

The Rajasthan Law And Judicial Department Manual, 1952

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The Rajasthan Law And Judicial Department Manual, 1952 Preliminary

1. Constitution of Law and Judicial Department

- The Law and Judicial Department consists of three sections, namely A, B, and C. The work allotted to each of these sections is shown in Appendix I.

2. Definitions

- In these rules, unless there is anything repugnant in the subject or context, -(i) "Government" or "State Government" means the Government of Rajasthan; (ii) "Government Advocate" includes Deputy Government Advocate, Additional Deputy Government Advocate and Assistant Government Advocate; (iii) "Government servant" means a person appointed to public services and posts in connection with the affairs of the Union or of the State; (iv) "High Court" means the High Court of Rajasthan; (v) "Public Prosecutor" includes Additional Public Prosecutor, and Assistant Public Prosecutor, and in relation to civil litigation this term means Government pleader. Government Advocate or any other Law Officer who may be engaged to represent the Government in such matters; and (vi) "State" means the State of Rajasthan.

3. Manner of making references to Government.

- References to be made to Government or to the Law and Judicial Department by any officer under any rule of this Manual shall be addressed to the Secretary to Government, Law and Judicial

Department, unless otherwise stated.

Part I – Law Officers Chapter -1

Appointment, powers and duties of Law Officers

4. Law Officers.

- The Law Officers of Government are -A. (1) Advocate General;(2)One or more Government Advocates;(3)Deputy Government Advocates;(4)Assistant Government Advocates;(5)Public Prosecutors.B. (1) Legal Remembrancer to Government;(2)Joint Legal Remembrancer to Government;(3)Assistant Legal Remembrancer to Government;(4)Legal Draftsman, Law and Judicial Department;(5)Additional Legal Draftsman, Law and Judicial Department.The Advocate General

5. Freedom from pecuniary embarrassments.

- No person shall be appointed Advocate General unless he gives a declaration in writing that he is free from pecuniary embarrassments.

6. Report to Government of cases in which Advocate General cannot represent them.

- Whenever an Advocate General is appointed either in a leave vacancy or otherwise, he shall on his appointment, report to the Government the cases in which he cannot represent Government owing to his having received instructions from other party.

7. Duties.

(1)The Advocate General is appointed, under Section 492 of the [Code of Criminal Procedure, 1898 (V of 1898)] [Section 492 corresponds to Section 24(1) of Criminal Procedure Code, 1974.] to be Public Prosecutor for all cases before the High Court.(2)Under clause (2) of Article 165 of the Constitution the Governor has assigned, in addition to the duties arising under sub-rule (1), the following duties to the Advocate General, namely:-(a)to prepare briefs for use of counsel engaged to represent Government in all appeals and references, civil or criminal, before the Supreme Court in which Government is a party,(b)to represent Government in the Supreme Court in all cases, in which Government is a party or in any other case in that court in which his services may be requisitioned by Government:(c)to represent Government in the High Court in the following cases, namely :-(i)all civil or criminal cases on the original side including prosecutions under the provisions of the [Code of Criminal Procedure, 1898 (V of 1898)] [Reference to old Criminal Procedure Code, 1898 Is deemed to have reference to the new Criminal Procedure Code, 1974.], before the High Court:(ii)Criminal cases which the High Court transfers from any other court in the State for trial before itself:(iii)Appeals to the High Court against the judgment of any Judge of the

Court exercising jurisdiction on the original side:(iv)Appeals by accused persons against capital sentences and against convictions for murder in any of its forms;(v)Appeal by Government against orders of acquittal;(vi)Appeals by accused persons against decisions of Sessions Judges, set down for hearing both parties, in which counsel appears for the appellant;(vii)Revisions in which applications have been filed by Government;(viii)Revisions filed on behalf of private persons and set down for hearing both parties in which counsel appears for the applicant;(ix)Proceedings regarding the transfer of cases, which have been set down for hearing both parties;(x)Any other proceedings in which his service may be requisitioned by Government;(d)to represent Government in all suits, appeals, revision, references and other proceedings of civil nature in which Government is a party in the High Court;(e)to represent Government in any civil, criminal or quasi criminal proceedings of special importance in the High Court, or in any court, or before any authority in the State, if his services are requisitioned by Government;(f)to represent the Court of Wards in the High Court in civil appeals, revisions, references and other proceedings of civil nature in which the court of Wards is a party, if his services are requisitioned by Government;(g)to represent Government in all cases before the Board of Revenue, Industrial Tribunal or Labour Court, in which his services may be requisitioned by Government;(h)to represent Government in all departmental or other enquiries instituted under orders of Government in which his services may be requisitioned by Government;(i)to represent a party in the High Court or any court in the State in any case in which Government is not a party but in which public interests are involved, if his services are requisitioned by Government;(j)to advise Government on any legal matter which may be referred to him for opinion;(k)to scrutinize such draft bills as may be referred to him for scrutiny by the Law and Judicial Department and to advise generally upon the proposed measures;(l)to report to the Law and Judicial Department any flaws in any law and any matters arising out of cases in which he has appeared, which he considers, should be brought to the notice of Government;(m)to attend and take part in the proceedings of the State Legislative Assembly, when required to do so by Government;(n)to assist the Legal Remembrancer in conveyancing work and to draft such instruments and other legal documents as Government may require;(o)to assist the Legal Remembrancer in all matters in which the Legal Remembrancer may seek his advice;(p)to advise District Officers, in respect of any proceedings, civil or criminal which he has conducted or which he may be conducting on behalf of Government;(q)to advise, when required by Government, the Court of Wards in matters of civil nature in which litigation may arise or which are the subject of litigation;(r)to report to Government the result of all cases instituted or conducted by him at the instance of or on behalf of Government;(s)to procure copies of any judgment or order passed by the High Court which may be required by Government or may contain comments on actions taken by Government; and(t)to discharge all such duties as are imposed on him by any law for the time being in force in the State.

8. Disabilities.

(1)The Advocate General is debarred from accepting a brief from any private person in any criminal cases in any court.(2)He may accept brief from a private person in any civil case in any court:Provided that (i) such acceptance does not interfere with his duties under these rules, and (ii) it is not a case in which Government or the Court of Wards is a party.(3)He is debarred from accepting a brief on behalf of a legal practitioner or an Advocate in which proceedings taken against

him under the Legal Practitioners Act, 1879 (18 of 1879) or under the Indian Bar Councils Act, 1926 (38 of 1926). (4) He shall not accept appointments as a director or as an adviser in any company without the sanction of Government. (5) He shall not give legal advice to private persons on matters in which the interests of those persons are adverse to Government. (6) He shall not give advice in any case to private persons if, in his opinion, he is likely to be called upon to advise Government in the same case.

9. Withdrawal from prosecution.

- The Advocate General may not withdraw from a prosecution which he has been directed by Government to originate without first consulting the department of Government which directed him to originate it nor may he withdraw from a prosecution originated by him suo motu without first consulting Government in the Law and Judicial Department. Government Advocates

10. Appointment and conditions of service.

(1) The Government Advocate or Advocates shall be appointed by Government. They shall be liable to perform the duties of the Advocate General specified in rule 7 and shall perform such duties as the Government may assign to them. (2) The term of appointment of the Government Advocate shall be such as the State Government may determine in each case. A Government Advocate may resign the appointment by giving one month's notice in writing. (3) A Government Advocate shall receive such remuneration as the State Government may determine. (4) The provisions of Rules 5 and 8 shall apply to the Government Advocate. (5) A Government Advocate shall not leave Head Quarters without the permission of Government. The Legal Remembrancer

11. Offices held by Legal Remembrancer, his powers and duties.

(1) The Legal Remembrancer is secretary to Government in the Law and Judicial Department. (2) The Legal Remembrancer exercises control over all the Public Prosecutors. (3) He is authorised to act for Government in respect of all judicial proceedings in any civil court within the State and is the recognised agent of Government under rule 2 of Order 27 of the First Schedule to Code of Civil Procedure, 1908 (5 of 1908). (4) His duties in addition to those indicated in the preceding sub-rules are - (a) to advise the State Government in any matter the disposal of which depends upon the interpretation of law; (b) to advise executive departments in the drafting of conveyances, agreements and other formal deeds; (c) to superintend the conduct of all litigations, civil and criminal to which Government is a party or in which Government is interested; and (d) to advise the Court of Wards in all civil litigation and to arrange for the conduct of all civil suits, appeals and proceedings affecting the Court of Wards, if so directed by Government. Public Prosecutors

12. Appointment.

- All appointments of Public Prosecutors shall be made by Government. Government may call for recommendations for these posts from the District Magistrate at the Head Quarters of the Sessions

Division or other area concerned. The District Magistrate shall then consult the District & Sessions Judge demi-officially and submit the later's opinion along with his own and also a list of pleaders practising in his district direct to Government.

13. Participation in politics and freedom from pecuniary embarrassments.

- No person shall be appointed as Public Prosecutor unless he agrees in writing to take no part in politics during the tenure of his appointment and gives a declaration in writing that he is free from pecuniary embarrassment.

14. Probation and confirmation.

(1) Every Public Prosecutor shall be considered to be on probation for a period of six months from the date of his taking charge. At the end of that period the District Magistrate shall submit a report through the District and Sessions Judge and the Divisional Commissioner to Government upon his conduct and ability. Should his work prove to have been unsatisfactory, his services may be dispensed with without notice. Should the report be satisfactory, he shall be confirmed. For any sufficient reason Government may extend the period of probation. (2) The District Magistrate shall, by the 15th January each year, submit a report to Government through the District & Sessions Judge and the Divisional Commissioner upon the conduct and ability of the Public Prosecutor who has been confirmed under sub-rule (1). The report shall be marked confidential .

15. Term of office.

- A Public Prosecutor shall be appointed for a period of three years, including the period of his probation, and may be re-appointed for further periods not exceeding three years at a time. Ordinarily no person will be appointed a Public Prosecutor after he attains the age of 60 years or continued in that office after he attains that age. Notwithstanding the expiry of the period, of his term of appointment, a Public Prosecutor shall continue as such until he is re-appointed or his successor is appointed.

16. Termination of term.

- (1) Government may, at any time and without assigning any reason, dispense with the service of a Public Prosecutor after giving him one month's notice. (2) A Public Prosecutor may resign his appointment after giving one month's notice.

17. Status and powers.

(1) The Public Prosecutor is the person to whom under sub-section (1) of Section 218 of the Code of Criminal Procedure, 1898 (V of 1898), orders notifying commitments are issued by Magistrates within the area for which he is appointed. (2) A Public Prosecutor is also the Government pleader appointed by the Central Government under clause (a) of rule 8(b) of Order 27 of the First Schedule

to the Code of Civil Procedure. 1908 (V of 1908). in relation to any suit by or against the Central Government, or against a public officer in the service of that Government in any court in Rajasthan.

18. Withdrawal from prosecution.

- A Public Prosecutor shall not withdraw from a prosecution under Section 494, [Code of Criminal Procedure, 1898 (V of 1898)] [Section 494 Criminal Procedure Code. 1898 corresponds to Section 321 Criminal Procedure Code. 1974.], without first consulting the District Magistrate who will obtain the orders of the Government in the Home Department before authorising such withdrawal where police cases are concerned.

19. Duties in criminal courts.

(1)The Public Prosecutor shall perform the following duties in the criminal courts, namely:-(a)he shall conduct the prosecution in all cases committed to the Court of Session in the area for which he is appointed;(b)he shall appear, when instructed by the District Magistrate, in appeals, references, revisions and other miscellaneous criminal proceedings before such court of Session: and(c)he shall appear, when instructed by the District Magistrate, in any criminal proceedings in any court, at the head quarters of the district in which he resides.(2)The Public Prosecutor may be instructed by the District Magistrate to appear in any criminal proceedings in any other court in the area for which he is appointed:Provided that he shall not be so instructed unless he is willing to act and can do so without detriment to the discharge of his other duties under this rule

20. Duties in civil courts.

- The Public Prosecutor shall be engaged to conduct civil cases on behalf of Government or the Court of Wards tried in any court, other than the High Court, situated at the head quarters of the District in which he resides:Provided that -(i)he shall not be so engaged unless he is willing to act and can do so without detriment to the discharge of his duties in the criminal court: and(ii)the Collector may, by special order, appoint another legal practitioner instead of the Public Prosecutor in Court of Wards cases.

21. Allotment of cases to Public Prosecutor.

- The Public Prosecutor shall conduct such cases, criminal or civil, as the District Magistrate or Collector may entrust to him in accordance with the instructions issued in this behalf by the State Government from time to time.

22. Duties In cases under the Local Fund Audit Act.

- The Public Prosecutor residing at the head quarters of a District Judge shall, whenever required to do so, appear the District Judge and represent the Collector in proceeding under clause (a) of Section 14(1) of the Rajasthan Local Fund Audit Act, 1954 (28 of 1954) as provided in rule 114.

