of the Supreme Court Rules, 1966.

25. Appeal against State.

(1) As soon as the Notice, Notice of Motion of petition or appeal or application, whether civil or criminal, is served on the administrative department concerned of Government, that department shall immediately get types 5 copies of Notice, Notice of Motion, Special Leave Petition, Petition of Appeal and the application for stay or injunction, as the case may be. The administrative department concerned shall send original copy of Notice along with its annexures to the Standing Counsel in the Supreme Court. One copy each of the said Notice and its annexures shall also be supplied by the administrative department concerned to the Government Advocate or Public Prosecutor concerned in the High Court, who conducted the case in the High Court, and one copy to the Legal Remembrancer, Law Department for issuing necessary instructions to the Standing Counsel. (2) If it is decided to file an appeal in the Supreme Court against the judgement, decree, order or sentence passed or made by the High Court, or any other court or Tribunal, the Legal Remembrancer Law shall send instructions to the Law Officer for the State, appointed by the Government in the Law Department in the Supreme Court, for filing Special Leave Petition in the Supreme Court under Article 136(1) of the Constitution, along with the following case papers:-(a) The certified copy/copies of Judgement, decree order or sentence appealed from; (b) A Vakalatnama duly signed by the Chief Secretary in favour of law Officer; (c) Paper-Book; and (d) A detailed note explaining the law and facts of the case. Two copies of the above communication shall also be sent to all concerned. Note: - Limitation period for filing of a petition for special leave to appeal to the Supreme Court is 90 days from the date of the judgement, decree, order or sentence to be appealed from: Provided that the limitation period for filing special leave to appeal to the Supreme Court in a case involving death sentence is 60 days from the date of the judgement, decree, order or sentence under Article 133(a) of the Limitation Act, 1963. (3) On receipt of communication under sub-rule (2), the administrative department concerned shall depute a responsible official not below the rank of Joint Secretary having actual knowledge of the case, to contact the Law Officer for swearing an affidavit in support of the statement of facts and other contents contained in the petition to be filed in the Supreme Court. (4) A Vakalatnama to be filed on behalf of the State be

executed by the Chief Secretary in favour of the Standing Counsel and shall be sent to him along with such instruction as may be made in this behalf.(5)As soon as the standing Counsel receives the Vakalatnama and the instructions for contesting the appeal, he shall without any delay draw up the case and lodge the same in the Supreme Court within the time prescribed for.Note: - (i) Limitation for entering appearance on behalf of respondent in the Supreme Court is 30 days of the service on him of the notice of lodgement of the petition of appeal as prescribed under rule 12, Order XV of the Supreme Court Rules, 1966.(ii)Under rule 35, Order XV of the aforesaid Rules, the respondent has to lodge his case within 30 days from the date of service of a copy of the statement of case lodged by the appellant.(6)Filing of Caveat: - If it is anticipate by the administrative department concerned or the Government Advocate or Public Prosecutor concerned in the High Court that an application for special leave to appeal to the Supreme Court will be made by the opposite party and if it is decided to oppose such application, a brief of the case along with opinion on merits of such appeal, shall at once be prepared by it or him and sent to the legal Remembrancer, who shall with necessary instructions send the same to the Standing Counsel for filing of a caveat in the Supreme Court.Note: - It may be noted that until the caveat has been lodged under rule 2, Order XVIII of the Supreme Court Rules, 1966, or a Vaklatnama, has been filed, the State can not be heard in opposition of the special leave petition filed by the opposite party.

26. Filing or defence of writ petitions, suits and other proceedings.

- The procedure, prescribed under rules 30 and 31, above shall, mutatis mutandis, in so far as it may be applicable, apply to the filing or defence of the original Writ Petitions under Article 32 of the Constitution, or suits or other proceedings under Article 131 of the Constitution in the Supreme Court on behalf of the State and its officers.

27. Result of case to be communicated.

(1)As soon as the case, either filed on behalf of the State or against the State and its officers, is decided by the Supreme Court, the Standing Counsel shall communicate the decision to the Legal Remembrancer and also to the administrative department or Government officer concerned and the Government Advocate or Public Prosecutor concerned in the High Court. He shall also obtain a certified copy of judgement and decree, final order or sentence, as the case may be, passed by the Supreme Court and send it to the administrative department concerned for compliance.(2)He shall also withdraw all the unspent security deposit after the disposal of the appeal and credit the same to the administrative Department concerned of Government.

