

**THE RULES FOR THE CONDUCT OF THE  
LEGAL AFFAIRS OF GOVERNMENT, 1984**

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# LAW AND JUDICIARY DEPARTMENT

Mantralaya, Bombay-400 032, dated the 15th November 1984

## RESOLUTION

No. LOR-1284/(53B)-IX-(LOR Cell).—In supersession of the Rules for the Conduct of the Legal Affairs of Government, 1939 and in supersession of all the existing Government Notifications, Resolutions, Circulars or Orders issued in this behalf and in force in the State of Maharashtra or any part thereof, the Government of Maharashtra hereby makes the following rules for conducting the legal affairs of Government of Maharashtra, namely:—

### CHAPTER I

#### PRELIMINARY

1. *Short title and extent.*—(1) These rules may be called the Rules for the Conduct of the Legal Affairs of Government, 1984.

(2) They extend to the whole of the State of Maharashtra.

2. *Definitions.*—In these rules, unless the context otherwise requires,—

(a) “ Advocate-General ” means any person appointed as an Advocate-General by the Governor of Maharashtra for the State under article 165 of the Constitution;

(b) “ Appendix ” means an Appendix appended to these rules;

(c) “ Code of Civil Procedure ” means the Code of Civil Procedure, 1908 (V of 1908);

(d) “ Code of Criminal Procedure ” means the Code of Criminal Procedure, 1973 (II of 1974);

(e) “ Constitution ” means the Constitution of India;

(f) “ court ” means the courts governed by the Code of Civil Procedure; and the courts established within the State under the Code of Criminal Procedure, the Bombay Civil Courts Act, 1869 (XIV of 1869), the Bombay City Civil Court Act, 1948 (Bom. XL of 1948) and the Presidency Small Cause Courts Act, 1882 (XV of 1882) and includes the High Court;

(g) “ day ” means any portion of time between a midnight and the following midnight;

(h) “ fee ” means the fee as prescribed by Government in the Law and Judiciary Department or as taxed by the court in the bill of costs to which the Law Officer is entitled;

(i) “ Form ” means a form appended to these rules;

(j) “ Government ” means the Government of Maharashtra;

(k) "Government officer" or "officer" means an officer of Government acting in his official capacity;

(l) "Government Pleader" means an advocate appointed to that post by Government in the Law and Judiciary Department,—

(i) in relation to the High Court at Bombay, to conduct civil cases, appeals, applications, references, petitions including petitions for exercise of powers under articles 226 and 227 of the Constitution and other proceedings filed on the Original Side and Appellate Side of the High Court at Bombay for and on behalf of the State or its officers and includes an Additional Government Pleader and Assistant Government Pleader and Honorary Assistant to a Government Pleader;

(ii) in relation to the High Court at Nagpur and Aurangabad, to conduct civil cases, appeals, applications, references and petitions including petitions for exercise of powers under articles 226 and 227 of the Constitution, for and on behalf of the State or its officers and includes an Additional Government Pleader and Assistant Government Pleader and Honorary Assistant to a Government Pleader;

(iii) in relation to the Bombay City Civil Court at Bombay to conduct civil cases and other proceedings for and on behalf of the State or its officers and includes an Additional Government Pleader and Assistant Government Pleader;

(iv) in relation to the Court of Small Causes at Bombay; to conduct civil cases, appeals and other proceedings for and on behalf of the State or its officers;

(v) in relation to any court at the district headquarters in the mofussil, to be called a District Government Pleader, to conduct civil suits, appeals and other proceedings for and on behalf of the State or its officers and includes an Additional or Assistant Government Pleader and Honorary Assistant to a District Government Pleader;

(vi) in relation to any court at taluka headquarters, to be called a Subordinate Government Pleader, to conduct civil cases, applications and other proceedings for and on behalf of the State or its officers;

(vii) in relation to the Maharashtra Revenue Tribunal, to be called a Special Government Pleader or Additional Special Government Pleader, to conduct appeals, revisions, review applications or any other application for and on behalf of the State or its officers;

(m) "High Court" means the High Court of Judicature at Bombay and includes its Benches at Nagpur and Aurangabad;

(n) "Law Officer" means an advocate appointed by Government in the Law and Judiciary Department, to conduct cases on behalf of the State or its officers before any court or the Maharashtra Revenue Tribunal and includes the Advocate-General, Government Pleader and Public Prosecutor;

(o) "mofussil" means the area of the State outside the limits of Greater Bombay as defined in sub-section (2) of section 2 of the Greater Bombay Laws and Bombay High Court (Declaration of Limits) Act, 1945 (Bom. XVII of 1945);

(p) "Public Prosecutor" means any advocate appointed as a Public Prosecutor by Government in the Law and Judiciary Department for the High Court and for every district in the State under sub-sections (1) and (3) of section 24 of the Code of Criminal Procedure, for conducting any prosecution, appeal, application or other proceedings on behalf of the State and includes an Additional Public Prosecutor;

(q) "Special Counsel" means an advocate specially appointed by Government in the Law and Judiciary Department, to conduct any case, civil or criminal, anywhere in the State or outside the State for and on behalf of the State or its officers and includes a Law Officer so appointed;

(r) "Special Public Prosecutor" means an advocate specially appointed by Government in the Law and Judiciary Department under sub-section (8) of section 24 of the Code of Criminal Procedure, to conduct any criminal case or class of cases on behalf of the State;

(s) "State" means the State of Maharashtra.

## CHAPTER II

THE LAW AND JUDICIARY DEPARTMENT AND THE REMEMBRANCER  
OF LEGAL AFFAIRS.

## Part A. The Law and Judiciary Department.

3. *Functions of Department.*—The Law and Judiciary Department, as the name connotes, functions as legal advisory department to Government and as an administrative department for Judiciary. This department tenders legal advice mainly to administrative departments in the Mantralaya on the following subjects :—

- (1) Legal points arising under the Constitution, State and Central Acts, rules, regulations, service matters etc.;
- (2) Legislation (both principal and subordinate);
- (3) Litigation (both civil and criminal);
- (4) Conveyancing.

*Note.*—Under item 10 of the First Schedule to the Maharashtra Government Rules of Business made under Article 166 of the Constitution, the Government litigation, civil and criminal, is subject to the control of the Law and Judiciary Department.

## Part B. The Remembrancer of Legal Affairs.

4. *Powers of Remembrancer of Legal Affairs.*—The Remembrancer of Legal Affairs, who is also the *ex-officio* Secretary to Government, is the administrative head of the Law and Judiciary Department. He shall exercise the powers as set out hereinafter.

5. *Duties as an adviser to Government.*—It shall be the duty of the Remembrancer of Legal Affairs to tender advice to Government in any administrative department in the Mantralaya on any legal point arising under the Constitution, State and Central Acts and the rules, regulations, orders and notifications made thereunder, interpretation of statutes, service matters etc.

6. *References to Remembrancer of Legal Affairs by Government or its officers.*

(1) All the administrative departments in the Mantralaya may refer any matter on which they require opinion to the Remembrancer of Legal Affairs directly.

(2) All the heads of the departments may make direct references to the Remembrancer of Legal Affairs for advice or opinion only in respect of suits or other civil or criminal proceedings, which are actually pending in the Courts of Law and to which the State or its officers are parties or in which they are interested.

(3) The Collectors and the heads of the departments shall submit references other than the above, to Government in the administrative department concerned, in the first instance, which shall decide whether the opinion of the Remembrancer of Legal Affairs should be sought or not.

(4) A reference to the Remembrancer of Legal Affairs is necessary when a decision of Government in a particular case is dependent wholly or in part on the determination of a specific question of law, including practice and procedure, and that the Minister-in-charge of the department consequently requires to have before him the advice of the Remembrancer of Legal Affairs before he records his opinion or order. In such case a reference to the latter shall be made by the officer, not below the rank of a Deputy Secretary or any Desk Officer, without submitting the papers to the Minister for permission to make the reference. In all such cases the point on which opinion is sought must be clearly stated in the reference. However, the Remembrancer of Legal Affairs will not undertake to scrutinize letters and resolutions which do not involve any legal points. The wording of such letters and resolutions shall be finalised by the concerned departments themselves, and such cases shall not be referred to him unless a legal point is involved which should, while making the reference, be specifically stated.

(5) The Maharashtra Legislature Secretariat, in case of doubt or difficulty on any question of law, may initially refer the case to the concerned administrative department of the Mantralaya according to the subject matter of the case. The concerned administrative department after considering the case, if it feels necessary to do so, may refer the case to the Remembrancer of Legal Affairs for advice.

(6) If any matter referred to the Remembrancer of Legal Affairs for advice or any Legislative proposal referred to him for examination, is to be or likely to be placed before the Cabinet, then the concerned department should clearly state so in the note under which that matter or proposal is referred to him.

(7) If any administrative department wants to invite the Remembrancer of Legal Affairs or any officer of the Law and Judiciary Department to some inter-departmental meeting with an intention to assist the meeting in sorting out some points of law, which may arise during the discussion, such department should indicate clearly the legal point or points, which are to be discussed or likely to be discussed or likely to arise for discussion at the meeting, in the notes circulated for the meeting. Such notes should also be sent to the Remembrancer of Legal Affairs in advance to leave to him sufficient time to examine the points.