23. Advisory and other duties.

(1)The Public Prosecutor shall advise the District Magistrate on any legal question arising out of any criminal proceeding which has been instituted or is proposed to be instituted within the Public Prosecutor's jurisdiction.(2)He shall also advise the Collector and departmental officers in civil matters of an urgent nature whenever there is no time to make a reference to the Legal Remembrancer and shall further render them such assistance as is required under these rules in matters connected with suits and appeal filed or proposed to be filed by or against Government within the Public Prosecutor's jurisdiction.

24. Disabilities.

(1)A Public Prosecutor shall not appear for the defence in any inquiry under Chapter XVIII of the Code of Criminal Procedure, 1898 (V of 1898)] [Reference to Criminal Procedure Code. 1898 shall be deemed to be reference to Criminal Procedure Code. 1974.], (enquiry into cases triable by Court of Session or High Court).(2)He shall not take up any criminal case on behalf of any private person, whether a complainant or an accused, in which he has reason to believe that his services have been or likely to be requisitioned by Government.(3)He shall not give legal advice to private persons in matters in which the interest of these persons are adverse to Government.(4)He shall not give advice in any case to private person if, in his opinion, he is likely to be called upon to assist Government in the same case.

25. Relations with District Magistrates and Police.

(1)The Public Prosecutor should apply for any instructions he may need to the District Magistrate, and shall keep in close touch with him in the discharge of his duties in the criminal courts.(2)He shall also keep in close touch with the District Superintendent of Police, and other responsible police officers in the discharge of his duties in the criminal courts, and shall furnish such police officers with any information or reports relating to such cases as may reasonably be demanded from him.

26. Government's power to engage private pleaders Instead of Public Prosecutors.

- Nothing contained in these rules which provides for the engagement of a Public Prosecutor in any case shall preclude Government from engaging in his place a, 1974 for conducting that case.

27. Consultation with the Advocate General or Legal Remembrancer.

- If in any case, a Public Prosecutor thinks that an interview, with the Advocate General or Legal Remembrancer is necessary in connection with any legal question arising out of such case, he may, with the previous consent of the District Magistrate, interview the Advocate General or Legal Remembrancer as the case may be. This interview shall be deemed to be an interview within the meaning of rule 70 for purposes of his fees and travelling allowances and daily allowance.

28. Use of District Judge s library.

- District Judges will offer every facility to each Government pleader or Public Prosecutors for consulting at any time during office hours any of the law books in their office libraries, but no such book will be removable from the library for such consultation.

Chapter II

Employment of private legal practitioners and their emoluments

29. Employment of counsel in criminal cases wherein Public Prosecutor is bound to appear but is not available.

(1) In any criminal case in which the Public Prosecutor is bound to appear or may be instructed to appear under rule 19, but is unable to appear, the District Magistrate may engage a Private legal practitioner. (2) This rule should be employed only to tide over temporary inability of the Public Prosecutor and should not be used if there is reason to believe that the inability is likely to be prolonged in the latter case the District Magistrate should make proposals for the appointment of a successor, either temporarily or permanently, as the circumstances may require.

30. Employment of counsel in criminal cases wherein Public Prosecutor is unable to appear.

- In any criminal case in which the Public Prosecutor is unable to appear the District Magistrate may engage a Private legal practitioner, provided that the District Magistrate considers the case to be of such difficulty or importance that it cannot be adequately be conducted by the police prosecuting staff.

31. Counsel to be local resident.

- The Private legal practitioner engaged under rule 29 or rule 30 should ordinarily be resident of the place at which the court in which the case is to be conducted is situated.

32. Employment of counsel in absence of Advocate General or Government Advocate.

- Government will make arrangements for its representation before the High Court in cases in which for sufficient reasons the Advocate General or any of the Government Advocates is unable to appear.

33. Employment of counsel for special reasons in civil or criminal cases.

- In any civil or criminal case Government may sanction of its own initiative or an representation

received from local offices -(a)the engagement of more than one Private Legal Practitioner to represent Government, or(b)the engagement of a Private Legal Practitioner to assist the Advocate General, the Government Advocate, the Public Prosecutor as the case may be. or(c)any special arrangements which the circumstances of the case may require.

34. Fees of counsel in criminal cases.

(1)When a Private Legal Practitioner is engaged to represent Government in any criminal case before any court, other than the High Court he shall receive fee at the following rates:-(i)For the first day of each criminal trial - Rs. 25/- at Jaipur, Jodhpur or Ajmer and Rs. 20/- at other stations.(ii)For each subsequent hearing in such trial- Rs. 20/- at Jaipur, Jodhpur or Ajmer and Rs. 15/- at other stations.Note: - A day on which only a spot inspection is made or a witness is examined on commission shall be deemed to be a day of subsequent hearing.(iii)For each appeal Rs. 20/-. (iv)For a reference or revision or miscellaneous criminal proceeding (not specifically provided for) involving any number of persons whether they have applied jointly or severally but subject to the proviso that there is a joint hearing in respect of all- Rs. 15/-:Provided that -(a)no fee shall be paid for a hearing fixed for delivering judgment only:(b)when two or more person convicted in a single case appeal, whether jointly or severally, and the appeals are all heard together, the case fee shall be at the rate of Rs. 10/- for each appellant, subject to a minimum of Rs. 25/- and a maximum of Rs. 75/-;(c)when one or more criminal cases are fixed for hearing on the same day; then-(i)if none of such cases is taken the Private Legal Practitioner shall be entitled to a fee of Rs. 10/-, and(ii)if one or more such cases is taken, he shall be entitled to the day s fee for each case taken and to no fee for any case not taken,(iii)if no case the fees payable under item (ii) shall exceed Rs. 100/- for the same day, irrespective of the number of cases taken on that day.Explanation. - A case will be deemed to be taken on a day. when some progress is made in the trial, e.g., examination of witnesses or accused, framing of charges or hearing of arguments. It will be considered as not taken if it is merely adjourned for want of time or due to absence of magistrate or witnesses or at the request either party, or for a similar cause.(2)When a Private Legal Practitioner is engaged to represent Government in any criminal case before the High Court, he shall receive fees at the following rates:-(i)for each appeal- Rs. 35/-. (ii)for reference or revision or miscellaneous criminal proceeding (not specifically provided for) involving any number of persons, whether they have applied jointly or severally but subject to the proviso that there is a joint hearing in respect of all- Rs. 25/-:Provided that when two or more persons convicted in a single case appeal, whether jointly or severally, and the appeals are all heard together, the case fee shall be at the rate of Rs. 15/- for each appellant, subject to a minimum of Rs. 40/- and a maximum of Rs. 95/-.

35. District Magistrate s power to increase fees in suitable cases.

- The District Magistrate may with the previous sanction of Government increase the fees prescribed in rule 34(1) (i)-(iv) upto a limit of Rs. 50/- if such increase is justiciable with due regard to the nature of the case.

36. Fees of counsel in civil cases.

- The fees of Private Legal Practitioners in civil cases in which they appear for Government or the Court of Wards shall be those prescribed by the rules for the time being in force under Section 27 of the Legal Practitioners Act, 1879 (18 of 1879): Provided that where the pecuniary value of the suit cannot be defined or when defined is so low that the fees calculated thereon are trifling, the Collector may fix a fee not exceeding Rs. 60/- for the case, or, with the previous sanction of Government a fee not exceeding Rs. 180/-.

37. Necessity of Government s sanction for excess fees.

- The case fees paid to a Private Legal Practitioner are to be regarded as average fees, and will be paid to him whether the case is a simple one or a complex one. The sanction of Government is required to the payment of any fee in excess of the prescribed scale, and will be given only in cases of great complexity upon the special recommendation of the District Magistrate or the Collector as the case may be.

38. Payment of fee when engagement is subsequently cancelled.

- In any case in which a Private Legal Practitioner has been engaged and his engagement is subsequently cancelled for any reason by the authority who had sanctioned it, that authority may, if this is considered necessary, sanction payment to the Private Legal Practitioner of such fee not exceeding Rs. 25/ - or such higher fee with the permission of Government as may be considered reasonable in the circumstances.

39. Fixation of fees in doubtful and special cases.

- In cases where there is doubt as to the applicability of the above scales, or where the above scales do not apply, the fee shall be fixed by Government with due regard to the work involved in the case.

Part II – Procedure in Advisory work. Chapter III

References to the Legal Remembrancer

40. Scope of the Chapter

- This Chapter relates to the advice given by the Legal Remembrancer to Government on legal matters arising in the discharge of their current administrative duties. It does not relate to matters on which litigation has already been launched or is definitely proposed. These matters are covered by the special provisions of Part III and IV.

41. Matters on which Legal Remembrancer's advice may be sought.

- The advice of the Legal Remembrancer may be sought on the following matters:-(a)interpretation of statutes, statutory rules, bye-laws, orders, deeds;(b)cases in which disputes have arisen or are likely to arise between Government and other persons or action in a court of law is threatened against Government;(c)defamatory attacks on Government servants.

42. Matters on which Legal Remembrancer's advice may not be sought.

- The Legal Remembrancer's advice may not be sought on the following matters:-(a)points arising for decision in a judicial or quasi-judicial proceedings before any court or tribunal or any officer empowered to exercise jurisdiction in such proceeding under a statute;(b)points arising before a revenue officer in the course of a revenue proceeding in which his order is subject to a revenue appeal;(c)points arising before a Government Officer acting as an arbitrator or umpire in any dispute;(d)hypothetical case;(e)cases where the advice is for the benefit of a private individual or a local body;(f)ordinary departmental procedure of which the department itself has special knowledge.

43. Who may make references.

(1)Subject to the provisions of rules 40 and 42 the following authorities only may make a request to the Legal Remembrancer for an opinion in connection with a matter arising in any Department of Government:-(i)Minister of Government in charge of the Department;(ii)Secretary or Deputy Secretary to Government in that Department;(iii)Head of a Department; and(iv)Any other officer specially authorised by Government.(2)Any other officer desiring an opinion must submit the case through his departmental superiors.

44. Method of correspondence.

(1)References by Ministers of Government and Secretaries to Government are made on the connected files in accordance with Secretariat procedure.(2)References to heads of Departments and other authorised officers may be made either by official letters, or by unofficial reference on the connected file. The latter method is the more convenient one when the referring officer is in the same station as the Legal Remembrancer.(3)When a reference by a head of department who is also a secretary to Government, relates to a civil suit by or against Government, it shall be made by official letter in accordance with the procedure laid down in Part IV.(4)Confidential references should be sent in sealed packets and marked "confidential" and addressed to the Legal Remembrancer by name.

45. Case to be clearly stated.

(1)The point on which advice is sought should be stated clearly and categorically; and proper references should be made to all materials within the knowledge of the officer making the

reference.(2)When the case involves complicated facts, a clear precise should be drawn up with references to relevant documents.(3)The Legal Remembrancer has the right to return any reference which does not comply with the provisions of this rule.

46. References concerning drafting of deeds.

(1)When a draft deed is on the lines of an accepted form, a complete draft should be submitted for scrutiny, and it should be stated also where the accepted form is to be found. Any important deviation from the standard form should be explained.(2)When a draft deed is not based on an accepted form, or deviates widely from it, the most convenient mode of making the reference is to state the proposed contents of the deed in short clear paragraphs, and to leave the form and legal phraseology to the legal Remembrancer's office.

47. Personal discussion.

(1)Much time and work may be saved to all concerned by oral discussion; and both the officer making a reference and Legal Remembrancer may ask for an appointment for this purpose.(2)When the officer making the reference desires an appointment he should ordinarily make the reference first in accordance with rule 14 to enable the Legal Remembrancer to carry on the discussion profitably.

48. Demi-Official references.

(1)References by demi-official letter are generally to be deprecated. However, a short demi-official letter on one or two simple issues is frequently a convenience to departmental officers, and the Legal Remembrancer will answer them promptly; but he has power to return any such reference and ask that it may be submitted in the usual manner.(2)Any opinion expressed by the Legal Remembrancer on a demi-official reference may only be used on the responsibility of the departmental officer concerned; and may not be quoted or referred to as an opinion of the Legal Remembrancer.(3)The Legal Remembrancer will refuse to answer any demi-official reference wherein a departmental officer seeks for arguments to support him in a controversy with his departmental superior, unless the reference is made through the departmental superior.

Chapter IV

References to the Advocate General

49. Direct references to Advocate General

- References may be made direct to the Advocate General on matters relating to any case which he has conducted or which he may be conducting -(a)by the District Magistrate, if the case is of criminal nature;(b)by the officer in charge, if the case is of civil nature;(c)by the officer in charge, if the case is one under Article 226 of the Constitution:(d)by the officer in charge in any case pending

before the Board of Revenue in which representation of Government has been sanctioned; otherwise no direct reference shall be made to the Advocate General by any officer. Explanation. - For the purpose of this rule, the officer in charge means the officer in charge as explained in Rule 104.

50. Advocate General's opinion to be taken in cases in which he may have to appear to court.

(1) Whenever the secretary to Government in the Law and Judicial Department records an opinion which, if accepted and acted upon by Government, would involve an appearance by the Advocate General before the High Court, or any other court, he will, as a matter of course, pass it on unofficially to the Advocate General in order that the latter may note whether he concurs to such extent as is necessary to enable him to argue the case on the lines indicated. If he does not concur to that extent, the Advocate General should record his reason in full, otherwise it will be unnecessary for him to do more than indicate his general assent. (2) If the Advocate General records a dissentient opinion the case will be re-submitted to Government for orders.

