

# Criminal Rules (Assam)

ASSAM

India

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### Rule CRIMINAL-RULES-ASSAM of 1940

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## Chapter I

### Appointment of Public Prosecutors

#### 1.

All Government Pleaders in the State of Assam are ex-officio Public Prosecutors in the District in which they, for the time being, conduct cases on behalf of Government, they having been appointed as such by the State Government under Section 492 of the Criminal Procedure Code, 1898.

#### 1A. Appointment of Public Prosecutors.

- Whenever the office of the Public Prosecutor is vacant, the Deputy Commissioner shall, in consultation with the Sessions Judge, nominate a qualified Pleader for the appointment and submit the papers, to the Legal Remembrancer who shall forward them to the State Government, with his recommendations. The Pleader selected will be appointed by the State Government and will receive his deed of appointment through the Legal Remembrancer. All appointments made after the 1st July 1940 shall be for a period of three years and may be renewed for further periods if the incumbents are found fit and efficient. A Public Prosecutor appointed before the 1st July, 1940 shall retire at the age of 60 years unless on consideration of the reports of the Local Authorities Government consider that it is in the interest of the public service that they should be retained for a further period to be specified, which period may be extended on like conditions.

**2.**

In Gauhati, the Public Prosecutor shall be generally in charge of all criminal works, while Government Pleader shall conduct all civil and revenue cases.

**3.**

The Public Prosecutor at Gauhati shall receive a monthly retaining fee of Rs. 100.

**4.**

The Government Advocates have been appointed ex-officio Public Prosecutors in all cases coming before the High Court of Assam in its appellate or revisional jurisdiction. The Senior Government Advocate, Assam shall receive a monthly retaining fee of Rs. 500 and the Junior Government Advocates, Assam shall receive a monthly retaining fee of Rs. 200 each.

## **Chapter II**

### **(A) Duties and Functions of Public Prosecutors**

**5.**

The Public Prosecutor shall advise the Head of any Government office on any legal matter affecting the interest of Government in connection with the department which such officer represents, without the payment of a fee, such service being covered by his general retainer.

**6.**

The Public Prosecutor shall advise an Officer of the Government consulting him on behalf of a Local Authority over whose proceedings, such officer has powers of supervision or control on payment of a reasonable fee for his opinion. In the case of a difference of opinion as to the amount of fee it shall be fixed by the Legal Remembrancer.

**7.**

(1)The Deputy Commissioner as the chief executive authority in the District is the representative of the Government and has the first call on the Public Prosecutor's professional services. The Public Prosecutor (including Government Pleader and ex-officio Public Prosecutor) shall not therefore accept a brief for the defence, or for an appellant or for an application for revision in a criminal case in any Court including the High Court, except with the Deputy Commissioner's permission in writing previously obtained: Provided that in a case before the High Court, the Deputy Commissioner shall not grant such permission without the prior approval of the Government. (2) In the sub-divisional headquarters, where there is a Public Prosecutor, the Sub-divisional Officer shall

exercise the powers of the Deputy Commissioner in respect of his own sub-division. Explanation. - For the purpose of this rule 'Court' includes any statutory Commissioner or Committee of Inquiry into the conduct of public servants.

**8.**

The Public Prosecutor shall defend any Government Officer against whom a prosecution has been brought for acts arising out of the performance of his public duty subject to the conditions laid down in Chapter III.(B)Employment of Public Prosecutors, Other Pleaders and Counsels

**9.**

The Deputy Commissioner is authorised to employ the Public Prosecutor without reference to the Legal Remembrancer in any case in a Magistrate's Court within his District which presents difficulties of Law or evidence beyond the capacity of the Court Police: Provided that at sub-divisional headquarters where there is a Public Prosecutor the Sub-divisional Magistrate shall exercise the powers of the Deputy Commissioner in respect of his own sub-division. In all such cases the fact of his employing the Public Prosecutor and the reasons for doing so shall be reported and a monthly return showing the cost incurred therefor submitted to the Commissioner.

**10.**

A District Public Prosecutor shall not be so employed that his absence from headquarters will interfere with his prosecution of cases before the Court of Sessions.