#### 7. Procedure for making a reference to Remembrancer of Legal Affairs.—

(1) The administrative departments, while making a reference to the Remembrancer of Legal Affairs for advice, should follow scrupulously the following requirements—

(a) the facts of the case in which the opinion is required should be clearly stated;

(b) the point or points on which the advice or opinion is required should be stated as precisely as possible; and

(c) the reference should be made by an officer authorised to do so, an officer not below the rank of a Deputy Secretary or the concerned Desk Officer;

(d) before making a reference, the department concerned should consider such previous opinions of the Remembrancer of Legal Affairs, as may be available in the Digests of Opinions, which have been supplied to all departments. These Digests as also recent opinions should be consulted before seeking the Remembrancer of Legal Affairs' opinion, and a reference should be made to any relevant opinion that may have a bearing on the point at issue. This procedure would help the Remembrancer of Legal Affairs in giving expeditious advice to the referring department;

(e) the drafts and the cases for opinion should not be sent to the Remembrancer of Legal Affairs till all the administrative questions have been finally decided in consultation with the various authorities;

(f) the drafts or notes should as far as possible be self contained; any suggestion which have been approved in the course of correspondence should be embodied in the drafts or notes forwarded to the Remembrancer of Legal Affairs;

(g) before sending the case to the Remembrancer of Legal Affairs for opinion the concerned department should consider the case on merits and come to certain conclusion and then refer the case to him for advice whether that conclusion is right or wrong;

(h) all references or statements for legal opinions sent to the Remembrancer of Legal Affairs should be in English as per rule 2(7) of the Maharashtra Official Languages (Excepted Purposes) Rules, 1966.

(2) Under the Desk Officer system, every Desk Officer, irrespective of his rank, is authorised to make such reference to the Remembrancer of Legal Affairs, where it is necessary to do so in connection with a case for which he is responsible. If possible, the subject matter should be personally discussed with the appropriate officer of the Law and Judiciary Department before a formal reference is made. This will help to ensure that the reference, when made, is clear and complete and no further time has to be lost in queries or back references. It must be noted, however, that any view expressed during such discussions are not to be considered as the considered opinion, advice or concurrence of the Law and Judiciary Department. Such opinion, advice or concurrence must be obtained in every case in writing after a formal reference has been made to and considered by the Law and Judiciary Department. Before doing so the Desk Officer concerned should verify with reference to the checklist mentioned below that all relevant questions in that list can be answered in the affirmative:—

(a) *Reference relating to drafting of new legislation or amendment of existing law—*

(i) Have the principles and broad features of the proposal been approved by Cabinet ?

(ii) Has the Cabinet given any general and special directions in regard to the processing of the proposal? If so, have such directions been followed?

(iii) Has priority for the proposed Bill been obtained from the Cabinet sub-committee?

*(b) Reference relating to scrutiny of statutory rules, notification or orders—*

(i) Has the approval in principle been obtained from the Secretary and, if appropriate, from the Minister-in-charge?

(ii) Have models of existing rules, notifications, or orders on the same or similar subjects been followed in preparing the draft?

(iii) Have two copies of the draft typed on half margin with double spacing been placed on the file for facilitating scrutiny?

(iv) Does the reference clearly state the point or points, if any, in connection with the draft, which require special examination by the Law and Judiciary Department?

(v) Has an up-to-date copy of the rules, notification or order proposed to be amended been placed on the file for ready reference?

*(c) Reference for opinion or advice regarding—(A) Interpretation of any law, rule or regulations.*

*(B) Any general legal principle arising out of a case—*

(i) Have the facts of the case been clearly and completely set out in a self-contained note in English?

(ii) Have the points or points on which the opinion or advice is required been precisely stated?

(iii) Has consideration been given to any previous opinion Remembrancer of Legal Affairs or the Law and Judiciary Department on similar cases, which may be available?

*(d) Reference relating to withdrawal of any prosecution—*

(i) Have the fact and circumstances of the case been clearly set out?

*Note.*—According to the present instructions, where the Remembrancer of Legal Affairs or the Law and Judiciary Department recommends withdrawal, the case has to be submitted through the Secretary, Home Department to the Chief Minister before orders are issued.

*(e) Reference relating to contracts or conveyancing i.e. drafting or scrutiny of documents.—Where any document is forwarded for scrutiny—*

(i) Have two clean typed copies, typed on half margin with double spacing, been put on the file?

(ii) If the document is to be executed in accordance with any scheme or Government Resolution; has a complete up-to-date copy of the said

scheme or Government Resolution together with a copy of the terms and conditions agreed upon between the parties have been included in the file ?

(iii) If the document is to be entered into by Government with any society, cooperative society, company or partnership firm ; has a copy of the bye-laws or constitution of such societies or cooperative societies, Memorandum and Articles of Association of the company, and partnership deed of the partnership been included in the file ?

(iv) If, in the document to be executed, there is a reference to any previous document ; has either the original document or a true copy thereof been included and if the proposal or document to be scrutinised is in English ?

8. *Matters on which opinion of Remembrancer of Legal Affairs may not be sought.*—Generally the opinion of the Remembrancer of Legal Affairs may not be sought on the following matters—

- (1) Points concerning mainly the questions of facts or policy matters;
- (2) Cases of hypothetical nature;
- (3) Ordinary departmental procedure or administrative matters;
- (4) Scrutiny of letters and resolutions which do not involve any legal point.

9. *Advice to be kept confidential.*—(1) It is emphasised that all advices and opinions given by the Remembrancer of Legal Affairs and the Advocate-General to the administrative departments are strictly confidential and therefore shall not be disclosed either to the public or to other Governments, including Central Government, without the permission of the Remembrancer of Legal Affairs. Any unauthorised disclosure may place Government in awkward and disadvantageous position in litigation besides raising question of privilege.

(2) (a) Whenever cases are referred to the Remembrancer of Legal Affairs for advice that information shall not be divulged to parties interested and that they shall not be directed to contact the Remembrancer of Legal Affairs or any of his subordinates ;

(b) if advice in any case is urgently required, the Remembrancer of Legal Affairs or any officer of the Law and Judiciary Department may be contacted personally or by letter, for expediting the advice.

10. *Grant of sanction for Departmental Enquiries and prosecutions.*—(1) The draft of charge-sheets and Statements of Allegations in Departmental Enquiries and the draft orders of previous sanction and consent under the Code of Criminal Procedure and the Prevention of Corruption Act, 1947 or the Explosive Substances Act, 1908 etc. shall be submitted to the Remembrancer of Legal Affairs for revision and scrutiny. To facilitate the work of his office, two copies of all such drafts typed on half margin shall be sent to the Remembrancer of Legal Affairs.

(2) The Statement of facts on which prosecution is to be based shall be embodied in the sanction or consent order. Many times facts are not correctly and precisely stated in the sanction orders with the result that the sanction or consent becomes vulnerable and the prosecution results in failure. In order to avoid any such contingency, the drafts of sanction orders and consent orders referred to in sub-rule (1), as far as possible, shall be shown to the concerned Public Prosecutors before sending them to the Remembrancer of Legal Affairs. The Public Prosecutors shall also scrutinize such sanction orders received from Government before they are filed in the courts and to bring any defects therein to the notice of the appropriate officer before the commencement of the prosecution.

(3) Before giving sanction or consent to the prosecution it is necessary to apply mind to the facts of each case. The concerned administrative department of the Mantralaya shall, therefore, call for all the relevant investigation papers and carefully go through them and get itself satisfied about the merits of each case.

(4) After the drafts are scrutinised by the Remembrancer of Legal Affairs, the administrative department concerned shall obtain the requisite previous sanction or consent order under the Code of Criminal Procedure, the Prevention of Corruption Act, 1947 or the Explosive Substances Act, 1908 etc. from the Minister-in-charge of that department.

11. *Local Authorities, Municipalities, Zilla Parishads not ordinarily entitled to advice except on certain conditions.*—(1) The local authorities such as Municipalities, Zilla Parishads in the State shall, as a general rule, be required to defend the legality of their own acts and proceedings and shall not seek advice of the Remembrancer of Legal Affairs or any other Law Officers. But in cases which mainly involve questions of the interpretation of statutes or rules, or in which there is a dispute between the local authority etc. and a third party, and in which Government is not in any way interested or likely to be interested, a local authority etc. may apply to the concerned Collector for obtaining the opinion of the Remembrancer of Legal Affairs. If the Collector considers that the interests of Government are not likely to be affected in any way and that the local authority etc. is not likely to be involved in any immediate litigation, he may refer the request to Government in the administrative department which, if it thinks proper, may obtain the opinion of the Remembrancer of Legal Affairs and communicate it to the Collector. The purport only of such opinion will be communicated by the Collector to the local authority etc.

(2) The Remembrancer of Legal Affairs may charge such fees as he may deem fit for giving his opinion to any local authority etc. Ordinarily a fee of Rs. 150 shall be charged, but if the case is complicated or of special importance, the Remembrancer of Legal Affairs may charge such higher fee as he deems proper. The decision of the Remembrancer of Legal Affairs as to the amount of the fee to be charged in any case shall be final.

(3) Government shall not be responsible in any way for the correctness of the opinion given by the Remembrancer of Legal Affairs or for the consequences of any action which a local authority etc. may take on the strength of such opinion.

12. *Opinions to Court of Wards not to be given.*—Unless Government in the administrative department concerned for special reasons or otherwise directs in any case, the Remembrancer of Legal Affairs shall not advise in any matter relating to a Court of Wards.

13. *Duties in respect of litigation.*—It is the duty of the Remembrancer of Legal Affairs to supervise all litigation, civil and criminal, in which the State or its officers are either parties or interested, in the following manner :—

(1) *In civil litigation.*—(a) to give advice to any administrative or head of the department, on any unofficial reference referred to him, in case of any doubt about the defensibility of any threatened suit and also to advise on any legal point arising out of any civil litigation pending in the court;

(b) to engage the Law Officer and to arrange for proper representation of the State or its officers in any civil proceeding before the subordinate courts, High Court and the Supreme Court and accord sanction for the institution or defence of such civil proceedings on behalf of the State or its officers;

(c) to approve the plaints, written statements, memoranda of appeals, cross objections, applications or their replies to be filed in the subordinate courts and High Court on behalf of the State or its officers;

(d) to decide whether an appeal should be lodged in the subordinate appellate court, High Court or the Supreme Court and to decide whether to file a writ petition in the High Court or the Supreme Court against any decision adverse to the State or its officers or to acquiesce in the said decision.