Part III – Control of Government litigation in criminal courts

Chapter V

Procedure in case before subordinate courts A.- In Magistrate's courts

51. Powers of police prosecuting staff.

(1) Under [Section 492 of the Code of Criminal Procedure, 1898 (V of 1898)] [Section 492 Criminal Procedure Code, 1898 corresponds to Section 24 Criminal Procedure Code, 1974.] all prosecuting inspectors and sub-inspectors of police are appointed to be Public Prosecutors in the districts to which they are posted, for cases tried or enquired into by Magistrates after investigation by the police and for appeals heard by magistrates arising from such cases. (2) Engagement of Public Prosecutors in Magistrate's court. - The prosecuting staff maintained by the Police Department should suffice for the great majority of criminal trials in Magistrate's Courts. In cases of special difficulty of importance, however, the District Magistrate may, subject to the provisions of rule 19 instruct the Public Prosecutor or additional Public Prosecutor or Assistant Public Prosecutor to appear. The power should be sparingly used only when the District Magistrate considers that the police prosecuting staff is inadequate.

52. Notice of appeal in Magistrate's courts.

- The prosecuting inspectors and the prosecuting sub-inspectors of police or the officers appointed under Section 422 of the [Code of Criminal Procedure, 1898 (V of 1898)] [Section 492 Criminal Procedure Code, 1898 corresponds to Section 24 Criminal Procedure Code, 1974.], for the districts to which they are posted to whom notices are to be given of the hearing of appeals filed in the court of the District Magistrate or in a court subordinate to the court of the District Magistrate.

53. Responsibility of prosecuting inspector.

- The responsibility of deciding whether an appeal is important enough to require the representation of Government rests primarily with the prosecuting inspector or prosecuting sub-inspector who will be subject to the control of his superior officers. His responsibility extends to appeals in all cases, whether originally challenged by the police or not.

54. Representation of Government in appeal before Magistrates.

- In these appeals representation of Government will, as a rule, be unnecessary, and where it is deemed necessary the police prosecuting staff should be sufficient. In rare cases involving intricate questions of law, the District Magistrate may engage the Public Prosecutor. B.- In Courts of Session

55. Public Prosecutor to appear in all Sessions trials.

(1) On receipt of an order notifying the commitment of an accused to the Court of Session as provided in rule 17(1) the Public Prosecutor shall conduct the prosecution on behalf of Government in that court. (2) As section 270 of the [Code of Criminal Procedure, 1898 (V of 1898)] [Section 270 corresponds to Section 225 Criminal Procedure Code, 1974.] requires that in every trial before a court of Session the prosecution shall be conducted by a Public Prosecutor, the District Magistrate shall arrange for the appointment of a substitute under rule 29 whenever the Public Prosecutor is not available.

56. Notice of appeal in court of Session.

- The Public Prosecutor is the officer appointed under Section 422 of the [Code of Criminal Procedure, 1898 (V of 1898)] [Section 422 corresponds to Section 385 of the 1974 Code.] for receiving notices of appeals filed in the Sessions court within the district for which he is appointed.

57. Appearance of Public Prosecutors in appeals etc.

- Unless otherwise provided for by or under the rules, the Public Prosecutor shall appear for the Government in the court of Session in all appeals, references or revisions under Section 123 of the [Code of Criminal Procedure, 1898 (V of 1898)] [Section 123 corresponds to Section 122 of the Code of 1974.] including cases instituted on private complaints in which the appellant or the applicant or the person directed to furnish security as the case may be, is represented by a counsel or in which he receives notice from the Sessions Judge under Section 422 of the 'Code of Criminal Procedure, 1898 (V of 1898). In other appeals, references or applications in the court of Sessions, the Public Prosecutor shall appear only when required to do so by the District Magistrate. C. - Supply of documents and other facilities to Public Prosecutors

58. Supply of copies in Sessions Cases

- In Sessions Cases, a copy of the charge, the reasons for commitment and the depositions of witnesses, as well as of the statement of the accused in the committing Magistrate's court should be supplied by the office of the Sessions Judge to the Public Prosecutor concerned immediately after commitment. Where type written copies of depositions of witnesses recorded in Sessions cases in the Court of Session are supplied to an accused person, on payment, copies thereof will also be supplied to the Public Prosecutor concerned.

59. Copies of original case diaries in Sessions cases.

- (1) A copy of the original case diary may be supplied to the Public Prosecutor by the Sessions Judge, on special application in each case. These copies need be granted only when the Sessions Judge has been unable to allow the Public Prosecutor reasonable facility for perusing the diary therefore the trial.(2) Case diaries are confidential documents and Public Prosecutors share the responsibility of the court that the contents are not divulged save in accordance with law.

60. Facility for Inspection of records in Sessions cases.

- If the Public Prosecutor is to appear in a Sessions case before a Sessions Judge or Additional Sessions Judge at whose head quarters he does not reside, the Judge concerned should arrange to send the record and the case diary as early as may be, under confidential cover to the District Magistrate of the district in which the Public Prosecutor resides to enable the Public Prosecutor to take inspection thereof at his head quarters. If a case is committed too late to permit of this arrangement, it should be set down for hearing by the Sessions Judge towards the end of the Sessions, and the Public Prosecutor allowed access to it during the earlier trials. The inspection by the Public Prosecutor under this rule must be governed strictly by the rules regulating the inspection of criminal records.

61. Supply of copies to Public Prosecutors in cases before a court of Session.

- In appeal, revision or reference before Sessions court in which the services of the Public Prosecutor are considered necessary he should invariably be supplied with a copy of the judgment or order concerned but not of the other record except where typed copies are supplied to accused. The Public Prosecutor shall have access to the original records in the Sessions court. Responsibility of Public Prosecutor in criminal cases

62. Public Prosecutor's duty to report results.

- It shall be the duty of the Public Prosecutor to report immediately to the District Magistrate the result of every criminal case conducted by him. A copy of the report shall be forwarded simultaneously to the District Superintendent of Police.

63. Further report when decision is adverse.

- Where in any criminal case the decision is adverse to the prosecution, the Public Prosecutor in charge of the case shall, not later than seven days from the date of the order or judgment, submit to the District Magistrate a detailed report on the case, together with his opinion as to the advisability of filing a revision or appeal and a draft of the grounds therefore if a revision or appeal is advised. A copy of the report shall be forwarded simultaneously to the District Superintendent of Police.

Chapter VI

Procedure in cases before the High Court and other authorities

A.- Appeals by Government against acquittals

64. Responsibility of District Magistrates

- Special attention should be paid to the provisions of Section 417 of the [Code of Criminal Procedure, 1898 (V of 1898)] [Section 417 corresponds to Section 378 of the Code of 1974.], enabling Government to appeal against orders of acquittal. District Magistrates should bear in mind the responsibility which rests upon them of bringing to notice instances of perverse or careless acquittals in which the importance of the case and the probability of securing a conviction justify a resort to this exceptional procedure.

65. Procedure.

- Ordinarily the District Magistrate will propose the appeal. With this proposal he should send the records and a note of his own giving the facts of the case and stating where he thinks the court was wrong. If he took the opinion of the Public Prosecutor or the District Superintendent of Police, he should state or attach it separately.

66. Special reference by Inspector General of Police.

- In any case in which the Inspector General of Police considers that an appeal against an acquittal should be filed, he may move the District Magistrate. If the District Magistrate refuses to move in the matter and the Inspector General disagrees with the decision or should the circumstances of any case be such that a reference to the District Magistrate would involve such delay as to prevent the appeal being filed within the prescribed time, the Inspector General may refer the case direct for the orders of Government.

67. Reference to be prompt.

- All cases to be referred for orders of Government should reach the Law and Judicial Department within a month from the date of the order of acquittal.

68. Applications to District Magistrates from private persons.

- In any case in which a private person makes an application to the District Magistrate, requesting him to move Government under Section 417 of the [Code of Criminal Procedure, 1898 (V of 1898)] [Section 417 corresponds to Section 378 of the Code of 1974.], to present an appeal against acquittal, he may decline to do so if he sees no adequate reason to move Government. If, however, he is of opinion that an appeal should be presented, he should follow the procedure laid down in rules 65, 66 & 67.B.- Revision cases

69. Procedure in cases of revision.

(1) If the District Magistrate considers that a case relating to a proceeding before the court of Session should be reported to the High Court, he may apply to Government to move for revision. Such application should show grounds for revision. (2) If Government supports the application, the law officer concerned will be instructed to apply for revision. (3) Under the rules of the High Court an application for revision in a criminal case before the High Court is ordinarily to be filed within sixty days. Every case of revision to be referred for the orders of Government should therefore reach the Law and Judicial Department within four weeks from the date of the order against which a revision application is to be made.C.- Miscellaneous provisions regarding criminal cases

70. Assistance to Advocate General.

- (1) It may occasionally happen in a criminal appeal or in a case of exceptional difficulty before the High Court that the Advocate General would be materially assisted by an interview with or the help of, the Public Prosecutor, or private legal practitioner engaged in the case, or the prosecuting inspector, or the investigation officer who may have dealt with the case. The District Magistrate should arrange for this when the necessity arises, but Government's sanction should be obtained in advance before the services of the Public Prosecutor or Private Legal Practitioner are requisitioned under this rule. (2) When applying for Government's sanction under sub-rule (1) the District Magistrate should explain the reasons for which such assistance is considered necessary and, if such application is made at the instance of the Advocate General that fact should also be stated. It should not be assumed that Government's sanction will be given as a matter of routine. (3) A Public Prosecutor or a Private Legal Practitioner engaged under this rule shall be entitled to a fee of Rs. 30/- for every day on which he is engaged in assisting the Advocate General; and if he comes from outside the place of hearing to travelling allowance and daily allowance admissible under the rules.

Chapter VII

Prosecution of criminal cases instituted at the instance of Departmental Officers

71. Scope of the rules

- These rules relate to the departmental prosecutions, i.e., criminal cases instituted at the instance of a Government officer relating to acts of which he has knowledge in his official capacity. They are intended mainly to help officers who have no experience of the procedure followed in the institution and conduct of cases in criminal courts.

72. Expedience of consulting District Magistrate in all cases.

- Before launching a prosecution a Government officer should consult the District Magistrate informally regarding the procedure to be adopted, unless the case is of a kind which is frequently launched by the department to which such officer belongs and the procedure is familiar to him. In all cases of doubt the District Magistrate should be consulted.

73. Report to Police in cognizable cases.

- When the offence is cognizable, i.e. one in which column 3 of Schedule 2 of the Code of Criminal Procedure, 1898 (V of 1898) shows that the police may arrest without warrant there is no difficulty. A report should be sent, giving a clear, consecutive and chronological statement of the salient facts, to the nearest police station. All further steps will be taken by the police, but the officer making the report must render all assistance in his power.

74. District Magistrate to be consulted in non-cognizable cases.

- When the offence is non-cognizable, i.e. one in which column 3 of Schedule 2 of the Code of Criminal Procedure, 1898 (V of 1898) shows that the police may not arrest without warrant and is of a kind not familiar to the department or the officer instituting the prosecution, the District Magistrate should always be consulted as certain formalities may be required in the institution of the case to ensure that the prosecution is legal. The formalities are set out in sub-section (1)(a) of Section 195 and in Section 197 of the Code of Criminal Procedure, 1898 (V of 1898).

75. Complaint in cases not requiring sanction of Government.

(1) When the case does not fall within the scope of section 197 of the Code of Criminal Procedure, 1898 (V of 1898) the officer instituting the prosecution should send a written complaint to the Magistrate having jurisdiction. (2) The complaint should give a clear, consecutive and chronological statement of the salient facts. (3) If the case falls within the scope of sub-section (1)(a) of Section 195 of the Code of Criminal Procedure, 1898 (V of 1898), the complaint should contain a statement that, with reference to that section, the complainant is the public servant concerned. (4) Under proviso (aa) to Section 200 of the Code it is no longer necessary for a public servant to be examined by the court when he makes a complaint in his official capacity; but if the complaint is intricate, the officer making it should present it personally in order that the court may have an opportunity of elucidating any obscure point.

76. Procedure in cases requiring sanction.

(1)When the case falls within the scope of Section 197 of Code of Criminal Procedure, 1898 (V of 1898) no prosecution can be instituted without the previous sanction or consent as the case may be, of the Government.(2)The departmental authorities should consult the District Magistrate and submit a complete report to Government through the head of the department concerned. Further steps to be taken will be indicated in Government's orders.(3)If there by doubt whether Section 197 of Code of Criminal Procedure, 1898 (V of 1898) applies the Legal Remembrancer should invariably be consulted.

77. Appointment of prosecutor in simple cases.

- In simple cases of departmental prosecutions for which the police are not responsible, the officer laying the complaint is responsible for the proper prosecution of the case. This should ordinarily be one by appointing a departmental officer or subordinate, familiar with the fact of the case to be prosecutor. Such prosecutor must ask for the court's permission to appear under Section 495 of the Code of Criminal Procedure, 1898 (V of 1898).