28. Engagement of Special Counsel other than Law Officer.

(1)If any advocate/lawyer, other than the Law Officer, is to be engaged in important cases the engagement of such advocate/lawyer shall be done by the administrative department in consultation with the Law Department and fees for such advocate/lawyer shall be negotiated and determined by the Law Department and the administrative department.No fees shall be paid to the advocate/lawyer engaged by a department without consulting the Law Department as stipulated above.(2)Ordinarily, when a case is filed or is pending in any Court outside the State in which the

State Government is a party, the lawyer from that State will be engaged for conducting the case.

29. Monthly report.

- Unless otherwise provided in these rules, it shall be the duty of the Standing counsel to submit monthly report regarding disposal and pendency of cases in the Supreme Court to the Law Department. Chapter-IX Execution of Decrees

30. Interpretation.

- For the purpose of this Chapter a "decree" includes an "Order" of a Civil Court as defined in section 2 of the Code of Civil Procedure, 1908.

31. Satisfaction of decree against State.

(1) Where a decree has been passed against the State or its Officers and it has been decided by Government not to contest further, a decision which is wholly or partly adverse to Government, the Government Officer concerned shall at once instruct the Law Officer concerned to pay in the Court whose duty is to execute the decree, all money payable under the decree. They shall see that the decree is fully satisfied within the time fixed for its satisfaction under section 82 of the Code of Civil Procedure, 1908. (2) For this purpose, the Law Officer concerned shall take the following steps for prompt satisfaction of the decree:-(a) As soon as it is decided to acquiesce in a decree passed by Civil Court against the State or its Officer, the Law Officer shall see that the decree is satisfied promptly. (b) He shall maintain register showing the particulars of the decree passed against the State or its officers. (c) He shall submit to the Government in the Administrative department concerned, a report every quarter (before the 10th of January, April, July and October) of every year, stating the particulars of the decrees which have remained unsatisfied for more than four months after it is decided to acquiesce in them, the period for which they have so remained unsatisfied and the reasons for the delay. (3) (a) The Law Officer and the administrative department concerned shall see that in case of adverse decisions no amount should be deposited in the trial court, pending decision of Government in the Law Department, as regards whether the decision of the trial court should be acquiesced in or appealed against. (b) If Government in the Law Department decides to file an appeal and the appellate court directs the State to deposit the decretal amount in the trial court, before making an order for staying the execution of decree under sub-rule (5) of rule 5 of the Code of Civil Procedure, 1908, a prayer should be made to the appellate court not to allow the opponent to withdraw the deposit till the decision of the State appeal.

32. Procedure where decree is passed in favour of State of its Officers.

(1) The Law Officer shall, immediately after the settlement of issues and before the date fixed for final hearing of the case, ask for and obtain from administrative department or the Government Officer concerned, instructions in writing, having regard to the provisions of Order XXI of the Code of Civil Procedure, 1908 as to the mode of execution including as to the process such as arrest,

attachment that is desired to be issued in the event of a decree being passed in favour of the State or its Officers, or both.(2)As soon as the Law Officer concerned receives a copy of decree under which any amounts is due to Government, he shall see that all necessary steps are taken with all possible expedition to realize the amount due under the decree or get it otherwise satisfied. For this purpose he shall, in the absence of any special instructions to the contrary, proceed as follows:-(a)If the person from whom the amount is due (hereinafter referred to as judgement debtor) or his advocate is known to the Law Officer concerned and is readily accessible to him, he shall endeavour to recover the amount from him.(b)If there is a reason to believe that the amount due can not be recovered under clause (a) and the Law Officer concerned knows of any property of the judgement debtor from which the amount due or part of it may be realized e.g. immovable property, securities, money deposited in the court or the subject matter of a suit on which Government has a first charge under Order XXXIII, rule 10 of Code of Civil Procedure 1908, he shall at once or as soon as he receives necessary information from any source, make an application for execution by attachment, sale etc. for such property;(c)Where no action under clause (a) or (b) is taken the Law Officer concerned shall without any delay send the copy of the decree to the administrative department concerned, with a report stating inter-alia-(i)The reason for not taking such action;(ii)The date on which the period of limitation for the execution of the decree will expire; and(iii)Any information which has come to his knowledge and the possession of which is likely to facilitate the recovery of the money due to Government.(d)Where action is taken under clause (a) or (b), the Law Officer concerned shall, as soon as possible and in any case within one month of the date of receipt by him of the copy of decree, report his action and proceedings to the administrative department concerned, and send the copy of decree if not longer required by him. He shall also report to the administrative department concerned the result of the proceedings on their completion and, if they have not been successful in re-covering the whole of the amount due, furnish the information specified in sub-clauses (ii) and (iii) of clause (c).