(2) *In criminal litigation.*—(a) to examine the proposals for filing criminal appeals/applications against the decisions or orders of acquittal or sentence or any interim orders passed by the subordinate courts and the High Court and to decide whether the said decisions or orders should be acquiesced in or not;

(b) to accord sanction for filing of criminal appeals/applications in the High Court and the Supreme Court and to instruct the Public Prosecutor in the High Court or the Government Advocate in the Supreme Court, as the case may be, for the purpose.

14. *Duties in respect of Law Officers.*—The Remembrancer of Legal Affairs, in his capacity as *ex-officio* Secretary to Government in the Law and Judiciary Department, is empowered :—

(1) (a) to issue appointment orders of all the Law Officers;

(b) to keep control over the working of all the Law Officers;

(c) to sanction their fees as per the rates prescribed by Government in the Law and Judiciary Department or decrees or bills of costs passed by the courts;

(d) to sanction special or enhanced fees to them under special circumstances;

- (2) to deal with—(a) establishment matters of all the Law Officers;  
 (b) interpretation of their service conditions rules;  
 (c) removal of their difficulties;  
 (d) periodical inspections of their offices;  
 (e) review of their performance;
- (3) (a) to appoint a Special Counsel or Special Public Prosecutor in any civil or criminal case, in which the State or its officers are either parties or in any way concerned;  
 (b) to decide their terms and fees and to make payment of their fees;
- (4) to decide upon the nature and facts of each case, as to whether the Advocate-General or any other lawyer or Law Officer should be engaged;
- (5) to countersign the bills of fees of the Law Officers in Land Acquisition cases which are not debitable to his grants;
- (6) to recommend the writing off of irrecoverable Government dues under any decree passed by the court.

15. *Delegation of functions.*—Such of the functions, powers and duties to be performed by the Remembrancer of Legal Affairs shall be carried out by the officers of the Law and Judiciary Department as may be entrusted or delegated to them by the Remembrancer of Legal Affairs by general or special orders.

### **Part C. Nagpur and Aurangabad Branches of the Law and Judiciary Department.**

16. *Litigation within Vidarbha Region.*—All civil and criminal litigation arising out of the nine districts of the Nagpur and Amravati Divisions shall be dealt with initially by the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur. The Government departments or officers, who are concerned with the Government litigation, civil and criminal, arising out of the nine districts of Nagpur and Amravati Divisions shall make references directly to the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur in the first instance.

17. *Litigation within Marathwada Region.*—All civil and criminal litigation falling within the jurisdiction of the High Court at Aurangabad shall be dealt with by the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Aurangabad. The Government departments or officers, who are concerned with the Government litigation, civil and criminal, arising out of the districts to which the jurisdiction of the High Court at Aurangabad extends, shall make references directly to the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Aurangabad in the first instance.

## CHAPTER III

### THE SPECIAL COUNSEL, SPECIAL PUBLIC PROSECUTORS, PANEL COUNSEL, AND ADVOCATE-ON-RECORD.

#### Part A. Special Counsel and Special Public Prosecutors.

18. *Special Counsel by whom to be engaged.*—(1) Save as otherwise provided in these rules, no special counsel on behalf of the State or its officers shall be engaged in any civil case in the High Court and subordinate courts in this State or in other States and in civil and criminal cases in the Supreme Court without the sanction of the Remembrancer of Legal Affairs. The fees, travelling allowances and other charges of such counsel shall also be settled by the Remembrancer of Legal Affairs.

(2) *Procedure for engagement.*—(a) In cases where the engagement of a special counsel on behalf of the State or its officers for the conduct of any case is considered necessary by any Collector or Government officer concerned, he shall send his proposal to that effect well in advance of the date fixed for hearing of the case to the Remembrancer of Legal Affairs, through the administrative department concerned, stating fully the following points:—

- (i) the nature of the case,
- (ii) the evidence to be brought forward,
- (iii) the reasons for justifying the engagement of a special counsel,
- (iv) the circumstances on account of which the Government Pleader concerned cannot be entrusted with the case,
- (v) the date and place of hearing of the case,
- (vi) the approximate number of days of hearing the case is likely to take,
- (vii) which other counsel, if any, is proposed to be engaged,
- (viii) at what rate it is proposed to remunerate a counsel, if appointed.

(b) The Law Officer concerned may send his proposal in the above manner to the Remembrancer of Legal Affairs directly.

(c) If the case is within the jurisdiction of the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, the proposals in the clauses (a) and (b) shall be sent to the Remembrancer of Legal Affairs through them.

(d) If there is no sufficient time for such communication to be made before the date fixed or likely to be fixed for hearing of the case, the court may be moved to adjourn the case or to fix a date in the first instance at a sufficient interval of time, to enable the Collector or the Government officer or the Law Officer concerned to obtain sanction for the engagement of a special counsel.

(e) If the Remembrancer of Legal Affairs thinks that the case is a fit one for the engagement of a special counsel, he shall, either on receipt of the proposal under clauses (a) to (d) or *suo motu*, issue orders for the engagement of a special counsel on such terms as he deems fit.

(f) The fees, travelling allowances and other charges to be paid to a special counsel shall be settled in advance by the Remembrancer of Legal Affairs with the special counsel before he is engaged and shall be payable by the Remembrancer of Legal Affairs.

19. *Procedure in forest cases.*—(1) Either the Conservator of Forests or if the authority has been delegated by the Chief Conservator of Forests to the Divisional Forest Officer then the Divisional Forest Officer may sanction the engagement of a special counsel for conducting the prosecution on behalf of the State for the offences in forest cases, subject to the following conditions, namely:—

(a) the services of the Public Prosecutor are not available,

(b) the fees payable to the special counsel do not exceed those which would be payable to the Public Prosecutor for appearing in such case, and

(c) the charges incurred by such engagement do not exceed Rs. 250 when the engagement is sanctioned by a Conservator of Forests and Rs. 100 when the engagement is sanctioned by a Divisional Forest Officer.

(2) The Conservator of Forests or the Divisional Forest Officer concerned shall, as soon as may be, inform the Remembrancer of Legal Affairs of the appointment so made. The Divisional Forest Officer shall send his information through the Conservator of Forests.

20. *Preparation of briefs for special counsel.*—Whenever in any civil case in the State, to be heard either in the High Court at Bombay, Nagpur or Aurangabad or in any subordinate court the engagement of a special counsel is sanctioned by the Remembrancer of Legal Affairs, the following procedure shall be followed:—

(a) if the case is filed in the High Court at Bombay, Nagpur or Aurangabad the Government Pleader concerned in the High Court shall, if so instructed by the Remembrancer of Legal Affairs, take necessary steps for preparing the counsel's brief in such case;

(b) if the case is filed in any subordinate court in the State, the Government Pleader concerned attached to that court shall, if so instructed by the Remembrancer of Legal Affairs, take steps for preparing the counsel's brief in such case.

21. *Appointment of Special Public Prosecutor.*—(1) The Remembrancer of Legal Affairs shall appoint under sub-section (8) of section 24 of the Code of Criminal Procedure, any person, who has been in practice as an advocate for not less than ten years, as a Special Public Prosecutor on behalf of the State to conduct any criminal case or class of cases in the High Court or subordinate

court. The proposal to that effect shall be made to him either by the District Magistrate, Commissioner of Police, Public Prosecutor or the Government officer concerned, through his administrative department.

(2) The provisions of clauses (a) and (b) of sub-rule (2) of rule 18 and rule 20 shall, *mutatis mutandis*, apply to the appointment of a Special Public Prosecutor.

22. *Engagement of Special Counsel or Special Public Prosecutor on the request of private parties.*—If in any case, civil or criminal, a request is made by any private party, interested in the case, for the appointment of its own advocate as a Special Counsel or Special Public Prosecutor, as the case may be, on the condition that the payment of fees of such advocate will be borne by that party, the Remembrancer of Legal Affairs may, after considering such case on merits, appoint such advocate for that particular case or cases.

23. *Engagement of counsel for the defence of soldiers charged with criminal offence.*—In case where arrangements are to be made for the defence of soldiers (including JCOs, WOs, NCOs and Sepoys when on duty) who are charged with criminal offence in accordance with paragraph 421 of the Regulations for the Army, 1962 (see Appendix A), the Brigade/Sub-area Commander shall arrange with the District Magistrate concerned for the selection of a counsel and he shall be paid by the military authorities.

24. *Legal Aid for the defence of persons accused of offences punishable with death.*—(1) (a) Notwithstanding anything contained in the rules made by the High Court under sub-section (2) of section 304 of the Code of Criminal Procedure, in all cases tried before a Sessions Judge in which any person is liable to be sentenced to death, the accused shall be informed by the committing Magistrate at the time of committal that unless he intends to make his own arrangements for legal assistance, the higher court i.e. Sessions Court will engage a legal practitioner at Government expense to appear before it on his behalf;

(b) in confirmation cases and in appeals against acquittals or for enhancement of sentence filed on the Appellate Side of the High Court in which the accused is liable to be sentenced to death, the accused shall be informed similarly by the trial court;

(c) if it is ascertained that he does not intend to engage a legal practitioner at his own expense, a qualified legal practitioner shall be engaged by the higher court concerned to undertake the defence and his remuneration shall be paid by Government in the Law and Judiciary Department.

(2) In such cases the fee of the defence counsel for the accused shall be as follows:—

(a) *On the Appellate Side of the High Court.*—(i) For preparation and perusal, for first five hours of hearing—Rs. 100.

(ii) *Refresher per hour*—Rs. 10.

(b) *In the City Sessions Court at Bombay.*—Rs. 150 per day for every day on which he actually conducts the case subject to a maximum of Rs. 600 for each case;

(c) *In the Sessions Court in the mofussil.*—Rs. 75 per day for every day on which he actually conducts the case subject to a maximum of Rs. 375 for each case;

(3) The recommendations for higher fees in any particular case may be made to Government in the Law and Judiciary Department by the court which decides the case.