78. Engagement of Public Prosecutor in complicated cases.

- When the case is a complicated one, the officer instituting it should approach the District Magistrate with a view to the engagement of the Public Prosecutor.

79. District Magistrate to assist Railway authorities.

- When prosecutions are instituted by a Railway authority, the District Magistrate should give it any advice required regarding preliminary formalities, and should put them into communication with the Public Prosecutor, or other suitable legal practitioner, if a prosecuting counsel is required.

80. Intimation to Railway or Departmental Officers of the filing of appeal.

- When the Public Prosecutor receives notice of an, appeal on conviction in a prosecution by a departmental or Railway officer he should inform the departmental or railway officer concerned.

Chapter VIII

Assistance to Government servants in criminal cases instituted by or against them

81. Scope of the rules

- These rules provide for assistance to be given to Government servant in instituting criminal cases for defamation and in defending criminal cases instituted against them in relation to acts done by

them in their official capacity.

82. Assistance in prosecutions for defamation.

- When Government, on an application by a Government servant, considers it desirable that he should prosecute under Section 500 of the Indian Penal Code, 1860 (45 of 1860) for a defamation uttered or published against him in his capacity as a public servant it will assist him and engage the Public Prosecutor to appear. The application should be made through the District Magistrate or the head of the department.

83. Reporting prosecution.

(1)When a prosecution is instituted against a Government servant for anything done by him in his official capacity he shall at once inform his superior officer and the head of the department and report to them as soon as possible thereafter the facts and circumstances of the cases.(2)The head of the department shall then make or have such inquiries made as may be necessary and forward the report to Government with his comments and recommendations for orders.

84. Defence of Government servants.

(1)When a prosecution is instituted against a Government servant on account of an act done by him in his official capacity, Government may defray the expenses of his defence, provided his act was justified by law, or provided that he believed himself after due care and attention to be justified by law in doing it. A pre-requisite for. Government's assistance is that the act of the Government servant must be either,(i)in strict accordance with law, or(ii)else be covered by any of the recognised exceptions enumerated in Sections 75 to 79 of the Indian Penal Code (45 of 1860).(2)When Government declines to defend a Government servant, he may, on his own responsibility and at his own expenses, take such measures as he considers necessary, provided that they will not interfere with the performance of his official duties. In such a case if the final decision is in favour of the Government servant. Government will ordinarily reimburse such expenses as it may consider to be reasonable.(3)When a prosecution is instituted against a Government servant who is not removable from his office save by or with the sanction of Government or some higher authority as required by Section 197 of the Code of Criminal Procedure, 1898 (V of 1898) and such sanction has not been obtained, the court should be requested to reject the complaint for want of the sanction.

85. Engagement of counsel.

- When the defence of a Government servant is sanctioned by Government, the service of the Public Prosecutor may be engaged if this is considered desirable. Where the services of the Public Prosecutor are not engaged, a Private Legal Practitioner may be engaged. The fee payable to the Public Prosecutor or Private Legal Practitioner for the whole case shall be such amount, not exceeding Rs. 100/- as the District Magistrate may fix according to the importance of the case. If it is proposed to fix the fee at the figure higher than Rs. 100/- sanction of Government shall be obtained.

The said fee and any incidental charges, such as court-fee and diet money of witnesses, shall be borne by Government. In petty cases, the appearance of the Government servant himself should ordinarily suffice.

86. Procedure after decision of case.

- (1) If the case, the defence of which was sanctioned by Government, is decided in favour of the Government servant and if any compensation, costs or damages are awarded to him, the amount of expenses paid by Government shall be refunded by him upto the limit of such compensation costs or damages. (2) If the case is decided against the Government servant, the question whether an appeal should be filed at the expense of Government or whether the damages awarded to the complainant or the fine imposed should be paid by Government shall be decided by Government either on the application of the officer concerned or on the representation of his superior Officer. The application or representation shall be submitted to Government through the Head of the Department. Both officers should give their own considered opinion on it.

87. Duty of counsel when proceedings are likely to prolong.

- Whenever it appears to the Public Prosecutor or the Private Legal Practitioner appearing on behalf of the Government servant that the proceedings in the Court are likely to be prolonged and to interfere with the discharge of the Government servant's public duties or are likely to harass him, the Public Prosecutor or the Private Legal Practitioner should request the court to deal with the proceedings with the utmost possible expedition.

Chapter IX

Prosecution of criminal cases instituted at the instance of the courts whether civil, criminal or revenue

88. Scope of the Chapter.

- These rules relate to the prosecution of complaints by courts, whether civil, criminal or revenue, in respect of offences connected with the administration of justice e.g. perjury, resistance to attachment, other resistance to lawful authority escape from arrest, disobedience of a court's order, etc.

89. Trial of cases

- Every case of the kind referred to in the foregoing rule shall ordinarily be tried by a Magistrate, of the First Class. Prompt disposal and care as to procedure are important.

90. Intimation to the District Magistrate.

- As soon as the complaint is drawn up, the court making the complaint shall, forward it through the District Magistrate of the district concerned giving a brief history of the case, and adding a recommendation to the District Magistrate whether the Government should be represented or not by counsel.

91. Arrangement for the conduct of cases.

- (1) The Government shall be represented in such cases and ordinarily counsel shall be engaged. Only in simple cases may representation by counsel be dispensed with. (2) If the trial is held at district headquarters, the Public Prosecutor shall be instructed to appear. In simple cases where representation by counsel is not recommended, the District Magistrate shall instruct the Prosecuting Inspector or Prosecuting Sub-Inspector to conduct the prosecution. (3) If the trial is at a place other than the district headquarters, ordinarily a local Private Legal Practitioner shall be engaged. Note:- For purpose of this rule, cases of resistance or obstruction to legal process and escape from arrest are not simple cases.

92. Fees of counsel in cases

- The fees payable to a Private Legal Practitioner engaged under rule 91 shall be the same as those laid down for a Private Legal Practitioner in rule 34.

93. Report of result in cases.

- When the Government is represented by counsel, counsel shall report the result of the case through the District Magistrate of the district to the complaining court, making such recommendation as he may consider justify and attaching a copy of the judgment. When the Government is not represented by counsel, the Magistrate trying the case shall simply forward a copy of the judgment to the complaining court through the District Magistrate of the district. The complaining court shall examine the judgment and decide whether further action is necessary desirable.

Chapter X

Defence of Impecunious Accused

94. Defence Counsel in Sessions Court.

(1) In any case which comes before a court of Session the court shall engage counsel at Government expense to defend the accused person if -(a) the charge against him is such that a capital sentence is possible; and (b) it appears that he has not engaged counsel and is not possessed of sufficient means to do so. (2) Only experience lawyers so far as they are available should be engaged to defend the

accused.

95. Recommendations for legal assistance in Sessions Court.

(1)The Magistrate committing any person for trial to a court of Session on a charge involving a capital sentence shall report whether the accused was represented by counsel in the proceedings before him and, if not, whether the accused can afford to engage one for his trial in the Court of Session.(2)The Sessions Judge may appoint counsel on behalf of an unrepresented accused if he thinks fit, even when the committing Magistrate has considered that the accused has means enough to engage counsel himself.

96. Counsel to be engaged in time: Copies of records to be made available to him.

- Counsel in such cases should be appointed in time to enable him to study the necessary documents which should be supplied free of cost. These documents in the Courts of Session will ordinarily be copies of -(a)the evidence recorded by the committing Magistrate, the charge and the order of commitment;(b)the police record including not the Zimnis, but such documents as the first information report, the inquest report and the plan of the spot.

97. Recommendation for legal assistance in High Court.

(1)When an accused person has been called upon by the High Court to show cause why a lesser sentence should not be enhanced to a sentence of death, the District Magistrate on receipt of a notice for service upon the person called upon to show cause if he is satisfied that the accused is unable, because of poverty to engage counsel for his defence, furnish a certificate that the accused is entitled to be defended at Government expense.(2)When a sentence of death is referred by a Sessions Judge to the High Court for confirmation under the provisions of Section 374, Code of Criminal Procedure, 1898 (V of 1898) the Sessions Judge shall note whether the accused person was represented by counsel in his court, whether the accused can afford to engage counsel for his defence in the High Court.

98. Counsel engaged by High Court.

- If the High Court decides that the accused is unable on account of poverty to engage counsel for his defence the High Court shall make arrangements to employ counsel at Government expense:Provided that the High Court may employ counsel if it thinks fit in every case when such accused is unrepresented, irrespective of considerations relative to the means of the accused to engage counsel.

99. Fees of Counsel.

(1)The fee payable to counsel appointed by the Court of Session under rule 94 shall not exceed Rs. 16/- for each working day of hours or more and Rs. 8/- for less than 3 hours' work:Provided that no fee shall be paid for a hearing fixed for delivering judgment only.(2)In addition to the fee payable under sub-rule (1) a fee of Rs. 20/- shall be paid to the counsel for the preparation of the case.(3)The fee payable to counsel for defence in the High Court under Rule 98 shall be Rs. 32/- per day. In addition 1 day's fee or more if the Chief Justice so directs shall be paid to the counsel for preparation of the case.

Part IV – Control of Government Litigation in Civil Courts.

Chapter XI

Suits and other Proceedings against Government.A - Proceedings prior to Institution of Suits

100. Procedure after receipt of notice.

- These rules relate to the stages subsequent to the receipt mentioned in rule 104.

101. Previous notice of suit against Government.

- Section 80 of the Code of Civil Procedure, 1908 (V of 1908) provides that no suit shall be instituted against Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of -(a)In the case of a suit against the Central Government, a Secretary to the Government;(b)In the case of suit against the State Government, a secretary to that Government or the Collector of the district: and in the case of a suit against a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

102. Procedure when suit filed without due notice.

- When a suit is brought against Government or a public officer without the notice required by Section 80 of the Code of Civil Procedure, 1908 (V of 1908), having been duly served or before the expiry of the period of two months from the date of service of the notice the Collector should move the Court of dismiss the suit on the ground that it has been instituted in contravention of the provisions of that section.

103. Procedure when notice relates to suit against Central Government.

(1) When a notice is addressed to a Collector or Secretary to Government making a claim against any department or officer of the Central Government, the officer receiving it shall inform the party concerned that the notice is not in accordance with the provisions of Section 80 of the Code of Civil Procedure, 1908 (V of 1908) and shall intimate the action taken to the Law and Judicial Department. (2) In all cases where a Secretary to Government receives notice of a suit under clause (b) of Section 80 of the Code of Civil Procedure, 1908 (V of 1908) against the Central Government the Secretary shall communicate to the Central Government, as soon as possible after the receipt of the notice, the views of the State Government as to whether the subject-matter of the suit falls within the executive authority of the Central Government, or the State Government and as to the arrangements that should be made for defending the suit, if brought.

104. Notice to be endorsed.

- Immediately on receipt of a notice of a claim in which Government is primarily concerned, the officer on whom it is served should endorse there on date and manner of its delivery and forward a certified copy of the notice so endorsed to the officer-in-charge of the case for further action. Explanation. - For the purposes of this rule and other rules in this chapter, the officer in-charge means the executive officer who is primarily concerned with the cause and is cognizant of the facts of the case, e.g., in the Public Works Department he is ordinarily the Executive Engineer, in the Forest Department, the Divisional Forest Officer. In a case not falling in a definite recognised department, he is ordinarily the Collector: Provided that Government may, having regard to the character of the suit as disclosed by the notice, appoint the head or any other officer of the department concerned to be the officer-in-charge for the purpose of that suit.

105. Duty of the officer-in-charge.

(1) On receiving the notice, the officer-in-charge shall forthwith make a careful enquiry into the case and within fifteen days of the receipt thereof, submit to the Collector a detailed report containing - (a) a clear chronological statement of facts and circumstances of the case, in narrative form, with references to the documentary evidence on both sides and indications of the oral evidence on either side; (b) a separate statement answering serially all points raised in the notice; (c) copies of all documents relevant to the case. (2) In a case in which the facts are complicated and of a technical character, the officer-in-charge should ascertain from the claimant whether if Government agree, he himself will agree, to have the dispute referred to arbitration in accordance with Chapter II of the Arbitration Act, 1940 (X of 1940). The provisions of that Chapter and the First Schedule of that Act should be explained and the advantages of its cheapness and speedy decision of arbitration proceedings should be pointed out to the claimant. If he agrees, the proposal in detail should be submitted to the Collector.

106. Papers to be filed in certain circumstances.

- If, on a perusal of the report of the officer-in-charge, the Collector considers that the notice is frivolous or that the claim made by the notice-giver is on the face of it untenable, he may take no further action on it and file the papers and give an intimation accordingly to the notice-giver.