33. Decrees in suits by indigent persons.

- If a decree under which court fees or pauper costs are awarded to the State, the Law Officer concerned shall furnish administrative department concerned with a copy of decree. It shall then be the duty of the Collector concerned to see that such costs are recovered as soon as possible. For this purpose he may make such enquiries as he deems necessary as to the property and means of the person liable to pay the pauper costs. The Law Officer shall carefully watch the execution of such decree and at proper time enforce the first charge of Government in respect of such money or other property.

34. Scrutiny of costs awarded to State.

- The Law Officer concerned shall carefully scrutinize the Court's Order or costs in all suits, appeals and other civil proceedings and also suits and appeals by indigent persons, in which he appears on behalf of the State or its officers. He shall see that the costs are duly assessed and entered in the decree together with an order specifying the party from whom they are to be recovered. If the order does not properly provide for the Government's costs, he shall at once bring the fact to the notice of the Legal Remembrancer in order that the desirability of applying for a review or, if necessary, filing

an appeal or application for revision may be considered.

35. General instructions for the Law Officer.

(1)The Law Officer concerned shall endeavour to obtain from time to time such information as may lead to the recovery of any money due to Government and furnish to the administrative department concerned any information which comes to his knowledge and which is likely to facilities the recovery of the moneys due to Government.(2)He shall be responsible for seeing that the execution of any decree is not barred by limitation. When the period of limitation for the execution of any decree is nearly expiring, without such decrees having been fully satisfied, he shall specially bring that fact to the notice of the administrative department concerned.

36. Enquiries as to the property and means of the judgement debtor.

(1)The administrative department concerned shall, whenever necessary, through the collector concerned or otherwise, make enquiries as to the property and means of the judgement-debtor and endeavour to recover from him the whole or such portion of the amount due as may be possible.(2)For the purpose of making any such enquiries, the administrative department concerned may employ such trustworthy agency as it may think fit any may pass bonafide traveling expenses incurred by the person deputed to make such enquiry.

37. Arrangements for identification of property to be attached.

- Upon the Court issuing orders for the attachment of the judgement-debtor's property, the Law Officer concerned shall at once apply to the Administrative department concerned to depute some one to accompany the attaching officer and to point out the property.

38. Procedure in cases where claims are made to attached property.

- In case claims are made by third parties to the property attached, the Government Officer on whose report the property was attached shall collect the evidence, which would show that the property belongs to the judgement debtor, and he shall, if possible, be present in the Court and instruct the Law Officer concerned, when the Court is inquiring into the claim.

39. Procedure with regard to recovery of the amount due.

- Where any sum due to Government under a decree is recovered otherwise then the agency of a Court, the Law Officer concerned shall certify such recovery to the Court under Order XXI, rule 2 of the Code of Civil Procedure, 1908.

40. Recoveries to be credited to the department.

- As soon as the Law Officer recovers any money on behalf of the State or its officers in the execution of a decree, he shall at once credit the amount in the treasury to the receipt head of account of the department concerned to which the decree relates and report the fact to the department concerned.

41. Procedure when a decree is passed by High Court.

(1) When a decree has been passed in appeal in favour of the State or its officers by the High Court, the Law Officer in the High Court, administrative department or the Government Officer concerned shall, as soon as he receives copies of the judgement and decree, forward them to the Law Officer in the Civil Court, having jurisdiction to execute the decree, with instructions to the mode of execution. On receipt of such decree, the Law Officer concerned shall immediately apply for its execution in accordance with such instructions. (2) When a decree is passed in a case in favour of the State or its officers by the High Court in the exercise of its original jurisdiction, the Law Officer concerned in the High Court shall make an application for execution of decree in the High Court after obtaining instructions as to the mode of execution from the administrative department concerned. For that purpose he shall follow the procedure as laid down in the foregoing rules.