**11.**

In cases of appeal and revision before the Court of Sessions the Deputy Commissioner may direct the Public Prosecutor to appear on behalf of Government without reference to the Legal Remembrancer. The Deputy Commissioner shall be responsible that a case does not fail because Government is not adequately represented in the Appellate Court. In all important appeals before the Sessions Judge (especially if the Appellant is represented by a pleader or counsel and it is unlikely that the complaint will be so represented) the Deputy Commissioner shall direct the Public Prosecutor to appear for the State.

**12.**

When the employment of an associate Pleader is considered necessary to help the Public Prosecutor in any case, the Deputy Commissioner shall apply before hand to the Legal Remembrancer for sanction, explaining at the same time the necessity for the extra assistance and the fee proposed. The Legal Remembrancer may sanction any fee allowed under these Rules.

**13.**

When the Public Prosecutor is unable to appear in any case or appeal and when the Deputy Commissioner is satisfied that it may without prejudice be conducted by another Pleader, the Deputy Commissioner may appoint another Pleader to conduct such case or appeal.

**14.**

Without the previous sanction of the Legal Remembrancer, no Public Prosecutor or other Pleader may be sent on deputation by a Deputy Commissioner beyond the limit of his own District.

**15.**

In any serious or important case in which the Legal Remembrancer considers that counsel should be employed before any Court other than the High Court, the sanction of Government shall be obtained. Where, however, there is no time to refer the matter to Government, the Legal Remembrancer's sanction will be sufficient. Whenever the Legal Remembrancer accords such sanction, he shall immediately report the matter to Government.(C)Representation of State to the High Court

**16.**

The Senior or one of the Junior Government Advocates will conduct prosecution in the High Court.

**17.**

If a Deputy Commissioner thinks it desirable that Government should be represented in any criminal appeal or application before the High Court, he shall at once send a letter to the Senior Government Advocate in Form C annexed to these Rules, giving a short statement of the facts of the case and his reasons for the requisition. A copy of the letter shall at the same time be forwarded to the Legal Remembrancer, Assam for information.(D)Procedure in Appeal Against Acquittal

**18.**

(1)When a Deputy Commissioner thinks that an appeal should be filed by the State Government to the High Court under Section 417 of the Criminal Procedure Code, 1898, against an original or appellate order of acquittal passed by any Court other than a High Court, he shall address the Legal Remembrancer forwarding all necessary documents and putting the case in such a way that no further reference will be required. Under no circumstances should a reference be made in the absence of the record of the trial itself; the Legal Remembrancer shall submit the case with his opinion for Government's orders. If there appear to be good grounds for preferring an appeal the complete paper shall be sent to the Senior Government Advocate for necessary action. If in any case, the State Government considers a further opinion necessary the opinion of the Advocate General,

Assam, shall be obtained.(2)Under the Union Government's instructions, an appeal against an acquittal should be filed within three months of the order of acquittal and the Senior Government Advocates requires the records to reach him within two months of the order of acquittal. Whenever, therefore, the Deputy Commissioner thinks that an appeal should be filed against an order of acquittal, he should send his recommendation, with the original records, to the Legal Remembrancer, Assam, within one month from the date of the judgement to be appealed against.(DD)Procedure in Moving for Enhancement of Sentence

## 18A.

Although the High Court sometimes entertain references under Section 438 of the Code of Criminal Procedure for enhancement of sentences [vide ILR 32 Bom 162 : and 55 Cal 417], it is desirable that motions for this purpose should be made whenever possible through the Senior Government Advocate of the High Court. Whenever, therefore, the Deputy Commissioner thinks that a sentence passed by any Court should be enhanced, he should send a report with all necessary papers to the Legal Remembrancer with the minimum of delay. The Legal Remembrancer shall submit the case with his opinion for Government's Orders.The report and papers should be sent so as to reach the Legal Remembrancer within one month of the date of the sentence.(E)Defence of Papers Accused of Murder