107. Procedure for compromising claims below rupees one thousand.

- Where the value of the claim is below rupees one thousand, action will be taken as follows :-(a)If on the perusal of the report of the officer-in-charge, the Collector considers the claim to be genuine in whole or in part, he shall forward all the connected papers to the Public Prosecutor for his opinion on the merits of the claim and also as to whether the claim should be compromised;(b)If, on considering the opinion of the Public Prosecutor, the Collector is satisfied that the claim should be compromised, he shall either himself or through the officer-in-charge open negotiations for compromise with the notice-giver. But it should be borne in mind that negotiations should as far as possible, be carried on verbally and "without prejudice" to the pleadings of Government in the event of a suit being filed and on the distinct understanding that any arrangement agreed upon will be subject to the sanction of the appropriate authority;(c)If the notice-giver is willing to settle his claim amicably on the terms which appear to the Collector to be reasonable, the Collector shall forthwith send all the connected papers along with the opinion of the Public Prosecutor and his recommendation to the Head of the Department concerned (which expression shall, in the case of a department having no separate head of the department shall be construed as referring to the Secretary to Government in that department);Note:- All action under this rule shall be completed by the Collector within one month from the date of the receipt of notice.(d)If the Head of the Department is satisfied that the claim is genuine and should be compromised on the terms recommended by the Collector, he shall issue orders forthwith to have the claim settled and the Collector shall then take steps to effect a compromise accordingly.

108. Procedure in other cases.

- The Collector shall, in the following cases, forward a detailed report with all connected papers to the Secretary to Government in the appropriate department within one month from the date of receipt of notice :-(i)Where the value of the claim is rupees one thousand or more;(ii)Where the value of the claim is below rupees one thousand and the claim has not been disposed of under rule 107;(iii)Where a proposal for arbitration has been received under sub-rule (2) of rule 105.

109. Orders of Government.

(1)The Secretary to the Government in the appropriate department shall, after examining the case and recording his opinion on the merits thereof, send the papers to the Law and Judicial Department for advice.(2)The Law and Judicial Department shall examine the case and advice whether it should be defended or where the question of compromise has not been considered whether the claim should be compromised, or where there is a proposal for arbitration, whether the

proposal should be accepted.(3)The Secretary to the Government in the appropriate department will then obtain the orders of the Minister-in-charge and send the papers to the Law and Judicial Department for issuing orders.

110. Procedure where orders direct compromise.

- Where the orders under rule 109 direct the Collector to compromise the claim of a notice-giver, the Collector shall either himself or through the officer-in-charge open negotiations for compromise with the notice-giver. But it should be borne in mind that negotiations should, as far as possible, be carried on verbally and "without prejudice" to the pleadings of Government in the event of a suit being filed and on the distinct understanding that any arrangement agreed upon will be subject to the sanction of Government.B. - Proceedings Subsequent to the Institution of Suits.

111. Collector appointed to receive processes.

- For the purposes of rule 4 of Order XXV¹¹ of the First Schedule of the Code of Civil Procedure, 1908 (V of 1908), the Collector shall be the agent of Government for receiving processes against Government issued by any Civil Court within his district in relation to any suit against Government or against a public officer in their service.

112. Transfer of summons to officer-in-charge.

- When a summon is served upon the Collector to appear and answer a claim against Government he shall immediately transfer the summons to the officer-in-charge.

113. Officer-in-charge to be recognised agent of Government.

- Unless otherwise ordered, the officer-in-charge of a suit shall sign and verify the written statements in that suit as required by Rules I of Order XXVII of the First Schedule of the Code of Civil Procedure, 1908 (V of 1908). Under rule 2 of the said Order the officer-in-charge is also authorised ex-officio to act for the State Government in the suit and shall be deemed to be the recognised agent by whom appearance, acts and applications under the said Code may be made or done on behalf of the State Government.

114. Engagement of Public Prosecutor.

- The officer-in-charge should move the Collector to engage the services of the Public Prosecutor, who shall assist in the preparation of the report mentioned in rule 115 and in the conduct of the case.

115. Report after receipt of summons.

(1)The officer-in-charge shall submit a report on the case, as soon as may be [but with in fifteen days of the receipt of summons, to Government in the Law and Judicial Department.] [Inserted by

Notification No. F. 47 (7) Judl/74, dated 5-10-1979 vide G.S.R. 38, Pub. In Rajasthan Gazzette Extra-ordinary part IV-(I) dated 5-10-1979, page 1=1979 RSCS page 462 note 336.] The Report need not repeat anything contained in the report submitted under rule 105 but it should meet all points, if any, not covered therein. It should further mention the date of hearing of the suit.(2)Along with the report there shall be sent -(a)a copy of the plaint;(b)a draft of the proposed written statement;(c)a list of all documents which it is proposed to file in evidence, or, of which production in Court is required;(d)copies of any papers needed for the elucidation of the case.(3)When the Public Prosecutor has been engaged, the officer-in- charge shall render him all possible assistance in preparing the case and shall be responsible that no important fact or document remains undisclosed.

116. Orders of Government on report.

- Orders of Government on the report will be obtained by the Law and Judicial Department through the Secretary to Government concerned with the subject- matter of the suit. The Orders will be communicated to the officer-in-charge by the Law and Judicial Department through the Head of the Department together with any instructions which may be necessary. The notes recorded by the Law and Judicial Department in the case should be treated as confidential.

117. Responsibility of officer-in-charge for production of evidence.

- During the trial of the case the officer-in-charge shall be responsible for the production of all available evidence and shall assist the Public Prosecutor to the best of his ability. In particular, he shall ascertain if oral evidence is available on any issue on which oral evidence is required, and shall keep the Public Prosecutor fully informed of the existence of such evidence.

118. Further instructions from Legal Remembrancer.

(1)Once orders are issued under rule 116 it should not be necessary to refer again to Government unless -(a)special instructions are required on some unusual point:(b)proposals are made for reference on arbitration: or(c)proposals are made to compromise the suit.(2)Although Government is prepared to ask the Legal Remembrancer to assist Public Prosecutors with advice, it is on the understanding that Public Prosecutors are primarily responsible for the conduct of cases in their charge: and references should not be made under this rule on ordinary points of law and procedure.

119. Responsibility of officer-in-charge or Public Prosecutor for timely action in suits.

- The officer-in-charge or the Public Prosecutor if engaged, shall be responsible for seeing that timely action is taken where revision of any interim order passed in the course of a suit is required. He should, therefore, forward through the Head of the Department a copy of such order as soon as it is passed to Government in the Law and Judicial Department with his recommendations.

120. Report of result of suits.

- As soon as the suit is decided [but within fifteen days] [Inserted by Notification No. F. 47(37) Judi.-74 dated 15-10-1979 vide G.S.R. 38. Published. In Rajasthan Gazette Extra-ordinary part IVC (I) dated 15-10-1979=1979 RSCS Page 462 Notes 336.] the officer-in-charge, or the Public Prosecutor, if engaged will report the result to Government in the Law and Judicial Department through the Head of the Department. A copy of the judgment should be obtained and sent with the report.

Chapter XII

Suits instituted by Government.

121. Sanction to institution of suit by Government.

- No suit on behalf of Government shall be instituted without the sanction of Government.

122. Desirability of amicable settlement

(1)The institution of a suit on behalf of Government should not be recommended until the proposed defendant has been given ample opportunity to state his views and come to any amicable settlement.(2)While it is the duty of officers of Government to enforce the rights and protect the interests of Government, they should not have recourse to the law Courts until all efforts to effect an amicable settlement have failed.

123. Preliminary departmental inquiry.

- Before the institution of a suit is recommended the case for Government should first be enquired into departmentally and evidence secured on all points which are likely to be contested.

124. Report when suit recommended.

- Whenever it appears any officer of Government that a suit should be instituted on behalf of Government he shall submit a complete report, through the Head of the Department for orders of Government.

125. Contents of report.

- The report should contain the following particulars -(a)a clear chronological statements of the facts and circumstances which, in his opinion, render the institution of the suit necessary, and precisely when and where they each occurred:(b)a clear statement of all the evidence both oral and documentary, by which the claim can be supported;(c)copies of the written documents, if any, upon which the claim is based, and any other papers, the inspection of which is considered necessary for

the elucidation of the case;(d)the pleas or objections, if any. which have been urged by the proposed defendant against the claim:(e)the evidence, both oral and documentary, which, so far as is known, the proposed defendant will be able and is likely to adduce in his defence; and(f)any other, material facts, e.g., the circumstances of the proposed defendant, any special reasons for the institution of the suit apart from the amount claimed, whether its decision will affect other claims, and the like.

126. Orders of Government on the report.

- Orders of Government on the report will be obtained by the Law and Judicial Department through the Secretary to Government concerned with the subject-matter of the proposed suit. The orders will be communicated by the Law and Judicial Department to the Head of the Department together with any instructions which may be considered necessary and the Head of the Department will transmit them to the officer- in-charge of the suit to be specified in these orders. The notes recorded by the Law and Judicial Department in the case should be treated as confidential.

127. Engagement of Public Prosecutor.

(1)If Government decides to institute the suit, the officer-in-charge should move the Collector to engage the Public Prosecutor to appear on behalf of Government.(2)In difficult cases the Public Prosecutor may be engaged to help in the departmental inquiry under rule 123 or in the preparation of the report under rule 125.

128. Submission of draft plaint.

- Before the suit is instituted a draft of the plaint with a list of the documents to be filed and copies of these documents, should be submitted, through the Head of the Department to Government; and instructions should be awaited.

129. Officer-in-charge to sign and verify plaint.

- The Officer-in-charge should sign and verify the plaint and also discharge the other functions described in rule 113 in regard to the suit. Any process issued to Government in the suit shall be received by the Collector as provided in rule 111.

130. Further procedure.

- After the suit is instituted the provisions of rules 117, 118, 119 and 120 should be followed, as far as they are applicable.

Chapter XIII

Production of Documents

131. Submission of documents and lists to the Legal Remembrancer.

- Under rule 14 of Order VII of the First Schedule of the Code of Civil Procedure, 1908 (V of 1908), it is required that the plaintiff shall produce in Court, when the plaint is presented any document in his possession or power upon which he sues; and further, where he relies on any other document (whether in his possession or not) as evidence in support of his claim, he shall enter such documents in a list to be added to or annexed to the plaint. Rule 15 of the same order provides that where any such document is not in the possession or the power of the plaintiff, he shall, if possible, state in whose possession or power it is. When a suit has been filed against the Government, special care should be taken to forward to the Legal Remembrancer copies of all documents filed with the plaint and annex a copy of the list produced with it. If the plaintiff has not filed any such list with the plaint the Public Prosecutor should move the Court to order the plaintiff to file such list and on its being filed shall at once send a copy of it to the Legal Remembrancer.

132. Protest against the filing of certain documents not mentioned in the list.

- If a plaintiff at any stage after the plaint has been presented, should put in any document not mentioned in the list annexed to the plaint, except where it is a document in answer to the case set up by the Government, or a document to refresh the memory of a witness, the Public Prosecutor must invariably object to such document being received, and if this objection is over-ruled and the document received, ask that a note be recorded of his protest :-(a)that the document should have been filed with the plaint or noted in the list, as the case may be;(b)that as the defence to all suits against the Government is prepared by the Legal Remembrancer, the Government, as the case may be, is placed at a most serious disadvantage by the admission of a document without notice; and(c)that the document not having been entered on the plaint or the list annexed to it as required by law. the reply was framed on the assumption that no such document would be forthcoming.

133. Procedure of documents at the first hearing.

- The Public Prosecutor should in every case, whether he is appearing as plaintiff counsel or defence counsel insist at the hearing under the provisions of rule 1 of Order XIII of the First Schedule of the Code of Civil Procedure, 1908 (V of 1908) upon the production of all documentary evidence and note upon his brief that he did so, and that the other side produced or declined to produce its documents, as the case may be. After this, he should protest against the admission of any document which was not produced when first called for.

134. Petition of protest.

- If the Court does not record any of the protests made under rule 132 or rule 133 the Public Prosecutor shall on the very first opportunity file in Court a petition in form No. A or in form No. B of Appendix III as the case may be, and ask that it be placed upon the record.

135. Information of the document to the Legal Remembrancer.

- The Public Prosecutor must give immediate notice through the Collector to the Legal Remembrancer of every document received by the Court after protest made, and send to him a summary of its contents or, in case the document is likely to affect the case adversely, an accurate copy thereof and a statement showing that he protested against the admission of such document and his protest was recorded and over-ruled.

136. Instructions regarding production of official documents by the Government.

- When the Government is called upon to produce any official document in Court, detailed instructions in this behalf issued by the Government in the General Administration Department and contained in the Appendix II must be followed.

Chapter XIV

A. - Appeals and Revisions

137. Procedure when decision adverse.

- When a suit has been decided, wholly or in part, adversely to Government, the Officer-in-charge of the suit should at once consider the advisability of filing an appeal and should consult the Public Prosecutor, if he was engaged in the case.

138. Report when appeal recommended.

(1) If he considers that an appeal should be filed, he shall submit a report, through the Head of the Department for the orders of the Government, giving his reasons for recommending an appeal. (2) The report shall be accompanied by :- (i) a copy of the judgment and decree against which it is proposed to appeal; and (ii) a draft of the proposed memorandum of appeal, which shall be drawn up by the Public Prosecutor, if he was engaged in the case. (3) The report must be despatched so as to reach Government with 15 days after the date of the decree - [xxx]: [The expression - 'In case where the appeal lies to the District Court and with In one month where the Appeal lies to the High Court', were deleted by Notification No. F 47/(37) Judl/74 dated 15-10-1979, vide GSR 38, published. In Rajasthan Gazette Extra Ordinary Part IV-C (1) dated 15-10-1979 Page 1=1979 RSCS Page 462 note 336.] Provided that, in a case where the appeal lies to the District Court, if there is a risk of appeal becoming barred by time, the officer-in-charge may, on his own responsibility, after consultation with the Public Prosecutor, file the appeal and immediately report the action taken to Government.