42. Procedure where a decree is passed by Supreme Court.

(1) When in appeal arising out of a decision of the High Court a decree in favour of the State or its officers is passed by the Supreme Court, the Registrar of the Supreme Court transmits the decree to the High Court. (2) If such a decree relates to a case dealt with by the High Court in exercise of its appellate jurisdiction, the decree is transmitted by the High Court to the subordinate trial court. As soon as the decree is so transmitted, the Law Officer concerned in the High Court shall inform the administrative department or the Government Officer concerned, as the case may be, who shall then send necessary instructions to the Law Officer in the Civil Court, having jurisdiction to execute the decree, to take necessary steps for the due execution of the decree. (3) If the Supreme Court passes a decree in favour of the State or its officers in a proceeding other than a Civil Appeal, the Law Officer in the Supreme Court shall apply to the Judge in the chamber for transmitting the decree to the High Court or any other appropriate court for enforcement. Thereafter the application for the execution of the decree shall be made to the appropriate court by the Law Officer concerned in the High Court or the Law Officer.

43. Application for stay of execution to be opposed.

(1) Unless there are any special reason to the contrary, every application made by the opposite party to an appellate court for staying the execution of decree passed in favour of the State or its officers shall be opposed strenuously by the Law Officer concerned on the following grounds:-(a) That Government was not responsible for the litigation and had done everything in its power to avoid it, and (b) That if the decree is reversed in appeal, Government is in a position to refund any amount which may have been recovered in execution. (2) (a) If the court allow the application for stay under

Order XLI, rule 5(3)(c) or the Code of Civil Procedure, 1908, the Law Officer, the administrative department or the Government officers concerned, as the case may be, shall see that the security given by the appellant is sufficient to cover the amount decreed and the costs of appeal;(b)If they consider that the security offered is not good or sufficient, the Law Officer concerned shall apply to the court to execute the decree at once;(c)If such application is refused, the Law Officer concerned shall inform the administrative department concerned, who shall endeavour to keep a watch on the property of the judgement-debtor, so as to prevent any fraudulent alienation or concealment of it.

44. Superintendence by Administrative Department of recovery of dues.

- The administrative department concerned shall generally supervise and control the steps taken for the recovery of money due to Government under decree relating to his district. For this purpose he may require the Law Officer concerned to submit to him such progress or other reports as he thinks fit in regard to decrees which have been sent to him for taking steps for the recovery of the amounts due to Government. He may also ask the Law Officer concerned to make such an application to the court for the recovery of any amount as he may deem fit.

45. Report about unsatisfactory recovery.

(1)If the administrative department concerned considers that the progress made in the recovery of moneys due to Government is unsatisfactory, he shall bring the matter to the notice of the Legal Remembrancer, Law Department.(2)The administrative department concerned may also consult the Legal Remembrancer whenever he requires advice in regard to the steps taken for the recovery of such amounts.

46. Writing off irrecoverable dues.

(1)As a rule, steps for the recovery of Government dues shall be unceasingly continued till the period of limitation expires.Note: - The period of limitation for execution of decree is 12 years under Article136 of the Limitation Act, 1963.(2)(a)If it appears to the administrative department concerned that the judgement-debtor will not be able to pay what is due from him under the decree, or the balance of what is due from him within the period of limitation, or if for any reason the administrative department concerned thinks it inexpedient that such person should be further pressed, he may, if the dues are in respect of court fees or dues to Government in a suit or appeal by indigent person, at once write off the amount still due;(b)In other cases he shall apply to Government through the Legal Remembrancer.Chapter-X General Rules for the Conduct of Suits, Appeals and Other Civil or Criminal Proceedings

47. Intervention pending cases.

- If it appears to the Head of administrative department or the Government Officer concerned that the interest of government requires that it should be intervened in any suit, appeal or other civil proceedings of which the State has been made a party, he shall follow the procedure prescribed for

the suits, appeals or other civil proceedings, as the case may be, before applying to the Court that the State should be made a party to such case.