## 19.

(1)When an an accused is committed for trial on a charge of murder, the committing Magistrate shall at the time of passing order for his commitment enquire of the accused whether he will make arrangements for his own defence in the Court of Sessions or wishes to be defended at the expense of Government, and shall communicate the result of his enquiry to Sessions. Judge direct filing a copy of the letter with the commitment record. If the accused expresses a wish to be defended at Government expense, the committing Magistrate shall state in the letter whether in his opinion the accused can afford to engage a pleader in the Sessions Court, giving the grounds for his opinion. It shall be stated whether the accused was defended by a pleader in the Lower Court.(2)On receipt of intimation that a prisoner committed to the Court of Sessions on a charge of murder desires to be defended at the expense of Government, it has been arranged that the Sessions Judge shall, unless he sees reason to believe that the prisoner is in a position to pay for his own defence, appoint a pleader for the purpose. To this end the Sessions Judge shall maintain a list of barristers or pleaders of the district in which Sessions trials are ordinarily held who are willing to accept briefs for the defence of prisoners on their trial for murder ; and ordinarily one of the persons on such list should be engaged.The list should be revised once in every three years, but the Judge shall have a discretion to revise it more frequently if he considers it desirable.(a)The pleaders on the panel shall be engaged by rotation except where an accused chooses a pleader out of his turn, in which case the pleader thus chosen shall lose his ordinarily turn unless he is again chosen out of his turn.(b)The wishes of the accused shall be ascertained by the Sessions Judge through the District Magistrate who shall depute a Magistrate to interview the accused in jail with a list of pleaders on the panel.(c)The Sessions Judge shall keep the District Magistrate supplied with an up-to-date list of pleaders on the panel, not excluding those who have had their turn, whether by rotation or because they were chosen by an

accused out of their turn(3)Notwithstanding these precautions if it appears at the commencement of the trial that an accused charged with murder is undefended, the Public Prosecutor shall bring the fact to the notice of the presiding Judge, and request him to appoint a pleader for the defence of the prisoner. The Judge may then appoint any barrister or pleader on the list referred to above, or any member of the Bar present in Court, to defend the prisoner.(4)Any person appointed under sub-rule (2) or (3) of this rule shall receive a fee not exceeding Rs. 32 a day to be fixed by the Judge; provided that in special cases, for reasons to be recorded, the Judge may, with the sanction of the Legal Remembrancer, allow a higher fee. When, however, the murder case for the defence of which such a person is engaged, is simply adjourned or when his appearance in a Court is for half a day or less, a fee amounting to only half that fixed under this sub-rule shall be allowed.

## 20.

The Deputy Commissioner shall supply to the barrister or pleader appointed to defend the accused free of cost, and in time for him to study the papers, copies of all papers including exhibits in the A file of the record of the proceedings in the Court of the committing Magistrate.

## 21.

(a)In cases in which an accused is called on by High Court to show cause why a lesser sentence should not be enhanced to a sentence of death, the Senior Government Advocate will inform the Legal Remembrancer who will communicate with the District Magistrate concerned, and ascertain whether the accused will be able to defend himself in the High Court or not. If the accused was defended as a pauper at State expense in the Sessions Court, he will obviously require to be similarly defended before the High Court. But cases may arise when the accused defended himself at his own expense in the Lower Court, and yet may be too poor to meet the cost of his defence in the High Court. In such cases enquiries will be made by the Magistrate before submitting his reports to the Legal Remembrancer. If the District Magistrate reports that the accused had not enough means to defend himself in the High Court, the Legal Remembrancer, will engage counsel for the accused and supply him with copies of charges, depositions and exhibits prepared for the Government Counsel. When the High Court of their own motion or at the instance of a private party issue a rule of this kind, it is anticipated that a notice will be served on the Legal Remembrancer to enable him, if necessary, to make arrangements for the defence of the accused.(b)In regard to cases where a sentence of death is referred by a Court of Sessions to the High Court for confirmation under the provision of section 374, Criminal Procedure Code, procedure similar to that described in paragraph (a) above will be followed. The Court of Sessions will, when submitting the case to the High Court, send intimation to the District Magistrate, who will inform the Legal Remembrancer, whether accused has means to defend himself at the reference.(c)An accused in all these cases shall be informed of the arrangements made in his behalf.