139. Orders of Government on the report.

- Orders of Government on the report will be obtained by the Law and Judicial Department through the Secretary to Government concerned with the subject-matter of the proposed appeal. The orders will be communicated to the officer-in-charge by the Law and Judicial Department together with any instructions which may be necessary. The notes recorded by the Law and Judicial Department in the case should be treated as confidential.

140. Departmental assistance to counsel conducting an appeal.

- The officer-in-charge shall render all possible assistance to the counsel appearing for Government in an appeal; and he should himself be present at the hearing of a complicated case, or should arrange for the attendance of an officer competent to advise counsel on the facts and on technical matters.

141. Appeals against decisions in favour of Government.

(1)When an appeal is made against any decision given in favour of Government, the officer-in-charge of the case shall take such measures as may be necessary to uphold the decision.(2)Ordinarily it should not be necessary to apply for instructions to the Law and Judicial Department, but a reference may be made in cases of doubt or difficulty, or when new pleas are raised:Provided that in important cases the Public Prosecutor shall report his proposals for the defence of the appeal to the Law and Judicial Department for approval.

142. Second appeals and revisions.

- Rules 125 to 129 shall be applicable to appeals against, appellate judgments and, mutatis mutandis, to applications for revision.

143. Responsibility of officer-in-charge or Public Prosecutor for timely action in appeals.

- The officer-in-charge or the Public Prosecutor if engaged shall be responsible for seeing that timely action is taken in appeals coming within the scope of Section 97 of the Code of Civil Procedure, 1908 (V of 1908).B. - Appeals to Supreme Court.

144. Advocate-General's duty in respect of certificate under Article 132(1) of the Constitution.

- In every case before the High Court in which a substantial question of law as to the interpretation of the Constitution is involved and in which a notice is issued to the Advocate-General, he should request the High Court to state in its judgment whether or not it withholds a certificate under Article 132(1) of the Constitution.

145. Procedure to be followed in regard to an appeal to the Supreme Court.

(1)Whenever an appeal or other proceeding in which Government is involved is decided against the Government by the High Court, the Law Officer concerned shall intimate the fact to the Law and Judicial Department along with his opinion whether an appeal should be preferred to the Supreme Court.(2)When it is decided by Government to go up in appeal to the Supreme Court from any judgment decree or any final order of the High Court, the Law Officer concerned shall, if necessary, apply to the High Court for grant of a certificate as required by Article 132(1) of the Constitution.(3)When an appeal is to be filed in the Supreme Court, the Law Officer concerned, shall without delay, take steps to have the record prepared in the High Court in accordance with the Supreme Court Rules and the rules of the High Court for transmission to the Registrar. Supreme Court. He shall at the same time prepare a brief of the case and the tentative grounds of appeal for the use of the Standing Advocate on record and Counsel at New Delhi and forward the same through the Advocate-General to the Law and Judicial Department for further action.(4)If a certificate is refused by the High Court, the Law Officer concerned shall, without delay, intimate the fact through the Advocate-General to the Law and Judicial Department alongwith his advice whether an application for special leave to appeal should be field in the Supreme Court. The Law and Judicial Department shall then issue necessary instructions to the Standing Advocate-on-Record at New Delhi.(5)On receipt of intimation regarding the grant of special leave to appeal by the Supreme Court in any case, the Law and Judicial Department shall inform the Law Officer concerned of the fact, who shall then follow the same procedure in regard to that case as laid down in sub-rule(3).(6)After receipt of the brief of the case and the tentative grounds of appeal from the Law Official concerned, the Law and Judicial Department shall take necessary steps for the filing of the appeal and for engagement of counsel for the proper conduct thereof in the Supreme Court.

146. Procedure in regard to an appeal or a Petition for leave to appeal in the Supreme Court by a private party.

(1)On receipt of a notice of appeal or of a petition for leave to appeal in the Supreme Court by a private party against Government, the Law and Judicial Department shall intimate the fact to the Advocate-General/Government Advocate and to the Department concerned. The Law and Judicial Department shall also at the same time send intimation in respect of such notice to the Standing Advocate-on-Record at New Delhi.(2)On receipt of intimation the concerned Law Officer shall prepare a brief of the case for the use of the Advocate-on-Record and Counsel at New Delhi and send the same to the Law and Judicial Department.(3)The Law and Judicial Department shall then send necessary instructions to the Standing Advocate-on-record at New Delhi for the proper conduct of the appeal or petition on behalf of the Government.

Chapter XV

Execution of Decrees

147. Satisfaction of decrees against Government.

(1) Whenever it has been determined not to contest further a decision which is either wholly or partly adverse to Government, the Officer-in-charge of the case shall at once arrange with the Head of Department concerned for the payment into the Court, whose, duty is to execute the decree, of all money payable under the decree care being taken that the decree is fully satisfied within the time fixed for that purpose under Section 82 of the Code of Civil Procedure, 1908 (V of 1908). Note: - The following instructions have been issued by the Finance Department for accounting of decretal expenditure :-Circulars(1) Finance Department Circular No. F. 14(25)F. (B)/55, dated the 30th April 1955. It has been noticed that the departmental authorities experience a considerable difficulty in finding funds to satisfy decrees passed by the Civil Courts against the Government. Such decrees are generally required to be satisfied immediately after orders are passed by the Court and the expenditure being of an unforeseen nature, it is not possible to make provision thereof in the budget before-hand. The following instructions are therefore, issued in regard to the satisfaction and accounting for, of decretal expenditure which should be carefully noted and acted upon by all concerned :-

- 1. All decretal expenditure should be debited to a new detailed head "Decretal expenditure" under the primary unit "Other charges" in the budget of the department concerned.**
- 2. According to Article 202(3)(e) of the Constitution of India all decretal expenditure should appear as Charged expenditure in the accounts. In cases in which the departments can estimate the amount required they should propose provision in the budget itself and where provision for charged expenditure already exists in the budget and it is possible to meet decretal expenditure by re-appropriation of funds out of this grant, necessary action should be taken to satisfy the decree accordingly.**
- 3. If there be no provision, for decretal expenditure or for other charged expenditure in the budget head concerned to accommodate the decretal expenditure, action should be taken in the prescribed manner by the departmental authority to obtain advance from the Contingency Fund. Payment should be arranged as soon as funds are made available. In view of the urgency involved, the whole process has to be rushed through so promptly that no delay occurs in the payment of the amount by the prescribed date. Communications and file should, therefore, addressed to the officers concerned by name.**

(2) Finance Department Circular No. D. 12067/F. 14(25)F (B) 55, dated the 16th January, 1958. The expenditure on account of deposits of decretal amounts if made in the courts as security for staying the execution of the decree pending final decision should be debited to the head 'Section Deposits and Advances Part III-Advances not bearing interest, Departmental Advances. Such deposits should, however, in the absence of a stay of execution of the decree and where the decree-holder is at liberty to withdraw them be deemed to be in satisfaction of the decree and treated as a final charge adjustable under the relevant service heads of Account and, in terms of Article 112(3)(f) of the Constitution, be charged on the Consolidated Fund. In either case the money paid into the court is to be credited to S-Deposits and Advances-Part II-Deposits not bearing interest-(C) Other Deposits Accounts - Departmental and Judicial Deposits-Civil Deposits - Civil Courts Deposits. This is based on the decision taken by Government of India. Ministry of Finance Department of Economic Affairs. Execution of Decrees in favour of Government.

148. Copy of Decree to be sent to Collector.

- When a decree has been passed in favour of Government the Public Prosecutor shall at once apply for a copy of the same and forward it to the Collector through the officer-in-charge. A decree dismissing a suit against Government is a decree in favour of Government.

149. Entry of decrees in Execution Register.

- Upon receiving copy of the decrees, the Collector shall enter the same in his register in form C of appendix III.

150. Collector's duty to execute decrees.

- It is the duty of the Collector to see that all necessary steps are taken for the execution of decrees and the realisation of moneys decreed in favour of the Government. When a decree has become final, either from not being appealed or from being confirmed on appeal, steps should at once be taken for executing the same.

151. Inspection of execution register.

- In the execution register sufficient space should be left to enter all the successive steps which are taken by the Collector for the execution of a decree. When inspecting the Collector's office the commissioner should scrutinise the entries in this register and note in his inspection report any irregularity which he may find in regard to the execution of the decree.

152. Enquiry about debtor's property.

(1) Before application is made for the execution of a decree, the Collector shall ascertain what property, movable, or immovable, the debtor possesses. (2) If it is proposed to execute a decree by sale of immovable property a Certificate from the sub-Registrar within whose Sub-District, such

property is situated showing that the Sub- Registrar has searched the concerned records for the twelve years preceding the mortgage or attachment as the case may be, and stating the encumbrances, if any, which he has found on the property, should be sent by the Collector to the Public Prosecutor vide Order XXI, Rule 108 of the Code of Civil Procedure, 1908 (V of 1908).

153. List of debtor's property.

- The officer to whom the inquiry has been entrusted shall, after completing his investigation, furnish the Collector with a list of the debtor's property, giving in the case of both movable and immovable property a complete description of the same, sufficient for its identification by the officer deputed to attach it, and the evidence available to show that the property in question belongs to the debtor.

154. Further instructions for execution.

- After receiving the above report, the Collector, in case the debtor does not come forward to make arrangements for the settlement of the decree, shall furnish the Public Prosecutor with a copy of the list of debtor's property, and such further instructions and papers as may be necessary to enable the Public Prosecutor to apply for the execution of the decree. If the instructions received by the Public Prosecutor from the Collector are incomplete having regard to the provisions of Order XXI of the Code of Civil Procedure, 1908(V of 1908), the Public Prosecutor shall return the papers to the Collector and ask for supplementary instructions.

155. Attachment of debtor's property.

- Upon the Court issuing orders for the attachment of the debtor's property, the Collector shall depute some-one to accompany the attaching officer. and to point out the property.

156. Claims by third parties.

- In case claims are made by third parties to the property attached, the officer on whose report the property was attached shall be directed to collect the evidence, by which it is proposed to show that the property belongs to the debtor, and he shall be present in Court and instruct the Public Prosecutor when the case comes for trial.

157. Instructions for satisfaction or taking out of execution.

- When the Public Prosecutor receives from the Collector instructions to satisfy or to take out execution of a decree he shall note the date of receipt on the back of the instructions and shall then at once carry them into effect, and shall be, from the date of receipt of instructions, responsible for all proceedings in Court in furtherance of them.

158. Payments in decree to be certified to Court.

- Any sum due to the Government under a decree, may if convenient, be recovered otherwise than through the agency of the Courts, but every payment made towards the satisfaction of the decree must under rule 2 of Order XXI of the First Schedule of the Code of Civil Procedure 1908 (V of 1908) be certified by the Public Prosecutor to the Court whose duty it is to execute the decree.

159. Payment of decretal money to Collector.

(1) When money has been paid into Court in satisfaction of a decree, the Public Prosecutor shall at once obtain an application for a payment order duly signed by the Collector and request the Court to grant him a payment order for the amount in favour of the Collector and forward the same, when received to the Collector. (2) A Public Prosecutor has no authority and the Collector cannot authorise him to receive money direct from Court or from any person indebted to the State, or to give receipts or valid discharges for any sum due to Government on any account whatsoever.

160. Appropriation of recoveries in decrees.

- Unless otherwise directed by the Court, all recoveries in a decree should first be appropriated towards the amount decreed as costs, then towards the amount decreed as interest and lastly towards the amount decreed as principal.

161. Recoveries to be credited to the department concerned.

- All sums realised in satisfaction of a decree should be credited to the department to which the decree relates, and notice of the credit should be given by the Collector to the departmental officer as soon as possible after the credit has been made. Note:- The following instructions have been issued by the Finance (B) Department vide Circular No. D. 4412/F. 4(144)F.(B)/56. dated the 30th April, 1958, regarding the classification of receipts on account of award of costs in civil cases against the Government :- "So far the costs awarded by the Courts in Civil Cases were credited to the head XXI - Administration of Justice but according to general principles of classification mentioned in the General Financial and Account Rules, the classification of transactions in Government accounts should have closer reference to the Department in which the revenue or expenditure occurs, than to the object of the revenue or expenditure or the grounds upon which it is sanctioned and as costs are payable by the Departments when awarded against Government, it has been decided with the concurrence of the Law Department and in consultation with the Accountant General that in future the receipts in Civil cases on account of costs awarded by the Courts, should be credited as Miscellaneous receipt of the Department concerned."