48. Procedure in emergency cases.

- If the Head of the administrative department or the Government Officer concerned considers that there is no sufficient time to receive orders of Government in the Law Department in the cases referred to in rule 53 above or in any miscellaneous civil proceedings, he shall direct the Law Officer concerned to apply for postponement of the hearing of the case. If the Court refuses to adjourn the case, he may, if he thinks fit that the matter is urgent, take action in anticipation of the orders of the Government in the Law Department. He shall, however, at once send a full report, giving reasons for his action to the Legal Remembrancer through his head of the department and obtain ex-post facto sanction in respect of the action taken by him.

49. Procedure for compromises.

(1) If the Head of administrative department or the Government Officer concerned desires that any suit, appeal or other civil proceedings should be settled out of the Court or compromised in the Court, he can do so only after obtaining the express orders of Government in the administrative department concerned shall consult the Legal Remembrancer. (2) Whenever Government in the administrative department takes a decision to compromise the litigation with a view to bring an end to it, the administrative department concerned shall give instructions to the Law Officer concerned to draft consent terms of the compromise. The Law Officer shall then file the consent terms in the Court concerned after the consent terms are duly approved by the administrative department concerned.

50. Procedure for production of documents from the Government records in the file.

(1) The law relating to the production of unpublished official records as evidence in the Court is contained in sections 123, 124 and 162 of the Indian Evidence Act, 1872 (Act of 1872). (2) For the purpose of section 123 of the Indian Evidence Act. only the Minister in-Charge or the Secretary of the department concerned should be treated as the authority to withhold or give the necessary permission for the production of official documents in evidence. (3) When a document is called for from a Government Officer, who is not the head of the department, he should refer the matter for orders to the Secretary of his department. The Secretary of the department should then carefully consider whether the production of the documents should not be objected to; (b) In respect of document emanating- (c) From a higher authority, viz, the Government of India, or the State Government or which have formed the subject of correspondence with such higher authority; or (d) From other Governments, whether foreign or Indian States, the head of the department should obtain the orders of Government before agreeing to produce the documents in the Court, or allowing evidence based on them, unless the papers are intended for publication, or are of a purely formal or routine nature, when a reference to Government may be dispensed with. (5) In the case of documents

other than those specified in sub-rule (4) above, the production of documents should be withheld only when the public interest would, by their disclosure be injured, or where disclosure would be injurious to national defence, or to good diplomatic relations or where the practice of keeping a class of documents secret is necessary for the proper functioning of the public service. Broadly speaking, privilege should be claimed under section 123 in respect of the following documents:-(a)Administrative instructions and guidance notes secretly given to various departments of Government;(b)Documents embodying the minutes of the Council of Ministers and the advice given to the Governor;(c)Advice tendered by the Public Service Commission to the Council of Ministers and its report;(d)Documents embodying the minutes of the discussion between private party and a State Minister and indicating the advice given by the Minister.(6)For claiming privilege under section 123 read with section 162 of the Indian Evidence Act, the following points should be noted:-(a)Section 162 makes it clear that when the State or a Government Officer is summoned to produce a document in respect of which he desires to claim privilege on the ground that it relates to any affairs of the State, he is bound in the first instance to appear and bring it in a sealed cover to the Court under section 162 notwithstanding any objection that he may have as to its production or advisability and then claim privilege for it in the proper way of an affidavit;(b)The head of the department should have document before him and give careful attention before claiming privilege and his affidavit should contain an indication as to the nature of the documents as to why privilege is claimed, what injury to public interests is apprehended or what affairs of the State are involved. The sole and the only test which should determine the decision of the head of the department is injury to public interest;(c)The privilege should be claimed generally in the form of an affidavit by the Minister-in-Charge, if not, the Secretary of the department concerned;(d)In every affidavit made for claiming privilege in respect of any document it must be emphasized that the document called in evidence is derived from unpublished official records relating to the affairs of the State, the disclosure of which would lead to injury to public interest.(7)The foregoing provisions apply to all cases irrespective of the fact whether the State or its officers are parties or not to any suit or other proceeding, in cases in which the State or its officers are parties, a reference to the Legal Remembrancer shall be made, when necessary.(8)A Government Officer other than the head of the department who is summoned to produce an official document, should first determine whether the document is in custody and he is in a position to produce it. Generally, all official records are supposed to be in the custody of the head of the department and it is only under special circumstances that an official document can be said to be in the custody of an individual Government Officer. If the document is in the custody of any Government officer summoned, he should first determine whether the document is an unpublished official record relating to affairs of the State and privilege under section 123 should be claimed or if he has any doubt about the correct position, in both the cases he should refer the matter to the Secretary of his administrative department, who shall then issue necessary instructions and shall also furnish the affidavit in suitable cases. If the document is such that privilege under section 123 cannot be claimed but if the Government Officer considers that the document is a communication made to him in official confidence and that the public interest would suffer by its disclosure, he should claim the privilege under section 124. In doubtful cases, he should seek the advice of the Secretary of his administrative department.(9)The Government officer, who is to attend a Court as a witness with official documents should where permission under section 123 has been withheld, be given an affidavit duly signed by the Secretary of his administrative department. He should produce it when he is called