## Chapter III

### Prosecutions by or Against Government Officers

**22.**

When a prosecution is instituted by a Government Officer and the charge is of a cognizable offence, the prosecution shall ordinarily be conducted by the police. Where the offence is non-cognizable or, though cognizable, calls for special arrangement, the officer who prefers the complaint shall refer for instructions to the Deputy Commissioner. The Deputy Commissioner may either instruct the officer himself to prosecute or if the case is of a complicated or difficult nature rendering legal assistance necessary, direct the Public Prosecutor to prosecute, and, if he gives such a direction, shall report the matter for the sanction of the Legal Remembrancer. The Legal Remembrancer shall check any tendency to employ the Public Prosecutor or pleaders unnecessarily.

**23.**

When a prosecution is instituted by a Public Officer against a Public Officer for acts done in the discharge of his public duty the latter shall be left to defend himself, but Government will defray all reasonable costs incurred in the event of his being acquitted and it being shown that his conduct throughout has been free from all blame. If, though the accused Government Officer is acquitted of the offence charged, his conduct should appear not to be free from blame, he shall receive only such portion, if any, of the cost incurred by him as may seem fitting to the State Government.

**24.**

When a prosecution is instituted by a private person against a Public Officer for acts done in the discharge of his public duty, the following course shall be followed: (a) In regard to prosecutions against officers, referred to in Section 197, Criminal Procedure Code, 1898, there will always be ample time to obtain the orders of Government for undertaking the defence of the officer and these shall be obtained. In the case of prosecutions against other public servants when it is impossible to obtain the orders of Government before the commencement of the proceedings, it must rest with the local officer to decide, subject to the control of the Government, whether the defence shall be undertaken by Government or not. When, however, it is probable that the orders of Government can be obtained in time, a full report shall be at once submitted to Government through the Legal Remembrancer. (b) If such orders are received before the commencement of the proceedings, they shall be acted on. If not, the local officer shall themselves decide upon the course to be taken. (c) In petty cases which, in the opinion of the Deputy Commissioner, do not present any difficulty of law or evidence, the prosecuted officer shall make his own defence, and the Deputy Commissioner shall see that in such cases no pleader is engaged. In the same way request for the payment of counsel will be entertained only under very exceptional circumstances. (d) When the prosecuted officer is discharged or acquitted, the case will be dealt with as provided under Rule 23, allowance being made for the expenses, if any, realizable under the order of the Court. (e) An incriminated officer, who is left to arrange for his own defence, shall, before engaging a lawyer, report in writing the name of the person selected and his proposed remuneration to the Deputy Commissioner through the head of the office; and it will then be for the Deputy Commissioner to say whether in the event of his being acquitted, he will advise Government to pay the whole or only part of the fees proposed. (f) Charges, the payment of which may be applied for under these Rules, shall be moderate, and Government do

not undertake to pay unnecessary expenses which an officer concerned may choose to incur.

## **Chapter IV**

### **Fees**

#### **25.**

The Public Prosecutor and the Assistant Public Prosecutor when employed at their respective stations, subject to any special order of the Legal Remembrancer, entitled to a daily fee of Rs. 40 for a day's work irrespective of the number of cases or appeals he conducts in the day except that for any day on which he appears only in a case or appeal which is adjourned without hearing and that for bail petitions, he shall be entitled only to a fee of Rs. 16.

#### **26.**

In any case where the sitting of the Court has been prolonged beyond usual hour, or when the prosecution may have involved exceptional labour or ability a fee not exceeding Rs. 50 a day to the Government Pleader or the Public Prosecutor, as the case may be, may be sanctioned by the Legal Remembrancer. The Deputy Commissioner or the Sessions Judge, as the case may be, when recommending a higher fee should state the ground upon which the special recommendation is based.

#### **27.**

When a Public Prosecutor or the Assistant Public Prosecutor, as the case may be, is employed to conduct a case at any place within his District other than the headquarters station, he will be allowed double his ordinary fee for every day's absence for his headquarters. When sent on deputation to another district he may be allowed a fee not exceeding Rs. 100 for each day as the Legal Remembrancer may decide.

#### **27A.**

When a Government Pleader is sent on deputation for the purpose of consultation of advice in any matter to any place outside his headquarters station, he will be allowed double the ordinary fee admissible in criminal cases for each day of his absence from headquarters. No travelling allowance will be allowed.