162. Applications for stay of execution to be opposed.

(1) Unless there are any special reasons to the contrary, every application made to an appellate Court for staying the execution of a decree passed in favour of the Government should be strenuously

resisted. The Public Prosecutor should invite the attention of the Court to rule 5(3) of Order XLI of the First Schedule to the Code of Civil Procedure, 1908(V of 1908) and should urge -(i)that the Government was not responsible for the litigation and had done everything in its power to avoid it; and(ii)that if the decree be reversed on appeal, the Government is in a position to refund any amount which may have been recovered in execution.(2)If the Court allows the application, the Public Prosecutor should see that the security given by the appellant is sufficient to cover the amount decreed and the costs of the appeal.

163. Inquiries about judgment debtor s property to be made.

- If execution of a decree passed in favour of the Government is stayed by order of the appellate Court, the Public Prosecutor should immediately inform the Collector who should in the interval before the decision of the appeal have all necessary inquiries made as to the property of the judgment debtor unless such information has already been collected.

164. Quarterly statement of cases for realisation of decrees.

- The Public Prosecutor shall furnish the Collector with a quarterly statement of cases in which any steps have been taken for the realisation of a decree during the quarter. The statement will show the name of the case, the steps taken and the result.

165. Entry In register from the statement.

- Upon receiving this statement, the Collector shall make the necessary entries in his register, and shall call for explanation if required, in those cases in which nothing has been done. If the explanation is unsatisfactory, the matter must be reported to the Legal Remembrancer.

166. Half-yearly statements of decrees.

- A half-yearly statement in Form D of appendix III shall be submitted by the Collector to the Legal Remembrancer on the 15th July and 15th January regarding Government decrees.

167. Legal Remembrancer s power to issue directions.

- If the Legal Remembrancer consider that the progress made in the execution of any decree is un-satisfactory, he may issue such orders and directions as he may consider necessary to the Collector. In case of gross neglect of or in attention to the order issued, the Legal Remembrancer may bring the matter to the notice of the Government.

168. Report when costs irrecoverable.

- When the Collector is of opinion that any sums on account of claims decreed or of costs adjudged in favour of the Government are absolutely irrecoverable he shall submit a report to the Legal

Remembrancer for remission in form E of appendix III.

169. Legal Remembrancer's power to write off costs.

- If the Legal Remembrancer, after such inquiry, if any, as he may consider necessary, is satisfied that every available measure has been taken towards the execution of decree, he may report the fact to the Government for orders with his own remarks and the Government may pass such order as it may think fit.

170. Head of Department and Government may write off irrecoverable decreed claims.

- Sums on account of claims decreed in favour of the Government which are found to be irrecoverable can be Written off by the head of the department concerned, if they do not exceed Rs. 200/-. If they exceed Rs. 200/- they can be written off only by the Government. If the Legal Remembrancer on receiving a report under rule 22 of any sum is satisfied that it cannot be recovered, he shall -(1)if the sum does not exceed Rs. 200/- obtain the orders of the department concerned; and(2)if the sum exceeds Rs. 200/- submit a report to the Government stating the circumstances under which the sum became due to the Government the legal proceedings which resulted in the sum being decreed the steps taken for the satisfaction of the decree and the causes which have rendered the satisfaction of the decree impossible and asking for sanction of the Government to the writing off of the sum found to be irrecoverable.

171. Officer-in-charge of Execution Department.

- In every district, a senior Assistant Collector at headquarters should be placed in-charge of the work.

172. Definition of Collector.

- In this Chapter, the word "Collector" includes any Assistant Collector who may be in immediate charge of the Execution Department under the general control of the Collector.

Chapter XVI

Suits by or against Government Servants

173. Suits against Government Servants.

(1)The procedure and principles of rules 82 to 86 shall be applicable to civil suits instituted against Government servants.

174. Notice in suits against Government Servants.

- No suit may be instituted against a Government servant in respect of any act done by him in his official capacity until the expiration of 2 months next after notice has been delivered to him or left at his office.

175. Dismissal of suits brought without notice.

- If any such suit is brought against a Government servant without the proper notice, he should at once represent the matter to the Court and ask that the suit should be dismissed under section 80 of the Code of Civil Procedure, 1908 (V of 1908). Note :- In suit by or against Government servants, the Government servant concerned will be the officer-in-charge.

Chapter XVII

Suits relating to Public Matters

176. Officers who may institute or consent to the institution of suits relating to Public matters.

(1) Under section 91 of the Code of Civil Procedure, 1908 (V of 1908) as suit for relief against nuisance may be instituted by the Advocate-General, or by 2 or more persons who have obtained his consent in writing. (2) Under section 92 of that Code, a suit relating to a breach of a trust created for public purposes of a charitable or religious nature, or asking for the direction of the Court for the administration of such a trust, may be instituted by the Advocate-General or by two or more persons interested in the trust who have obtained his consent in writing. (3) Under section 93 of the Code, the powers conferred by section 91 and 92 on the Advocate-General are exercised with the previous sanction of the State Government also by the Collectors within their respective districts.

177. Procedure to be followed when applications are addressed to the Advocate-General.

- When the Advocate-General receives an application for consent to the institution of a suit under sections 91 and 92 he may dispose of it or may forward it to the Collector concerned for holding an inquiry on such lines as may be indicated in the forwarding endorsement. On receipt of the proceedings of inquiry, the Advocate-General may, if necessary hear the parties in person or through their counsel and pass such final orders as he may think fit.

178. Procedure to be followed when applications are addressed to the Collector.

(1) When a Collector receives an application for consent to the institution of a suit under sections 91 and 92 other than the one received by him for enquiry under the rule 176, he should order an

enquiry to be made and, in case he is of opinion that consent should be given. He should forward the papers relating to the enquiry together with a report containing his opinion to the State Government for previous sanction as required by section 93 of the Code of Civil Procedure, 1908 (V of 1908). (2) In the case of an application under section 92 the enquiry may as far as possible be directed towards the following issues :-(i) Does a trust exist for public purposes of charitable or religious nature ?(ii) Has there been a breach of such trust ?(iii) Have the applicants an interest in such trust ?(iv) Are they fit and proper persons to be entrusted with the conduct of the suit ?(3) In the case of an application under section 91, the enquiry may as far as possible, be directed towards the following issues :-(i) Whether there exists public nuisance, if so, of what nature ?(ii) Are the applicants fit and proper persons to be entrusted with the conduct of the suit ?(4) The inquiry need not be elaborated and only a prima facie case need be made out on each issue by the applicants. The inquiry should not be allowed to develop into a regular trial.

179. Fresh applications relating to matters disposed of not to be entertained.

(1) When an application for consent to the institution of a suit under section 91 or section 92 of the Code is disposed of by the Advocate-General or Collector no fresh application relating to the same subject matter should be entertained by either officer. (2) A copy of an order passed by the Advocate-General dismissing an application under section 91 or 92 of the Code shall be sent for information to the Collector and vice versa.

180. Procedure when suit proposed to be instituted by Government Agency.

(1) When the Collector considers that the circumstances require that a suit relating to a public matter should be filed by himself or the Advocate-General he shall follow the procedure laid down in Chapter XII as if the suit were being instituted on behalf of Government. (2) In making the report required by rule 125 (a) the Collector shall report specially on the circumstances rendering it expedient that the suit should be instituted by Government agency.

Chapter XVIII

Pauper suits and Appeal

181. Notice to Public Prosecutor (Government Pleader).

(1) When an application to sue or to appeal in forma pauperis is filed in court, notice is given to the Government Pleader under rule 6 of Order XXXIII or rule 1 of Order XLIV of the first schedule to the Code of Civil Procedure, 1908, (V of 1908), as the case may be. (2) On receipt of the notice, the Public Prosecutor shall at once submit a report to the Collector setting forth :-(a) the name, description and place of residence of the applicant; (b) the relief claimed; (c) the schedule of property belonging to the applicant; and (d) the date fixed for hearing. (3) The Public Prosecutor may, if necessary, take steps for obtaining an adjournment of the hearing of the application for a period sufficient for the completion of the enquiry by the Collector.

182. Public Prosecutor s duty to examine the application.

- The Public Prosecutor shall examine the application and ascertain that the procedure enjoined by rules 2 and 3 of Order XXXIII of the first schedule to the Code of Civil Procedure 1908 (V of 1908), has been followed, and that none of the objections mentioned in rule 5 of Order XXXIII of the Code can be taken to the petition. If he discovers any error or objection, he shall take the first opportunity of bringing it to the notice of the court in written petition.

183. Inquiry into pauperism and instructions to Public Prosecutor.

(1)On receipt of the Public Prosecutor's report the Collector will, if necessary, with the assistance of the Superintendent of Police, cause an inquiry, will instruct the Public Prosecutor whether he should appear or not to oppose the application.(2)If the Collector decides that the application should be opposed, he will also forward to the Public Prosecutor all the papers relating to the inquiry made by him.

184. Public Prosecutor to appear in pauper cases only when directed by the Collector.

- The Public Prosecutor should not appear to oppose an application to sue in forma pauperis unless directed to do so by the Collector. He should, however, appear to oppose all applications for leave to appeal in forma pauperis.

185. Special direction in pauper appeals.

- Application for leave to appeal in forma pauperis are often admitted when they might be successfully opposed under rule 1 of Order XLIV of the first schedule to the Code of Civil Procedure. 1908 (V of 1908). Such applications can only be admitted when the Court, upon a perusal of the application and of the judgment and decree against which the appeal is made, sees reason to think that the decree is contrary to law or to some reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust. The point must whenever possible, be taken by the Public Prosecutor and strongly pressed upon the notice of the Court.

186. Collector to satisfy If the application is not collusive.

- In some cases persons who cannot decide their disputes without the intervention of a civil court collude to bring a suit in forma pauperis. In other cases persons who would ordinarily all appear as plaintiffs put forward one of their members, who is a pauper as the sole plaintiff and the rest are arrayed as proforma co-defendants. Before deciding not to oppose an application to sue in forma pauperis, the Collector must satisfy himself that there is no ground for suspecting collusion of any kind.

187. Costs to be claimed.

- When an application to sue or to appeal in forma pauperis is opposed by the Public Prosecutor he should invariably ask the court to award him his costs in case the application be refused, and in such case he should obtain a copy of the order passed and submit it to the Collector.

188. Public Prosecutor to examine decrees in pauper cases.

- When the application to sue or to appeal in forma pauperis has been allowed and an order is made under rule 10, rule 11 or rule 12 of Order XXXIII of the first schedule to the Code of Civil Procedure, 1908 (V of 1908), the court is required by rule 14 forthwith to cause a copy of the decree to be forwarded to the Collector. The Public Prosecutor should examine this decree carefully and see that all Government claims have been definitely included and charged by the Court to one of the parties to the suit. If this has not been done he should immediately apply for amendment of the decree.

189. No delay in execution.

- When the case has been finally decided by an order rejecting the application or by a decree in the suit, the Public Prosecutor shall, without any delay, submit a report in Form "F" of Appendix III to the Collector, and ask for instruction as to the steps to be taken to recover the Government dues. It is very necessary that there should be no delay in taking out execution in such cases.

190. Pauper cases In High Court.

- In the High Court, copies of the decrees in appeals in forma pauperis will be supplied to the law officers attached to the court, and they should forward them without delay to the Legal Remembrancer. The Legal Remembrancer shall send such copies to the Collector concerned with instructions that proper steps be immediately taken to recover the dues of the State.

191. Duties of the officer-in-charge of the pauper cases.

- The Collector shall on receipt of a copy of the order mentioned in rule 161 or the decree mentioned in rule 162 or rule 164 enter it with the connected papers and subsequent proceedings upon a file. The file should be placed in charge of an Assistant Collector whose duty it shall be to advise the Public Prosecutor as to the mode of execution, to ascertain the available assets and to proceed systematically in the case until the Government's claim is satisfied or until sanction is obtained to write off as irrecoverable any sums due to the Government. Where execution is sought by sale of immovable property such officer shall supply the Public Prosecutor with copies of all the papers required by law to be filed in such proceeding.

192. Register of pauper cases.

- The Collector shall maintain a register in Form "G" of Appendix III and each case on a separate page. Entries in the first five columns shall be made from the Public Prosecutors' report submitted under rule 161 or from a copy of the decree received under rule 162 or 164. As the case proceeds, a memorandum in column 6 shall be added showing the amount of stamp duties realised and costs recovered.

193. Sanction required to write off irrecoverable sums.

- When after every available effort has been made, any amount due to Government is found to be irrecoverable, a report shall be made by the Collector to the Legal Remembrancer in Form "H" of Appendix III who will obtain the sanction of the Government for writing off the amount. On receipt of sanction the amount shall be written off and the case struck off the file. The date of such sanction shall invariably be entered in Form "G" of Appendix III before the file is deposited.

194. Government dues first charge on the subject matter.

- The special attention of Collectors and Public Prosecutors is invited to the provisions of rule 10 of Order XXXIII of the first schedule to the Code of Civil Procedure, 1908 (V of 1908). That rule provides that if the plaintiff succeeds in the suit, the amount of court fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper shall be recoverable by the Government from any party ordered by the decree to pay the same and shall be a first charge on the subject-matter of the suit. When the plaintiff has been successful and an application is submitted for sanction to write off as irrecoverable any amount decreed as Court fees, it should invariably be shown that this amount cannot be recovered as a first charge on the subject-matter of the suit.