(4) The appointment of a defence counsel shall not be deferred until the accused has been called upon to plead. The defence counsel shall always be appointed sufficiently in advance to enable him to take copies of the depositions and other necessary papers which shall be furnished free of cost before the commencement of the trial or other proceeding. If after the appointment of such legal practitioner the accused appoints another counsel, the defence counsel appointed by the court may still in the discretion of the Remembrancer of Legal Affairs, the Registrar or Additional Registrar or Deputy Registrar of the High Court or the Sessions Judge, as the case may be, be allowed his fee for the case, but the copies already prepared shall be made available only upon payment for the use of the counsel privately appointed by the accused.

25. *Employment of counsel for the accused when an appeal is filed by the State.*—(1) When the State has filed an appeal in the High Court against an order of acquittal or sentence, the trial court on receipt of an intimation that an appeal has been admitted, shall in cases of accused person who is unable to engage a counsel on account of poverty, inform such accused person, whether in custody or not, that unless he intends to make his own arrangements for legal assistance, the higher court will engage a legal practitioner at Government expense to appear before it on his behalf. In such cases i.e. in cases of poverty the accused should be asked whether he intends to engage a legal practitioner at his own expense, and if not, whether there is any particular practitioner whom he wishes to be engaged for him by the higher court and his reply should be reported to the Registrar or Additional Registrar or Deputy Registrar, as the case may be, of the High Court. Any particular practitioner named by the accused may be engaged, if possible, or otherwise some other practitioner shall be engaged by the Registrar or Additional Registrar or Deputy Registrar, as the case may be, of the High Court.

(2) No elaborate enquiry into the poverty of the accused is necessary. The legal assistance shall be offered to any person who can not easily afford the cost of the journey or of his own expense, as the case may be.

(3) The fee of such legal practitioner shall be Rs. 30 for each case, which amount may in the discretion of the Registrar be increased to Rs. 50.

*Note.*—The provisions regarding the appointment of an advocate for undefended accused at Government cost in the cases before the High Court are also contained in rules 31 to 33 of Chapter XXVI of the Bombay High Court Appellate Side Rules, 1960.

26. *Grant of legal aid to unrepresented accused persons at Government cost.*—The following rules are made by the High Court at Bombay in exercise of the powers conferred on it by sub-section (2) of section 304 of the Code of Criminal Procedure (published in the *Maharashtra Government Gazette*, Part IV-C, dated the 16th December 1982) for the grant of legal aid to unrepresented accused persons, who have no means to engage a legal practitioner for their defence in criminal trials or cases before the Courts of Session or other criminal courts:—

(1) The legal aid to unrepresented accused person in cases before the Court of Sessions Rules, 1982 (*see Appendix B*);

(2) The legal aid to unrepresented accused person in criminal cases other than those before the Court of Sessions Rules, 1982 (*see Appendix C*)

### Part B. Panel Counsel.

27. *Panel Counsel for the High Court.*—(1) There shall be two Panels of Counsel namely 'A' and 'B' Panel Counsel on the Original and Appellate Side of the High Court at Bombay. The appointments of the advocates on these Panels shall be made by Government in the Law and Judiciary Department.

(2) *Terms and Conditions of appointment*—(a) *In respect of 'A' Panel Counsel.*—The advocates having not less than fifteen years practice in the High Court with wide experience in the matters involving Constitutional Law, shall be considered eligible for being appointed as 'A' Panel Counsel on the Panel of Government counsel on the Original and/or Appellate Side of the High Court at Bombay.

(b) *In respect of 'B' Panel Counsel.*—The advocates having not less than seven years practice in the High Court shall be considered eligible for being appointed as 'B' Panel Counsel on the Panel of Government counsel on the Original and/or Appellate Side of the High Court at Bombay.

(c) Notwithstanding anything contained in the foregoing provisions, if in the opinion of Government in the Law and Judiciary Department, a person is,—

(i) a distinguished jurist, he shall be eligible for being appointed as 'A' or 'B' Panel Counsel on the Original and Appellate Side of the High Court at Bombay, irrespective of the fact whether such a person is or is not practising as an advocate, or if he is or was practising as an advocate, whether he has or has not completed the period of practice prescribed in clause (a) or (b), as the case may be, on the date of such appointment; or

(ii) a retired judicial officer or officer of the rank not below that of a Joint Secretary in the Law and Judiciary Department and who, prior to his joining service as such officer was a practising advocate, or had practised as an advocate, for not less than fifteen or seven years, as the case may be, he shall be eligible for being appointed as 'A', or as the case may be 'B' Panel Counsel on the Original and Appellate Side of the High Court at Bombay.

*Explanation.*—In computing the period of practice prescribed in this clause, there shall be included any period during which the person has held judicial

office or the office not below the rank of Joint Secretary in the Law and Judiciary Department, after he became an advocate.

(d) The appointments of 'A' Panel Counsel shall be subject to the following terms and conditions, namely:—

(i) it is left to the good sense of 'A' Panel Counsel whether they should appear against the State or its officers in any civil matter or not;

(ii) normally 'A' Panel Counsel shall not decline a brief offered on behalf of the State or its officers;

(iii) 'A' Panel Counsel shall be entitled to fees as prescribed in sub-rules (4) and (5) of this rule.

(e) The appointments of 'B' Panel Counsel shall be subject to the following terms and conditions, namely:—

(i) he shall not advise, act or appear against the State or its officers, in any civil case without the previous permission of the Remembrancer of Legal Affairs and without ascertaining whether Government in the Law and Judiciary Department requires his services.

(ii) normally 'B' Panel Counsel shall not decline a brief offered on behalf of the State or its officers;

(iii) 'B' Panel Counsel shall be entitled to fees as prescribed in sub-rule (4) of this rule.

(f) If in any case the amount of fee payable to the Panel Counsel is in dispute, the decision of the Remembrancer of Legal Affairs thereon shall be final and binding on the Panel Counsel.

(3) *Allotment of work.*—The Panel Counsel shall conduct such cases on behalf of the State or its officers which are entrusted to them by the Advocate-General.

(4) *Fees for appearance on the Original Side of the High Court at Bombay:*—

	'A' Panel Counsel's Fees Col. 1	'B' Panel Counsel's Fees Col. 2
	Rs.	Rs.
A. <i>Long Cause Suits</i> :—		
(i) Brief to draw plaint .. .. .	150	120
(ii) Brief to settle draft plaint .. .. .	150	120
(iii) Brief to draw written statement .. .. .	150	120
(iv) Brief to settle draft written statement .. .. .	150	120
(v) Brief to apply for directions .. .. .	30	30
(vi) Brief for adjournment .. .. .	30	30
(vii) Brief for hearing and final disposal, per day .. .. .	600	450
(viii) Brief to hear judgment (when it is kept C.A.V.) .. .. .	600	45

	'A' Panel Counsel's Fees Col. 1 Rs.	'B' Panel Counsel's Fees Col. 2 Rs.
<b>B. Short Cause, Summary Suits, etc. :—</b>		
(i) Brief for hearing when the suit is likely to be transferred to Long Cause List.	.. ..	60
(ii) Brief for hearing where evidence is likely to be recorded.	....	300
<b>C. Writ Petitions :—</b>		
(i) Brief to draw petition .. ..	....	150
(ii) Brief to settle draft petition .. ..	225	....
(iii) Brief to settle draft affidavit (in case of 'B' Panel drawing also).	225	150
(iv) Brief for adjournment .. ..	....	30
(v) Brief for hearing and final disposal, per day	600	300
(vi) Brief to hear judgment (when it is kept C.A.V.) ..	....	30
(vii) Hearing of notice of admission .. ..	225	150
(viii) (1) Brief for appearance in applications made for direction of the court.	....	30
(2) To submit to the orders of court .. ..	....	30
<b>D. Appeals in the High Court :—</b>		
(i) Brief to settle draft memorandum of appeal (in case of 'B' Panel drawing also).	225	150
(ii) Brief for hearing and final disposal, per day ..	600	450
(iii) Brief to hear judgment (when it is kept C.A.V.)	....	30
(iv) Brief to draft petition for leave to appeal to the Supreme Court (in case of 'B' Panel drawing also).	225	150
(v) Brief to draft affidavit in reply or rejoinder to the Petition.	....	75
(vi) Brief for adjournment .. ..	....	30
(vii) Brief for hearing of the petition for leave to appeal to the Supreme Court (first five hours of hearing).	225	150
(viii) Brief to draft statement of case .. ..	600	450
(ix) Brief to oppose or support admission of appeal or to obtain stay.	225	150
<b>E. Interlocutory Proceedings :—</b>		
(i) Brief to settle draft affidavit in reply to Chamber Summons or Notice of Motion.	....	75

	'A' Panel Counsel's Fees Col. 1 Rs.	'B' Panel Counsel's Fees Col. 2 Rs.
(ii) Brief for adjournment .. .. .	....	30
(iii) Brief for hearing of Chamber Summons .. .. .	225	150
(iv) Brief for hearing of Notice of Motion .. .. .	225	150
<b>F. Sales Tax, Land Acquisition and Stamps references :—</b>		
(i) Brief for hearing and final disposal, per day .. .. .	600	450
(ii) Brief for adjournment .. .. .	....	30
<b>G. Applications filed directly to the High Court under proviso to sub-section (1) of section 61 of the Bombay Sales Tax Act, 1959 :—</b>		
(1) Brief to draw up or settle application—		
(a) For drafting only .. .. .	....	75
(b) For settling only .. .. .	75	....
(c) For drafting and settling .. .. .	150	....
(2) Brief for hearing of the application .. .. .	225	150
<i>Note.</i> —(i) The brief for appearance at the time of hearing should be entrusted to only one counsel.		
(ii) No separate fees shall be claimed by counsel for adjournment.		
<b>H. Company Petitions :—</b>		
(i) Brief to draw petition .. .. .	....	150
(ii) Brief to settle draft petition .. .. .	225	....
(iii) Brief to settle draft affidavit (in case of 'B' Panel drawing also). .. .. .	225	150
(iv) Brief for adjournment .. .. .	....	30
(v) Brief for hearing and final disposal, per day .. .. .	600	300
(vi) Brief to hear judgment (when it is kept C.A.V.) .. .. .	....	30
(vii) Hearing of Notice of Admission .. .. .	225	150
<b>I. Arbitration Proceedings :—</b>		
(i) Brief to draw written statement or any other pleading. .. .. .	....	150
(ii) Brief to settle written statement or other pleading. .. .. .	225	....
(iii) To obtain directions .. .. .	....	30