upon to give evidence and should explain that he is not at liberty to produce the document before the Court or to give any evidence derived from the documents. He should, however, take with him the papers in a sealed cover which he has been summoned to produce.(10)The Secretary of the administrative department should abstain from entering into correspondence with the Presiding Officer of the Court concerned in regard to the grounds on which the documents have been called for.

51. Substitution of legal representatives in case of death of the person.

- In case of death of defendant/respondent in any suit, appeal or other civil proceeding filed by the State, it shall be the duty of the head of the department or the Government Officer concerned to ascertain and intimate the names of legal representatives of the deceased defendant/respondent along with their addresses to the Law Officer concerned for making an application to the Court for substitution of names of the legal representatives of the deceased within the limitation prescribed therefore, i.e. 90 days from the death of the defendant/respondent.

52. Procedure when the Government Officer is sued by name and designation.

- If any proceeding has been filed against the Government Officer by name and designation and Government in the administrative department decides that the Government Officer has acted in the discharge of his official duties, he case should be referred to the Legal Remembrancer.

53. Conduct of Civil and criminal case by the Law Officers on behalf of State owned Authorities, Corporations and Boards.

- The Law Officer may appear in any civil or criminal case on behalf of any Authority, Corporation or Board under the control of Government provided such case does not conflict with the interest of the State and other Government litigation does not suffer. In such case the Law Officers would be entitled to fees as laid down by Government in the administrative department concerned.

54. Law Officers to use their own discretion in conducting cases.

- The Law Officers shall use their own discretion as to the manner in which the cases should be conducted by them. But they shall be guided by any instructions that may be issued to them by the Legal Remembrancer. Unless otherwise specifically directed, their arguments need not, however, be limited to those stated in such instructions: Provided that they should not admit or make any statements before the Court while arguing cases which would put Government in an embarrassing position, without obtaining the written instructions from the administrative department or the Government Officer concerned.

55. Special directions or orders may be given in particular cases.

- Notwithstanding anything contained in these rules, Government in the Law Department may, in any particular case, issue such directions or orders as it may deem fit and it should be the duty of the Law Officer concerned to comply with such special directions or orders.

56. Procedure to be followed by the Government Officer in reference made to Law Officers.

- In any reference made to a Law Officer only the documents necessary for the proper consideration of the point on which his opinion or advice is required should be sent. The facts of the case and also the point on which the advice or opinion is required should be stated as precisely as possible. If the Law Officer to whom the reference has been made finds that the real point has been missed or incorrectly stated, or that the facts stated do not afford sufficient material for forming an opinion, he may point out at the same time in what respect the reference is deficient.

57. Correspondence and Government Resolutions to be deemed strictly confidential.

- All correspondence and all resolutions of Government on the subject of suits, appeals or other civil or criminal proceedings are to be regarded by all Government Officers and the Law Officers concerned into whose hands they may come, as strictly confidential. No Government Officer, for any reason, whatsoever, grant copies of any such correspondence or such Government Resolution during the pendency of the suit, appeal or any civil or criminal proceedings, or before it is finally decided by the highest Court before which it may go in appeal and no such copies shall be granted at any time after such final decision without the previous sanction of the Secretary of the administrative department concerned.