195. Expenses to be first incurred by Public Prosecutors.

- The charges entailed in opposing an application for leave to sue or to appeal in forma pauperis and in execution of decrees in such cases are generally small. They should ordinarily in the first instance be defrayed by the Public Prosecutor and afterwards recovered by him as provided by rule 170.

196. Annual statement by Collectors.

- The Collector shall submit to the Legal Remembrancer yearly on the 30th April, in Form "I" Appendix III an abstract statement showing the progress made in recovering all sums due to the Government in pauper suits and appeals. Collectors will also at the same time submit a report in Form "J" of Appendix III with regard to applications for leave to sue or to appeal as a pauper which were opposed by the Government during the year.

197. Bills in pauper suits.

- The bill for fees and other law charges in connection with pauper proceedings shall be prepared separately for each case by the Public Prosecutor and forward to the Collector who shall satisfy himself that (1) the Public Prosecutor actually appeared in the case under the written orders of the Collector and (2) that the Court fee payable on the plaint was correctly calculated. The Collector will pass on the bill with a certificate as aforesaid to the Legal Remembrancer for counter signature. Note :- Under rule 569 of the General Rules (Civil), 1952, the following provision has been made in respect of legal fees allowed to Public Prosecutors (Government Pleaders) in such cases :- "Fees in inquiries into pauperism. - In an inquiry as to pauperism under Order XXXIII and XLIV of the Code, the fee payable to a Government Pleader, who has opposed an application for leave to sue as a pauper, or has applied for the dispaupering of the plaintiff, shall be Fifteen per centum on the amount of the Court fee that would be payable on the plaint if the suit were not brought by a person alleging pauperism; provided that no fee in excess of Rs. 112/8/- shall be payable under this rule. A Government Pleader who appears in the proceedings for the execution of a decree without having appeared in Court in the proceedings prior to decree, is entitled to the fee prescribed in the first part of this rule".

198. No power of attorney to Public Prosecutor (Government Pleader) in such cases.

- The Government Pleader in such suits and appeals is an officer recognised by the law and by the Court itself when it issues a notice upon him, and needs no power of attorney when he appears in cases under Orders XXXIII and XLIV of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908).

199. Where there is no Public Prosecutor (State) notice to be served on the Collector.

(1) If no Public Prosecutor State is stationed at the Headquarter of any court, the notice referred to in rule 155 will be served on the Collector. The Collector is appointed to be Government Pleader for his district for discharging the functions of Government Pleader under rules 6 and 9 of Order XXXIII of the first schedule of the Code of Civil Procedure, 1908, (V of 1908), in respect of such cases arising in Court at the Headquarters of which no Government Pleader is stationed. (2) If the Collector decides that the application to sue or appeal in forma pauperis is fit to be opposed, he will ordinarily engage a local lawyer to appear and act on behalf of the Government. Note :- The local lawyer so engaged will be selected from amongst the panel of lawyers for Government cases where such a panel has been appointed.

Chapter XIX

Writ Cases

A. - Writ Cases in the High Court[199A. Report on notice of demand of Justice. - (1) On receipt of the notice of demand of justice, the department concerned shall without loss of time appoint an officer-in-charge in the case. A copy of the such order shall be endorsed to the Government Advocate at Jodhpur as well as at Jaipur and also to the Law and Judicial Department.(2)As soon as the notice of demand of Justice is received before the filing of a writ the officer-in-charge shall prepare a detailed para-wise report of the case after making due enquiry and such report together with all relevant information and copies of relevant documents shall be sent to the Government in Law and Judicial Department through the Administrative Secretary concerned together with comments within 10 days after the receipt of the notice.(3)Such report shall be immediately examined in the Law and Judicial Department and the Law and Judicial Department shall obtain the order of the Government whether the claim of the notice given should be accepted or the notice should be ignored.] [Rule 199A added by Notilication No. F.47(37) Judl-74. dated 15-10-1979 vide G.S.R. 38, Published In Rajasthan Gazzette Extra-ordinary part IV- C(I), dated 15-10-1979, page 1=1979 RSCS page 462 note 336.]

200. Procedure in cases in the High Court under Article 226 of the Constitution.

(1)Whenever a notice of a petition under Article 226 of the Constitution is received by an officer, he shall immediately forward the same to the Administrative Department of Government concerned with the subject-matter of the petition and endorse a copy to the Law and Judicial Department (C) for information.(2)[In case where no officer-in-charge has been appointed under rule 199-A, on the receipt of the notice of writ, the department concerned shall without loss of any time, appoint an officer-in-charge of the case. A copy of such order shall be endorsed to the Government Advocate at Jodhpur or at Jaipur, as the case may be. and also to the Law and Judicial Department"] [Substituted by Notification No. K. 47(37), Judl/74. dated 15-10-1979 vide G.S.R. 38, Published. In Rajasthan Gazzette Extra-ordinary part IV-C(1), dated 15-10-1979, page 1=1979 RSCS page 462 note 336.](3)The Officer-in-charge shall immediately make such inquiry into the facts of the case, as may be necessary and prepare a report answering parawise all the points raised in the petition and giving such additional information as is likely to be of help to the Law Officer concerned in the conduct of the case. If the Law and Judicial Department had been consulted at any stage, the opinion of that Department shall also be specifically referred to in the report.(4)The report along with true copies of all documents relevant to the case in duplicate shall be forwarded to the Government Advocate, who shall, in consultation with the officer-in-charge, prepare the return for being filed in the High Court. Any counter affidavit which the Government Advocate considers necessary shall be prepared by him on the instructions of the officer-in-charge. A copy of the draft return and counter affidavit will be sent by the officer-in-charge to the Law and Judicial Department who will obtain the orders of the Government thereon and then send back the same. The officer-in-charge shall arrange for the counter-affidavit being sworn to by the appropriate officer. A copy of return and any counter-affidavit filed in court will be sent by the Officer-in-charge to the Law and Judicial Department and the concerned Administrative Department for information. The officer-in-charge shall instruct the Government Advocate from time to time regarding the case whenever necessary.(5)(a)Where in any petition under Article 226 of the Constitution any officer has been made a party in a judicial or quasi-judicial capacity, such officer shall prepare a return answering

para-wise all the points raised in the petition and send the same to the Administrative Department concerned, with his opinion whether representation on his behalf by a Law Officer is necessary. Note. - Normally representative by a Law Officer should not be considered necessary in writ cases which do not involve any question affecting the interests of Government or substantial question of Law. (b) If the Administrative Department considers that representation in any such case by a Law Officer is necessary, it shall send the papers to the Law and Judicial Department for being forwarded to the Government Advocate for necessary action. Where representation is not considered necessary, the Government Advocate at Jodhpur should be informed, accordingly, through the Law and Judicial Department in such a case no return shall be filed in the High Court. (6) As soon as the case is decided, the Government Advocate at Jodhpur shall intimate the result to the officer-in-charge and if the decision is adverse to Government, he shall also forward to that officer a copy of the order along with his opinion whether an appeal should be filed. The officer-in-charge shall immediately transmit to the Department concerned all information and papers, if any, received from the Government Advocate. If an appeal is considered necessary, the Department concerned shall take a decision in the matter in consultation with the Law and Judicial Department. (7) When a writ case in the High Court is entrusted to the Advocate-General, the Government Advocate shall assist him. Note. - When in any such case, costs are awarded to the Government, the Government Advocate shall obtain a certified copy of the memo of costs without delay and send the same to the officer-in-charge who shall take steps to recover the amount through the court in consultation with Government Advocate if the petitioner fails to make payment on demand by the officer-in-charge. B. - Writ Cases in the Supreme Court.

201. Procedure in cases in the Supreme Court under Article 32 of the Constitution.

(1) Whenever a notice of a petition in the Supreme Court under Article 32 of the Constitution is received by any Department of the Government, that Department shall forthwith endorse a copy thereof and of its enclosures (in duplicate) to the Law and Judicial Department (C) for information, and at the same time, take necessary steps for collecting all such information and documents as may be material to the case. The concerned Department shall also, at the earliest, name and appoint a senior officer conversant with the facts of the case as officer-in-charge who shall, represent the Government and shall be generally responsible for the preparation and conduct of the case. (2) On receiving intimation of notice of a petition under Article 32 of the Constitution, the Law and Judicial Department, shall intimate the fact to the Advocate-on-Record at New Delhi, Assistant Government Advocate, Central Agency, Room No. 138, "P" Block, Ministry of Law, New Delhi. Telegraphic address is cen-gency and shall also send him a Vakalatnama. If the notice is received directly in the Law and Judicial Department it shall forward the same together with its enclosures to the Department concerned which shall then take necessary steps for the appointment of the officer-in-charge and for collecting all such information and documents as may be material to the case as indicated in the preceding paragraph. (3) The Department concerned shall without delay prepare the return and the affidavit in consultation with the Government Advocate at Jodhpur and forward a duly signed return and a duly signed and sworn affidavit to the Law and Judicial Department (C) along with 9 spare copies thereof (in all 10 copies). In complicated cases the Department concerned shall also furnish a separate note of instructions for the use of the Standing

Advocate-on-Record of the Central Agency at New Delhi. Such note of instructions should be sent in duplicate.(4)The Law and Judicial Department shall then transmit all the papers mentioned above together with necessary instructions for the proper conduct of the case to the Standing Advocate-on-Record of the Central Agency at New Delhi and shall also specify the counsel who will argue the case in Supreme Court.(5)In respect of writ petitions against an officer of the Government in his judicial or quasi-judicial capacity where Government interests are not involved, the guiding principles with regard to the need for representation by a Law officer will be the same as set forth in para (5) (a) and (b) of rule 200.(6)When a writ case in the Supreme Court is assigned by the Government to the Advocate-General, the Government Advocate will assist the Advocate-General in the preparation of the return and the affidavit and in drawing up any instructions for the proper conduct of the case by the Standing Advocate-on-Record and counsel at New Delhi.Note 1. - The expression "Government Advocate" in 200 and 201 rule includes any Law Officer other than the Advocate-General to whom any particular case is, subject to any specific orders to the Government, assigned by the Government Advocate.Note 2. - When in any such case in the Supreme Court costs are awarded to the Government expeditious action should be taken by the officer-in-charge to recover the costs out of the security amount deposited by the petitioner by giving necessary notice under rule 409 of the Rules of the High Court of Rajasthan, 1952.

Chapter XX

Miscellaneous

202. Division of fee between an outgoing Law Officer and his successor.

- When a Law Officer of the Government ceases to hold office, the cases to which the Government or the Court of Wards is a party and which are pending at the time when he hands over charge, shall, unless directed otherwise by the Legal Remembrancer, be conducted by the new incumbent of the office, and the fee in such cases shall, in the absence of a mutual agreement between the outgoing Law Officer and his successor, be divided between them by the Legal Remembrancer provided that the fee payable to them in any case shall not exceed the total fee payable for that case in accordance with the rules.

203. Legal Remembrancer's decision final in cases of remuneration, etc.

- When any question arises as to the amount of fees, travelling allowance or halting allowance to which a Law Officer of the Government is entitled, the matter shall be referred to the Legal Remembrancer whose decision shall be final, except in the case of Advocate-General when the matter shall be referred to Government for orders.

204. Division of fee between Law Officers of two districts.

- Whenever in any suit one part of it has been conducted by the Law Officer of one district and another part by the Law Officer of another district, only one regular fee shall be charged, and such fee shall be divided by the Legal Remembrancer between the two Law Officers concerned in

proportion to the labour undergone by each Law Officer.

205. Orders as regards costs to be scrutinized by the Public Prosecutors.

(1) It is the duty of Public Prosecutors in all suits and applications in which they appear on behalf of Government, and especially in pauper suits and applications to sue in forma pauperis to scrutinize carefully the Court's order of costs 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 the Government costs, they should 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.

206. Recovery of documents filed on behalf of Government.

- It shall be the duty of the Public Prosecutors to take back from the Court all exhibits filed on behalf of Government 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 Collector or other officer concerned.

207. Monthly return to be sent by the Public Prosecutors to the Legal Remembrancer.

(a) All Public Prosecutors shall send a return to the Legal Remembrancer on the first of every month in form of Appendix III. When there are no cases to be entered in the return it shall be sent blank. (b) The Public Prosecutors shall also before 31st January of each year send a similar return giving the requisite information for the preceding year.

208. Maintenance of registers.

- The following registers shall be maintained in the office of the Collector :-(i) a register of notices received in Form K of Appendix III; (ii) a register of civil suits or other proceedings for or against Government in Form L, in Appendix III; (iii) a register showing recovery of court-fee and other costs in pauper suits in Form M in Appendix III; (iv) a register showing the work done and the accounts of fees of Public Prosecutors and Additional Public Prosecutors and other legal practitioners in Form N in Appendix III; (v) a register of civil suits or other proceedings for or against Government servants in Form O in Appendix III; (vi) a register of civil suits or other proceedings by or against Government servants for anything done by them in their official capacity in Form P in Appendix III;

209. Returns.

- The Collector shall send to the Law and Judicial Department, annual statements in Forms Q and R in Appendix III. These statements shall be sent on the 1st February, of the next following year.