	'A' Panel Counsel's Fees Col.1	'B' Panel Counsel's Fees Col.1
	Rs.	Rs.
(iv) To apply for adjournment .. .. .	....	30
(v) Opinion .. .. .	225	....
(vi) To apply for interim stay .. .. .	120	....
(vii) To oppose application for interim injunction ..	225	150
(viii) Hearing and opposing Chamber Summons for extension of time.	225	150
(ix) Brief for hearing and final disposal, per day	600	300
(x) Visit to the site, per day .. .. .	600	300

*J. Miscellaneous Petitions :—*

*(a) Claims to be filed before Official Assignee—*

(i) For adjournment .. .. .	30	30
(ii) To submit to the orders of the court ..	45	30
(iii) To consent to the withdrawal of the petition ..	30	30
(iv) To appear and obtain leave of the court to attach the moneys lying with the Court Receiver.	225	150
(v) To appear and obtain orders for payment of the amount which is lying with Court Receiver, High Court, Bombay.	225	150
(vi) For hearing and final disposal, per day ..	225	150
(vii) To settle draft memorandum of appeal ..	225	150

*Note.*—In appeals filed therefrom the counsel will get the same rate of fees as prescribed above for adjournment and appearance etc.

*(b) Claims to be filed before Official Liquidator—*

(i) Adjournment .. .. .	30	30
(ii) For drafting affidavit in support of the claims to be filed.	225	150
(iii) Appearance before the Official Liquidator ..	225	150
(iv) For hearing and final disposal, per day ..	225	150

*(c) Matters before Taxing Master under the Bombay Court-fees Act, 1959—*

(i) Adjournment .. .. .	30	30
(ii) To appear before Taxing Master, per day ..	225	150
(iii) To settle draft memorandum .. .. .	225	150

*Note.*—In appeals filed therefrom, the counsel will get the same rate of fees as prescribed above for adjournment and appearance etc.

	'A' Panel Counsel's Fees Col. 1 Rs.	'B' Panel Counsel's Fees Col. 2 Rs.
<i>(d) Testamentary and Intestate jurisdiction matters—</i>		
(i) To apply for adjournment .. .. .	30	30
(ii) To settle draft affidavit .. .. .	225	150
(iii) To obtain directions .. .. .	45	30
(iv) To withdraw the objections raised by the respondents. .. .. .	45	30
(v) For hearing and final disposal, per day .. .. .	225	150
<i>(e) Adoption Petition matters—</i>		
Brief for hearing and final disposal .. .. .		150

*Note 1.*—In the above Miscellaneous Petitions the Government Pleader, High Court (Original Side) at Bombay shall engage 'A' Panel Counsel only in exceptional cases and that too after obtaining in that behalf prior approval in writing of Government in the Law and Judiciary Department. In such an event 'A' Panel Counsel so appointed shall alone conduct the case and no 'B' Panel Counsel shall be engaged to assist the 'A' Panel Counsel.

*Note 2.*—In the case of group matters or similar matters, where the matters are decided by one common judgment, the counsel (A as well as B Panel) shall be entitled to only one set of fees. In all such group matters or similar matters the Government Pleader, High Court (Original Side) at Bombay, shall engage only one and the same A Panel Counsel assisted by one and the same B Panel Counsel.

*Explanation.*—The above provision for payment of one set of fees shall be applicable also to applications made or to be made in the same or similar matters which involve the same or similar points and are heard and decided together.

*Note 3.*—No counsel shall be allowed to claim separate fees for conference.

K. The rates of fees under items A to J shall be payable subject to the condition that, if two or more cases are conducted during a day, not more than Rs. 900 per day shall be payable to 'A' Panel Counsel and not more than Rs. 600 per day shall be payable to 'B' Panel Counsel, irrespective of the number of cases conducted by him during that day.

*(5) Fees for appearance in civil writ petitions on the Appellate Side of the High Court at Bombay—*

	A Panel Counsel Rs. /
(i) For hearing and final disposal, per day .. .. .	600
(ii) Brief to oppose petitions on admission (if the hearing lasts for less than 3 hours) and brief to appear and oppose notice of	225

interim stay, application and injunction in writ petition before admission or after admission but before final hearing.	
(iii) Brief to oppose petitions on admission (if the hearing lasts for more than 3 hours) and brief to appear and oppose notice of interim stay application and injunction in writ petition before admission or after admission but before final hearing.	600
(iv) Brief to draw petitions or any other pleadings .. .. .	225
(v) Brief to settle petition, affidavit in reply, rejoinder or any other pleading.	225
(vi) Brief for hearing of the petitions for leave to appeal to the Supreme Court or to oppose the stay application (if the hearing lasts for less than 3 hours).	225
(vii) Brief to draw statement of case in the Supreme Court .. .. .	600

*Note 1.*—In the case of group matters or similar matters, where the matters are decided by one common judgment the counsel shall be entitled to only one set of fees. In all such group matters or similar matters the Additional Government Pleader, High Court (Appellate Side) at Bombay shall engage only one and the same A Panel Counsel assisted by one and the same Assistant Government Pleader.

*Explanation.*—The above provision for payment of one set of fees shall be applicable also to the applications made or to be made in the cases involving the same or similar points and are heard and decided together.

*Note 2.*—The above prescribed rates of fees shall be payable subject to the condition that, if two or more cases are conducted during a day, not more than Rs. 900 per day shall be payable to 'A' Panel Counsel, irrespective of the number of cases conducted by him during that day.

*Note 3.*—No counsel shall be allowed to claim separate fees for conference.

(6) (a) There shall also be a Panel of Counsel, one each, for the High Court at Nagpur and Aurangabad. The appointments of the advocates on these Panels shall be made by Government in the Law and Judiciary Department;

(b) the Panel Counsel shall be entitled to fees as prescribed for the Government Pleader or the Additional Government Pleader or the Assistant Government Pleader in the High Court at Nagpur or Aurangabad, as the case may be;

(c) the Panel Counsel shall conduct such cases on behalf of the State or its officers which are entrusted to them by the Government Pleader concerned in the High Court at Nagpur or Aurangabad, as the case may be.

(7) If the Panel Counsel is deputed to New Delhi to appear before the Supreme Court or Delhi High Court or High Courts of other States, he shall be entitled to the following fees and expenses:—

(A) For appearance before the Supreme Court or other High Courts—

(a) For A Panel Counsel—

- |                                    |    |                    |
|------------------------------------|----|--------------------|
| (i) for hearing in regular matters | .. | Rs. 1,000 per day. |
| (ii) for miscellaneous matters     | .. | Rs. 600 per day.   |

(b) For B Panel Counsel—

For giving assistance to Advocate-General or Special Counsel or A Panel Counsel or Government Pleader or Additional Government Pleader ....  
Rs. 600 per day.

(B) Travelling expenses —He shall be entitled to travel by Air and claim the actual air fare.

(C) Expenses on incidentals, boarding and lodging.—He shall be entitled to 20 per cent. of the fees to meet his incidentals, boarding and lodging expenses during his stay at New Delhi or at any place of concerned High Court.

(D) In case any of the aforesaid Counsel is required to halt at New Delhi or in other States on account of the postponement of the hearing or the date originally fixed for hearing, then, such counsel shall be entitled to claim 50 per cent. of the fees prescribed above *per day*. In such contingencies, the counsel shall be entitled to the fees as stated below:—

(a) 'A' Panel Counsel—

- |                                    |    |    |                  |
|------------------------------------|----|----|------------------|
| (i) For hearing in regular matters | .. | .. | Rs. 500 per day. |
| (ii) For miscellaneous matters     | .. | .. | Rs. 300 per day. |

(b) 'B' Panel Counsel—

For giving assistance to the Advocate-General, Special Counsel, 'A' Panel Counsel, the Government Pleader or the Additional Government Pleader—  
Rs. 300 per day :

Provided that, if the postponement is for a period of more than three days, then the counsel shall not be entitled to claim 50 per cent. of the fees as prescribed above, but in that event the counsel shall forthwith, on the very day on which he comes to know about the postponement, return to his headquarters and thereafter again proceed to New Delhi or the High Court in any other State, as the case may be, on the next day fixed for hearing. The counsel concerned shall be entitled to claim 50 per cent. of the fees prescribed above, only if he complies with this direction :

Provided further that, the counsel shall not claim any fees during the aforesaid halt if he conducts any other case on behalf of the State or any other private party.

28. *Panel of Special Counsel for the High Court.*—(1) There shall be a Panel of Special Counsel on the Original and Appellate Side of the High Court at Bombay. The appointments of the advocates on the Panel of Special Counsel shall be made by Government in the Law and Judiciary Department.

(2) *Terms and Conditions of appointment.*—(a) The advocates having not less than twenty years practice in the High Court at Bombay with wide experience in the matters involving Constitutional Law as well as specialised laws like service matters, contract, Labour Law, Sales Tax Law etc. shall alone be considered eligible for being appointed as Special Counsel on the Panel of Special Counsel.