58. Purchase of judgement-debtor's property for Government forbidden.

- The practice of deputing Government servants to bid on behalf of Government at Court auction with a view to purchase the property of a judgement-debtor from whom money is due to Government is, as a matter of general principle, objectionable as it is likely to involve Government in further litigation and should not, therefore, be resorted to save with the sanction of Government in the administrative department obtained through the Legal Remembrancer.

59. Records relating to suit, appeals and other civil or Criminal proceedings.

- The Legal Remembrancer shall keep in his office a record of the correspondence (other than unimportant papers) connected with every suit, appeal or other civil or criminal proceeding in which the State or its officers are concerned. The records of the inquiries made prior to the institution of a suit, appeal or any other civil or criminal proceeding or any other records or papers, which are not required to be sent to him under any of the rules will be kept in the office of the Government Officer

concerned or dealt with in accordance with the rules of that office regarding the preservation of records. The case papers relating to the execution of decrees should be kept till the execution is completed.

60. Suits, appeals and other civil or criminal proceedings filed or to be filed in other States.

- The Government Officer, through his head of the department, who wants to institute or defend any suit, appeal or any other civil or criminal proceeding in the Court situated in other State shall approach the legal Remembrancer, Law Department. While doing so he shall follow the procedures as laid down in the foregoing rules. On receipt of the report and the relevant documents from the head of the department concerned, the Legal Remembrancer shall correspond with the Legal Remembrancer of the State Government concerned for asking their Law Officer to appear on behalf of this State or its officers or both in such Law Officer to appear on behalf of this State or its Officers or both in such suit, appeal or any other civil or criminal proceeding. On receipt of the intimation from the Legal Remembrancer, Law of the State Government concerned about the engagement of a particular Law Officer, the Government Officer concerned shall make available all the information required by such Law Officer. The fees for the conduct of such case, as certified by the legal Remembrancer, Law of the State Government concerned on the basis of the rules prescribed by the State Government concerned for payment of fees to its Law Officers, shall be paid from the Grants of the Legal Remembrancer of this State.

61. Orders as regards cost to be scrutinized.

- In all suits and applications in which the Law Officer concerned appear on behalf of the State and specially in suits and applications filed by the indigent persons to sue in forma pauperis, they shall scrutinize carefully the Court's order of cost and see that their costs are duly assessed and entered in the decree together with an order specifying the party from whom they are to be recovered. If the order does not properly provide for Government cost, they shall at once bring the fact to the notice of Legal Remembrancer in order that the desirability of applying for a review or, if necessary, filing an appeal or application for revision may be considered.

62. Cost of Paper Books to be deposited in Court.

- In cases in which First Appeals have been filed in the High Court by the State, the Law Officer concerned shall, when called upon to do so, deposit in the Court the estimated cost of preparing the Paper-Books.

63. Recovery of documents filed on behalf of State.

- The Law Officer concerned should take back from the Court all exhibits filed on behalf of the State which are liable to be destroyed under the rules made by the High Court but which may be of use in future and forward the documents so obtained to the administrative department concerned.

64. List of bringing on record legal representatives of deceased defendants or respondents.

- In suits, appeals or other proceedings in which the State or its officer is the plaintiff, appellant or applicant, the Law Officer concerned shall send a list of cases for bringing on record the legal representatives of the deceased defendant or respondent to the administrative department concerned on the first day of each month.

65. Filling of Caveat.

- If it is anticipated by the administrative department or the Government Officer concerned that in any suit, appeal or any other civil proceedings, the litigants are likely to obtain an ex-parte order from the Court against the State or its officers, which may result in unnecessary complications or loss to the Government, the administrative department or the Government Officer concerned shall at once send his instructions to the Law Officer concerned in the High Court or the sub-ordinate Court, as the case may be, for filing of a Caveat in the concerned Court. The administrative department or the Government Officer concerned shall thereafter give an intimation of the same to the Legal Remembrancer for obtaining his sanction to the same.

66. Saving.

- The provisions of these Rules shall be in addition to and not in derogation of any Order, Notifications of Executive Instructions etc. for the time being in force regulating any of the matters dealt with in these Rules.