#### **28.**

[\*\*\*]



**29.**

When fees exceeding those ordinarily allowed are claimed, whether at the headquarters of district or elsewhere, reasons therefor must be given and supported by a recommendation from the Deputy Commissioner or Sessions Judge.

**30.**

[\*\*\*]

**31.**

(1)Whenever a pleader other than the Public Prosecutor (which expression includes an Assistant Public Prosecutor) is employed in conducting a case on behalf of the State he shall ordinarily be paid at the rate of-(a)rupees 25 a day when engaged within his headquarters station; and(b)rupees 25 a day when engaged away from headquarters station but within the district.The payment of any increased or special fee may be sanctioned by Legal Remembrancer subject to a maximum of-(c)rupees 30 a day engaged within the headquarters station;(d)rupees 35 a day when engaged away from his headquarters station but within the district.(2)When a case is adjourned or any bail petition is moved a fee of Rs.10 is allowed for the day.(3)Whenever such pleader is employed to conduct case on behalf of the State, outside his own district he shall be allowed Rs. 40 for every day's absence from headquarters.

**32.**

[\*\*\*]

**33.**

The Public Prosecutor and all pleaders appointed under the foregoing rules shall keep a register in Form B appended to these Rules. This register shall be submitted for countersignature to the Presiding Officer of every Court in which the Public Prosecutor or Pleader has appeared.Within ten days of the close of each month, a bill shall be submitted in Form A appended to these Rules for fees for all work done including both original and appellate work with a true copy of the register relating to that month. Where a Public Prosecutor or Pleader has been employed in cases arising in more than one districts a separate bill should be submitted for each district. All bills must be checked by the Deputy Commissioner before being forwarded to the Legal Remembrancer.

## **Chapter V**

### **General**

**34.**

The Deputy Commissioner shall see that a Public Prosecutor is properly briefed in all cases in which he is engaged and that briefs are sent to him in time.

**35.**

[\*\*\*]

**36.**

A Public Prosecutor is not entitled to any halting allowance when away from the headquarters, but is recognised as a Government Officer of the second grade under Rule 153 of the Subsidiary Rules for the purpose of drawing travelling expenses only.

**36A.**

The Legal Remembrancer is authorised to grant travelling expenses to Legal Practitioners who are engaged, in the interests of the public service, to conduct cases, elsewhere than in their own stations, provided such charges do not exceed what would be admissible under parallel circumstances, to a Government Officer of the second grade referred to in Subsidiary Rule 153.

**37.**

The Legal Remembrancer is the countersigning officer for all bills of fees to pleaders and counsels in criminal cases.

**38.**

The Legal Remembrancer is the controlling officer for the purpose of countersigning travelling allowance bills for Public Prosecutors.

**39.**

Whenever the office of Public Prosecutor is vacant, the Deputy Commissioner, in consultation with the Sessions Judge, shall nominate one or more qualified pleaders for the appointment and submit the papers to the Legal Remembrancer. The Legal Remembrancer shall forward with his opinion the name or names of the nominated candidates to Government for such order as they may think fit to pass.

**40.**

In the event of a temporary vacancy in the office of Public Prosecutors, the Deputy Commissioner shall, in consultation with the District Judge, appoint a qualified pleader to act in the office until relieved by the Public Prosecutor duly appointed. The Deputy Commissioner shall forthwith report to the Legal Remembrancer, the occurrence of every such vacancy and the making or cancellation of every such appointment.

**41.**

When a Public Prosecutor receiving a retainer desires leave of absence, he shall submit an application to the Deputy Commissioner, who will forward his application to the Legal Remembrancer and state whether in his opinion leave should not be granted. If the Deputy Commissioner considers that the leave should be granted, he will submit his recommendation for filling up the leave vacancy.

**42.**

A Public Prosecutor receiving a retainer is allowed leave of absence under Subsidiary Rule 131 without loss of his retainer; provided that the Deputy Commissioner can make suitable arrangements for the conduct of criminal work during his absence and that no extra cost to Government is entailed.