(b) The Special Counsel so appointed will be entrusted only with those cases wherein important questions of Constitutional and other Laws are involved. They may also be entrusted such cases wherein prestige of the Government or high stakes are involved.

(c) Whenever a brief is entrusted to a Special Counsel, he is entitled to engage only one junior counsel from the Assistant Government Pleaders or B Panel Counsel of his choice.

(d) He shall not, except under special circumstances and without prior approval in writing of Government in the Law and Judiciary Department, engage in any matter more than one Assistant Government Pleader or B Panel Counsel.

(3) *Fees for appearance.*—The Special Counsel engaged under sub-rules (1) and (2) shall be entitled to the fees at the following rates :—

	Rs.
(a) To oppose Petition on admission (if the hearing lasts for less than three hours).	600
(b) To oppose Petition on admission (if the hearing lasts for more than three hours), <i>per day</i>	1,000
(c) For hearing and final disposal of the case, <i>per day</i> ..	1,500
(d) To settle draft affidavit .. .. .	225

*Note.*—(i) *Fee per day* shall mean the fee for hearing upto five hours whether five hours occupied on the same day or spread over several days. Where the hearing lasts for more than five hours, a fresh fee shall be admissible at the same proportionate rate as above for each hour of hearing in excess of five hours.

(ii) No separate fees for conference shall be allowed.

(iii) In the case of group matters or similar matters, where the matters are decided by one common judgment, the Special Counsel shall be entitled to only one set of fees. In all such group matters or similar matters Government in the Law and Judiciary Department shall engage the same Special Counsel.

*Explanation.*—The above provision for payment of one set of fees shall be applicable also to applications made or to be made in the same or similar matters which involve the same or similar points or are heard and decided together.

(4) If the Special Counsel is deputed from Bombay to New Delhi to appear before the Supreme Court or Delhi High Court or High Courts of other States, he shall be entitled to the following fees and expenses :—

(a) *For appearance before the Supreme Court or other High Courts :—*

- (i) for hearing in regular matters : Rs. 1,600 per day.
- (ii) for miscellaneous matters : Rs. 1,040 per day.

(b) *Travelling expenses.*—He shall be entitled to travel by Air and claim actual air fare.

(c) *Expenses on incidentals, boarding and lodging.*—He shall be entitled to 20 per cent. of the fees to meet his incidentals, boarding and lodging expenses during his stay at New Delhi or at any place of concerned High Court.

(d) In case the Special Counsel is required to halt at New Delhi or in other States on account of the postponement of the hearing or the date originally fixed for hearing, then, such counsel shall be entitled to claim 50 per cent. of the fees prescribed above *per day*. In such contingencies, the counsel shall be entitled to the fees as stated below :—

- (i) For hearing in regular matters—Rs. 800 per day.
- (ii) For miscellaneous matters—Rs. 520 per day.

Provided that, if the postponement is for a period of more than three days, then the counsel shall not be entitled to claim 50 per cent. of the fees as prescribed above, but in that event the counsel shall forthwith, on the very day on which he comes to know about the postponement, return to his headquarters and thereafter again proceed to New Delhi or the High Court in any other State, as the case may be, on the next day fixed for hearing. The counsel shall be entitled to claim 50 per cent. of the fees prescribed above, only if he complies with this direction :

Provided further that, the counsel shall not claim any fees during the aforesaid halt if he conducts any other case on behalf of the State or any other private party.

29. *Panel of Special Public Prosecutors.*—(1) There shall be a Panel of advocates, having a practice of not less than ten years, constituted for the appointments of Special Public Prosecutors in Greater Bombay for conducting cases in the City Sessions Court and the Courts of Metropolitan Magistrates at Bombay, as and when considered necessary.

(2) Such appointments shall be made under section 24 (8) of the Code of Criminal Procedure in each case by Government in the Law and Judiciary Department.

### Part C. Advocate-on-Record in the Supreme Court.

30. *Appointment of Advocate-on-Record.*—(1) Government in the Law and Judiciary Department shall appoint an Advocate-on-Record in the Supreme Court as a Government Advocate on behalf of the State for the conduct of its litigation, civil and criminal, in the Supreme Court as well as High Court or other courts and tribunals at New Delhi.

(2) (a) Government in the Law and Judiciary Department shall also form a Panel of Advocates in the Supreme Court consisting of Groups A, B, C and D for the proper conduct of its cases in the Supreme Court. The Panel Advocates shall conduct those cases in the Supreme Court on behalf of the State as may be entrusted to them by the Advocate-on-Record.

(b) They shall be entitled to the fees as formulated by the Government of India for various groups as shown below :—

Groups	Regular matter per day		Miscellaneous matters per day	
	Rs.		Rs.	
(i) Group A (1) .. .. .	1,600		1,040	
(2) .. .. .	1,000		600	
(ii) Group B .. .. .	600		300	
		Hearing on 1st day	Hearing on other day	Miscellaneous matters per day
(iii) Group C .. .. .		400	300	250
(iv) Group D .. .. .		300	250	200
(v) Group E—				

(1) Fees for drafting special leave petition, statement of case and reply affidavit to writ petition. 200

(2) Fees for drafting counter affidavit to stay petition or other miscellaneous petition, stay petition and civil miscellaneous petition. 100

(3) For preparation of list of documents or hearing judgment .. 30

These fees shall be for effective hearing on *per day* basis irrespective of the number of cases conducted by the advocate on that day. In case the advocate appears in the Supreme Court on the date fixed for hearing of a case but the case is adjourned for whatever reasons and there is no effective hearing on that day then the advocate shall be entitled to claim 50 per cent. of the fees prescribed above *per day*.

*Explanation.*—If the advocate obtains adjournment for the sake of his convenience he shall not be entitled to any fee for that day.

## CHAPTER IV

CIVIL SUITS, LAND ACQUISITION CASES AND OTHER CIVIL PROCEEDINGS IN THE CIVIL COURTS IN THE MOFUSSIL, CITY CIVIL COURT AND SMALL CAUSES COURT AT BOMBAY AND IN THE HIGH COURT (ORIGINAL SIDE) AT BOMBAY.

### Part A

31. *Procedure for institution of suits on behalf of State or its officers—*

(1) *Report to be submitted before a suit is instituted.*—(a) Any Government officer, wishing to institute a suit, shall submit a clear and detailed report through the ordinary channels of communication, to the head of his department, showing—

(i) the circumstances which render the suit necessary;

(ii) the exact nature of the claim for which it is to be instituted;

(iii) the steps, if any, which have been already taken to obtain satisfaction of the claim;

(iv) what object or excuse, if any, the defendant (i.e. the person against whom it is proposed to institute the suit) has urged against the claim;

(v) the evidence, both oral and documentary, which is proposed to be adduced in support of the claim;

(vi) the evidence which, so far as is known, the defendant will be able to adduce in his defence;

(vii) whether the circumstances of the defendant are such as to render it likely that satisfaction will be obtained of any decree that may be passed against him; and

(viii) present address and other necessary particulars, which would facilitate effective service of summons on defendant;

(b) all documents relied upon and all correspondence and other papers, whether in English or in any regional language connected with the subject matter of the proposed suit, should be sent alongwith the report;

(c) the probability of the recovery of a sum at least equal to the costs of the suit shall be ascertained before recommending the institution of any suit, unless, for reasons which shall be explained, it is considered that the suit should be brought notwithstanding that the recovery of costs of the suit is doubtful.

*Note.*—The limitation for filing of any suit by or on behalf of the State is 30 years from the date on which the claim becomes enforceable as per Article 112 of the Limitation Act, 1963.

(2) *Report to be forwarded by head of the department to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.*—(a) The head of the department, if he thinks that all the necessary preliminary steps have been taken and that there is *prima facie* sufficient cause for the institution of a suit on behalf of the State, shall forward the report with his opinion to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be;

(b) the head of the department shall make an appointment of a suitable officer by designation as the officer-in-charge for the suit. In doing so, he shall have regard, among other things, to the importance of the points of Law and facts involved in the suit, the value of the subject matter of the suit and rank, status and capacity of the officer to undertake responsibility for the conduct of the suit. He shall communicate the same to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, the Government Pleader concerned, the officer who made the report under sub-rule (1) and the person appointed as officer-in-charge of the suit.

(3) *Orders of Government in the Law and Judiciary Department to be communicated to Government Pleader.*—If Government in the Law and Judiciary Department sanctions the institution of the suit, a copy of the Government Resolution in *Form No. 1 or 2* authorising such institution, shall be sent to the Government Pleader of the concerned court in which the suit is to be instituted. In cases in which the suit is to be filed on behalf of a Government officer, the Government Resolution shall also state which officer is authorised to verify the plaint.

(4) *Preparation of Plaint.*—(a) After the institution of the suit is sanctioned, a draft of the plaint shall be prepared within three months by the Government Pleader concerned in consultation with the officer, who proposed its institution and shall be forwarded by him to the said officer for scrutiny with reference to the correctness of the facts in the first instance. The officer concerned thereafter shall forward the draft plaint to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for approval;

(b) the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, shall accord his approval to the draft of the plaint in *Form No. 3* ;

(c) after obtaining the approval, the plaint shall be signed, verified as per the provisions of Order XXVII, rule 1 of the Code of Civil Procedure, by the Government Pleader or the Government officer concerned and presented by the Government Pleader concerned to the court, except when the suit is to be filed on behalf of a Government officer, in which case it shall be signed and verified by the officer mentioned in the Government Resolution.

(5) *Arrest or attachment before judgment.*—After the institution of suit, the officer-in-charge or the head of the department shall cause an enquiry to be made as to whether there are grounds for proceeding against defendant for arrest or attachment before judgment under Order XXXVIII, rule 1 or 5 of the Code of Civil Procedure and, if necessary, shall direct the Government Pleader concerned to take necessary action.

(6) *Papers to be sent to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.*—The Government Pleader concerned shall send the true copies of the plaint, as actually presented in the court, or any written statement filed by the defendant, and the issues framed in the suit, as well as of any subsequent amendments of the issues or additional issues under Order XIV, rule 5 of the Code of Civil Procedure, to the officer-in-charge and to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

(7) *No amendment of pleading without permission.*—No alterations or additions shall ordinarily be made in the pleadings by the Government Pleader concerned after they have been approved and filed in the court. If any alterations or additions are considered necessary, he shall submit the brief to the officer-in-charge concerned for orders. If there is no time for such action, he may move the court for necessary amendment of the pleading without such prior approval, but such amendments shall immediately be reported to the officer-in-charge concerned. The Government Pleader concerned shall then send an amended copy of the plaint to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for information.

### Part B

32. *Procedure for defence of suits on behalf of State or its officers.*—(1) *Notice of suit.*—Where a notice of a suit against the State, under section 80 of the Code of Civil Procedure, is received by the Secretary to Government or the Collector concerned, he shall forward the same within 7 days to the officer principally concerned with or conversant with the matter in respect of which the suit is threatened. He shall also send within 7 days one copy of notice to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, and another copy to Government in the administrative department concerned. If any Government officer receives such notice of threatened suit against him in respect of any act done or purporting to be done by him in his official capacity, he shall also act in the same manner as stated above.

(2) *Action to be taken when the threatened suit is indefensible.*—(a) The Government officer to whom the notice is forwarded or served as stated in sub-rule (1) shall examine the claim made in the notice and ascertain the facts with reference to the relevant documents;

(b) where the statements made in the notice are vague, he shall endeavour to obtain, within 7 days, if possible in writing, a clear statement of the grievance of the person who served such notice;

(c) where upon a consideration of the relevant circumstances it appears to such Government officer that the act or conduct complained of by the notice-giver is wholly indefensible, he shall, within three weeks from the receipt of such notice, take action to redress the grievance or make a report to the proper authority to obtain such redress and take such other action in that behalf as may be required;

(d) where it is doubtful whether or not, the act or conduct complained of is justifiable, and the doubt arises as to the real intension of Government in the administrative department or such authority in any order, the carrying out of which has occasioned the service of notice, he shall, within 7 days from the receipt of notice, refer the matter for orders to Government in the administrative department or such authority;

(e) where the doubt is as to the legality of the act or conduct complained of, though it may have been done in pursuance of a rule or order issued by Government in the administrative department or the superior authority, the administrative department concerned shall send clear statement of the case, within 7 days, to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for advice who in turn shall send his legal opinion to the administrative department concerned;

(f) if as a result of the references under clauses (d) and (e), the Government officer concerned finds that the act or conduct complained of is indefensible he shall forthwith proceed to redress the grievance;

(g) every endeavour shall be made by the Government officer concerned to have the matter disposed of within the statutory period of two months, from the delivery of notice, allowed by the Code of Civil Procedure before the threatened suit can be instituted. If it is not possible to redress the grievance of the notice-giver within a period of two months, due to some administrative difficulties, the Government officer concerned shall inform the notice-giver to wait for some time more after the expiry of the period of two months. The intimation, that the grievance of the notice-giver has been redressed, shall be given by the Government officer concerned to his head/administrative department concerned and also to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be;

(h) if any kind of lapses on the part of any Government officer concerned in dealing with the notice results in the prolonged litigation and avoidable loss to Government, the administrative department concerned should take a serious view of such lapses.

(3) *Action to be taken where the threatened suit is defensible.*—(a) If the Government officer concerned, to whom a notice of suit against the State is forwarded, is of the opinion that the suit is defensible, or any Government officer, who is served with a notice of suit in respect of an act done or purporting

to be done by him in his official capacity, desires that Government should undertake the defence of suit, shall collect, with the least practicable delay, all information regarding the facts of the case which he can procure;

(b) such officer shall forward, within three weeks from the receipt of notice, his parawise comments and other information together with copies of all the necessary documents to the administrative department concerned and inform it of the grounds on which it is proposed to defend the threatened suit. A copy of the grounds for defence of such suit shall also be sent to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be;

(c) the Government officer concerned should also give a suitable reply, in consultation with the Government Pleader concerned, to the notice-giver before the suit is actually filed. Such action may sometimes result in avoiding unnecessary litigation.

(4) *Procedure to be followed after receipt of summons.*—(a) (i) The summons and other processes of the court, unless directed against a particular Government officer, either by the name or office, should be served on the Government Pleader concerned attached to that court under Order XXVII, rule 4 of the Code of Civil Procedure. The administrative departments concerned with the subject matter of the case, may insist on such service being made on the Government Pleader concerned. It may not be possible to refuse service of orders of the court, particularly orders granting injunction, but in case of other processes, it is possible to insist upon the same being served upon the Government Pleader concerned. All the administrative departments concerned may, therefore, see that the Government officers, under their control, including their Registry Sections, should not accept the processes from the court, but insist service on the concerned Government Pleader, who would then be apprised of the matter and would file his appearance in the court on the date fixed and take such suitable steps as are necessary for the defence of such suit. But once a process of the court is accepted or otherwise brought to the notice of the administrative department, it has to take a note of the same and must act with utmost promptitude. Such processes are intended to communicate the date of hearing of the proceedings and it is absolutely necessary that every process of court should be carefully read by a responsible Government officer without any loss of time and in case he has any doubt or difficulty, he should personally contact the Law and Judiciary Department for guidance as to the future course of action;

(ii) in case of suits filed against the Government officers in their official capacity, the Government officers concerned should accept the summons;

(b) (i) where a summons of suit against the State is served on the Government Pleader concerned, he shall at once procure an uncertified copy of the plaint and other documents, if any, annexed to it and forward them together with summons and other processes, with the date of receipt of summons noted thereon, to the Government officer concerned, who himself, or by his subordinate, is alleged to have given rise to the cause of action of the suit;

(ii) if the plaint relates to the acts of two or more Government officers, the abovesaid papers should be sent to the principal of such Government officers;

(iii) once the summons is received by the Government Pleader concerned, would be his duty to file appearance in such case;

(iv) if any Government officer is impleaded as a party defendant in a suit for actions performed by him lawfully in his capacity as such Government officer and the summons is served on him personally, he shall at once forward a Vakalatnama to the Government Pleader concerned (unless such Government Pleader, already holds a general power of attorney from him) and procure through him an uncertified copy of the plaint and other documents, if any, annexed to it. He shall also request the Government Pleader concerned to file his interim appearance in the matter;

(v) the Government Pleader or the Government officer concerned shall send copies of such summons and plaint with its annexures to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be;

(vi) if the summons and the plaint with its annexures are served upon the Collector or the Government department concerned, such Collector or the department shall forthwith inform the Government Pleader concerned to appear in the case and also forward copies of such summons and plaint with its annexures to him, with a direction to file interim appearance, and as well as to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be;

(vii) if any notice of the court in respect of an interlocutory matter is received by the Collector concerned, he shall forthwith send such notice to the concerned Government officer and direct him to depute a responsible official to brief the Government Pleader concerned in the matter.

(5) *Report to be submitted to the head of the department.*—(a) The Government officer concerned or the Government officer, who is sued in his official capacity and who desires that Government should undertake the defence of suit on receipt of the summons and the copy of plaint with its annexures from the Government Pleader concerned, shall note the date of such receipt and also the date fixed for hearing and shall at once proceed to ascertain the facts of the case unless the facts have already been ascertained at the notice stage;

(b) he shall then submit a report through the ordinary channels of communications to his head of the department stating distinctly—

(i) the number of the suit;

(ii) the date on which and the court in which it is instituted;

(iii) the names of all the parties;

(iv) the amount or value of the claim;

(v) the date fixed by the court for the first hearing; and

(vi) whether the notice of the suit under section 80 of the Code of Civil Procedure, has been given and, if so, the date of delivery of such notice;

(c) The following papers shall be sent to the head of the department along with the report:—

(i) the copies of the summons and plaint along with its annexures i.e. copies of any documents or list of documents;

(ii) the copies of his replies, in duplicate, to each paragraph of the plaint giving in details whether the statements made in the plaint are correct or not, and, if not, in what respect they are inaccurate. The Government officer should note that parawise report should not be cryptic. It should be clearly stated in the parawise report whether the allegations are to be admitted or denied and, if so, to what extent;

(iii) a full and detailed statement in duplicate—

(A) of the circumstances which led to the suit;

(B) of the courses which it is proposed to adopt namely, whether to admit, compromise or defend the suit, and of the reasons for the same; and

(C) if it is proposed to defend the suit, the grounds on which it is proposed to base the defence, and the evidence to be adduced;

(iv) if the case turns on documentary evidence, the copies of the documents (or the originals) relied on by the plaintiff (if procurable) and by the defence;

(v) all the correspondence and written proceedings connected with the subject matter of the suit;

(vi) if the civil suit or any other civil proceeding is filed in the High Court (Original Side) at Bombay then the copies of English translation of all the documents should be supplied.

(d) The Government pleader concerned shall give the Government officer concerned such assistance as he may require in preparing his report under this rule.

(e) The Government officer concerned shall also give to the Government Pleader concerned, copies of the parawise report and papers referred to in clauses (b) and (c) within 15 days of the receipt of summons. If it is proposed in the report to defend the suit, the Government Pleader concerned shall prepare a draft written statement in consultation with the Government officer concerned, if he feels it necessary, and supply it to the Government officer concerned. If the Government Pleader is of the opinion that the suit is either wholly or partly indefensible and may be compromised, he shall with the draft written statement of defence, submit his opinion in detail stating how far the suit will be defensible and suggesting in consultation with the Government officer concerned, the terms on which the suit may be compromised.