**43.**

When a Deputy Commissioner sees cause to recommend the removal or suspension from office or other punishment of a Public Prosecutor, he shall submit a report of the facts of the case to the Legal Remembrancer and the Legal Remembrancer shall forward the report to the Government stating his opinion as to whether the Public Prosecutor should or should not be removed or suspended. The State Government will pass such orders as they may deem fit. Voucher No..... of list of payment for 19..... Form A [Vide Rule 33] Bill for fees of Government Pleader of..... for conducting..... criminal cases during the month of..... 19.....

No. of case	Court attended	Name of the first accused or appellant	Section of the Act	Date of attendance	Fees charged	Remarks (If extra fees charged, the hour at which court rose or other reasons)
1	2	3	4	5	6	

Total Rupees (in words)

Received contents

Checked with Work Register and countersigned for Rupees (in words) Government Pleader

Dated 19, District Magistrate

Passed for Rs.,Rupees

Dated 19,

Examined and entered

Accountant

For Use in the Accountant General's Office Noted in page..... of Audit Register

Admitted Rs.

Objects Rs. for reasons given below:

Auditor Superintendent

Form B[Vide Rule 33]Register of work done by.....Public Prosecutor, during the Superintendent month of.....

Date	Court	Whether original case or appeal	Name of first accused or appellant	Section of the Act	Signature of presiding officer	Remarks
1	2	3	4		5	6

Form C[Vide Rule 27]FromToThe Senior Government Advocate of the Assam High Court, Gauhati Criminal Appeal No..... of/Case No..... of.....Appellate/PetitionerSir,Please cause appearance to be entered on behalf of the State in the above-mentioned case. A short statement of the facts of the case, and the reasons for making this requisition, are give below:Statement showing the Sections of Cr. P.C., 1973 (2 of 1974) applicable in full in the whole of Nagaland

Sl. No.	Sections	Chapter	Subject	Modification, if any	No. and Date
1.	Section 11 & 12	II	Courts of Judicial Magistrates, Chief Judicial Magistrates andAdditional Chief Judicial Magistrates	With modification Section 11-In sub-section (1) the words "after consultation with theHigh Court" shall be deleted.  In sub-sections (2) & (3) the words "High Court"shall be substituted by the words "State Government"wherever it occurs.  In sub-section (3) after the words "Judicial service"the words "civil service" shall be inserted.  Section 12- In	No. 1 LAW 170/74/LEG dated 30th July, 1975.

				sub-sections (1), (2) & (3) the words 'High Court' shall be substituted by the words 'State Government' wherever it occurs.	
2.	Sections 20 to 23	II	Executive Magistrates, Special Executive Magistrates, Local jurisdiction of Executive Magistrates, Subordinates of Executive Magistrates	Without modification	LAW 82/70 (Vol. II), dated 19-6-1975.
3.	Section 36	IV	Power of superior officers of police	Without modification	LAW 82/70 dated 3-5-1974.
4.	Sections 41 to 60	V	Arrest of persons	do	LAW 82/70 dated 5-7-1977.
5.	Sections 70 to 90	VI	Warrant of arrest, proclamation and attachment and other Rules regarding process	do	do
6.	Sections 95 & 96	VII	Power to declare certain publications forfeited and issue search warrants for the same. Application to High Court to set aside declaration of forfeiture	do	LAW 82/70 dated 24-6-1974.
7.	Sections 106 to 124	VIII	Security for keeping the peace and for good behaviour	do	Applicable vide S.52 of Cr.P.C.
8.	Sections 129 to 148	X	Maintenance of Public Order and tranquillity	do	do
9.	Sections 149 to 153	XI	Preventive action of the police	do	do
10.	Sections 154 to 176	XII	Information to the Police and their powers to investigate	do	LAW 82/70 dated 3-5-1974.
11.	Section 207	XVI	Supply to the accused copy of police report and other documents	do	do
12.	Section 373	XXIX	Appeal from orders requiring security or refusal to accept	do	LAW 82/70 dated

			orrejecting surety for keeping peace or good behaviour		19-6-1975.
13.	Sections 432 to 435	XXXII	Suspension, remission and commutation of sentences	do	LAW 82/70 dated 5-7-1977.
14.	Sections 436 to 450	XXXIII	Provisions relating to bail and bonds	do	do