(6) (a) The head of the department shall, on receipt of report under sub-rule (5) forward it to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, with the opinion thereon and in particular, as regards defensibility of the suit and the terms of compromise suggested, if any;

(b) the head of the department shall then make an appointment of a suitable Government officer by designation as the officer-in-charge for the suit. In doing so, he shall have regard, among other things, to the importance of the point of law and facts involved in the suit, the value of the subject matter of the suit and the rank, status and capacity of the officer to undertake the responsibility for the conduct of the suit. He shall communicate the same to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be. The Government Pleader concerned, the Government officer, who made report under sub-rule (5) and the person appointed as officer-in-charge of the suit.

(7) *Procedure when two or more Government officers are jointly concerned in a suit.*—If two or more Government officers, belonging to different departments are sued conjointly, or if the plaint, in a suit against the State, relates to the acts of two or more Government officers, they shall with the least possible delay, communicate with each other, and after mutual consultation, if possible with a view to having a common line of defence, arrange for the preparation of a joint report for the purpose of filing a common written statement. Where a joint report is not sent, a separate report, as per sub-rule (5), of each Government officer shall be submitted simultaneously to their respective head of the department for further action under sub-rule (6) for the purpose of filing separate written statements.

(8) *Sanctioning of the defence of suit and approval of written statement.*  
 (a) (i) On receipt of the report under sub-rule (6) from the head of the department, the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, shall examine the defensibility of the suit. If he finds the suit to be defensible, he shall scrutinise the draft written statement of defence, received with the report, and approve, modify or revise it as necessary in consultation with the administrative department, if necessary. If the defence of suit is sanctioned by Government in the Law and Judiciary Department, the draft written statement, as approved and revised by him in *Form No. 3*, alongwith sanction order in *Form No. 1 or 2* and other case papers, shall be forwarded to the Government Pleader concerned:

(ii) the Government Pleader or the Government officer concerned, as the case may be, then shall subscribe and verify the same under Order XXVI, rule 1 of the Code of Civil Procedure, and shall take such other steps for the defence of the suit as may be necessary;

(b) in the case in which Government in the Law and Judiciary Department undertakes the defence of a suit against Government officer in his official capacity, the Government Resolution or order sanctioning the defence is to be deemed to be the Government Pleader's authority to appear and answer to the plaint and he shall at once on receipt thereof move the court to cause a note of his authority to be entered in the register, but shall not produce such resolution or order in the court.

(9) *If the suit is indefensible.*—If the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, finds that the suit is indefensible, in whole or in part, or may be compromised, he shall obtain suitable orders in the matter from Government in the administrative department concerned and communicate the same to the Government Pleader concerned and the head of the department concerned. The Government Pleader concerned shall then take appropriate action in respect of the same.

(10) (a) *Time limit to be observed by all concerned.*—The summons served by the court specifies the date fixed for hearing of the proceedings. The utmost importance should, therefore, be given to send the report under sub-rules (5) to (8) to the Government Pleader concerned well in advance so that the written statement can be drafted and filed in the court before the date fixed for hearing. It is necessary to discourage the practice of asking the Government Pleader concerned to go on applying for adjournments because granting of adjournment is a matter within the judicial discretion and it is usual for the court to award costs against the State even when it grants such adjournment. It should, however, be noted that the court cannot grant adjournment beyond two months as per Order XXVII, rule 5 of the Code of Civil Procedure.

(b) *Applications for adjournment pending receipt of Government Orders.*—  
(i) If the sanction of Government in the Law and Judiciary Department is not received by the Government Pleader concerned before the date fixed by the court for filing answer to the plaint, for any reason, he shall take steps for applying to the court for extension of time on behalf of the State or the Government officer, sued in his official capacity, under Order XXVII, rule 7 of the Code of Civil Procedure, until such sanction or other orders of Government in the Law and Judiciary Department are received by him;

(ii) if in any instance the court is likely to decline to grant further time, the Government Pleader concerned shall inform immediately about the same to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for orders. He shall also inform the position to the Collector of the district or the officer-in-charge of the case and with his consent file written statement in anticipation of its approval.

(iii) in any event the Government Pleader concerned shall be responsible for seeing that no *ex-parte* order is passed by the court against the State or Government officer, sued in his official capacity.

(11) *Procedure in case of another suit based on similar cause of action.*—  
(a) If after the grant of sanction to the defence of a suit, the plaint is not accepted for want of jurisdiction but returned for presentation to the proper court having jurisdiction, or which is dismissed on account of some technical objection, such as want of due notice, the same sanction shall be held valid for the defence of any subsequent suit based on the same or a similar cause of action that may be brought by the same plaintiff, unless in the opinion of the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary

to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, there are special reasons which render it desirable to obtain further orders from Government in the administrative department in the matter;

(b) in any such case the report under sub-rules (5), (6) and (7) should be confined to forwarding such papers and information as are necessary to enable the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, to consider whether any modification of his previous opinion or addition to, or alteration, in the grounds on which it was proposed to defend the former suit, is necessary. If he considers that there are no special reasons which render it desirable to obtain further orders from Government in the administrative department in the matter, he shall communicate his instructions for the defence of the new suit to the Government officer submitting report under sub-rule (6) and also to the Government Pleader concerned, who shall thereupon proceed in the matter to defend the suit.

(12) The Government Pleader concerned shall immediately send the copies of issues framed by the court after they are cast, as well as of any subsequent amendments of the issues or additional issues under Order XIV, rule 5 of the Code of Civil Procedure, to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for enabling them to have a proper check and to issue suitable directions to him, if necessary, at the proper time.

33. *Procedure for the conduct of suits.*—(1) *Important points respecting the conduct of suits.*—The following important points relating to the conduct of all suits should be carefully attended to by the Government Pleader concerned and the officer-in-charge concerned :—

(a) no averment should be made in a plaint or in a written statement unless it can be proved from the evidence, which is or which may be available. In the preparation of draft plaints and written statements, the Government Pleader concerned shall observe the provisions of Orders VI to VIII of the Code of Civil Procedure;

(b) the evidence, whether oral or documentary, on which it is intended to rely should be carefully scrutinized by the Government Pleader concerned before it is adduced, and he should advise as to its admissibility and its probable importance or unimportance for the purpose of the suit, and suggest what evidence, if it be forthcoming, may with advantage be substituted for any which, in his opinion, would be weak or inadmissible;

(c) (i) when a suit is instituted on behalf of the State, the documents sued upon shall be produced in the court when the plaint is presented together with copies thereof as required by Order VII, rules 14 and 17 of the Code of Civil Procedure;

(ii) the list of other documents relied upon as evidence which is required by Order VII, rule 14 of the Code of Civil Procedure, to be annexed to the plaint, should be very carefully prepared;

(iii) all the documents which it is intended to rely upon should be produced at the first hearing of the suit, i.e. the day fixed for the settlement of issues, as required by Order XIII, rule 1 of the Code of Civil Procedure;

(iv) applications to the court to accept any document in evidence, at any subsequent stage of the trial should, as far as possible, be avoided, as such applications can not be granted without the grant of similar indulgence to the opposite party, which may place Government at a disadvantage. Such applications by the opposite party should be resisted;

(d) all the witnesses, where it is necessary or advisable to examine on behalf of the State, should be kept present and produced in the court on the day fixed for hearing. The necessity of making applications for adjournment should, as far as possible, be avoided and such applications on behalf of the opposite party should, unless they are made for sufficient reasons, be resisted as tending to prolong the litigation and to give opportunities for the fabrication of false evidence;

(e) the documents filed or disclosed by the opposite party should be carefully examined at the earliest opportunity by the Government Pleader concerned in order to raise such objections, as to their admissibility, as may be proper. They should also be compared with originals in the Government records, or with the papers which may tend to establish or disprove their authenticity;

(f) the Government Pleader concerned should, so far as possible, with the assistance of the officer-in-charge, should enquire into the circumstances of the witnesses to be examined by the opposite party and collect such evidence which may be useful for their cross-examination and which may tend to affect the nature of their testimony;

(g) the Government Pleader concerned should see that for claiming privilege of official documents the provisions of sections 123, 124 and 162 of the Indian Evidence Act, 1872 (Act I of 1872) are complied with and the question of admissibility of any document in the possession of any Government officer, when produced, should be carefully considered by him and argued. Both of them should follow the procedure as laid down in Chapter XI, containing general rules, if the Government officer is summoned by a court to produce official documents for the purpose of giving evidence;

(h) *Admission and protest against filing of certain documents mentioned in the list.*—If in suits against the State or its officers, the plaintiff at any stage, after the presentation of the plaint, files any document, not mentioned in the list annexed to the plaint, and it is not a document in answer to the case, set up by the State or a document to refresh the memory of a witness, the Government Pleader concerned shall invariably object to such document being received in evidence. If this objection is overruled and the document is

received, he shall request the court that a note be entered on the record of his objection:—

(i) that a document should have been filed with the plaint or noted in the list, as the case may be;

(ii) that as the defence of all suits against the State or its officers is prepared under the instructions of Government and the Government is placed at a most serious disadvantage by the admission of a document without notice; and

(iii) that the document not having been entered on the plaint or the list annexed to the plaint as required by law, the reply was framed on the assumption that no such document would be forthcoming;

(i) *Admission and protest regarding documents at the first hearing.*—The Government Pleader concerned shall in every case insist at the first hearing under the provisions of Order XIII, rule 1 of the Code of Civil Procedure, upon the production of all documentary evidence by the opposite party and note upon his brief that he did so, and that the opposite party produced or declined to produce his documents, as the case may be. After this, he should object to the admission of any document which was not produced when first called for;

(j) the Government Pleader shall give immediate notice to the officer-in-charge of every document received by the court after his objection and send to him a summary of its contents or, if the document is likely to affect the case adversely, a true copy thereof and a statement showing that he objected to the admission of such document and his objection was recorded or overruled. In such cases, the officer-in-charge shall obtain instructions of the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, through his head of the department;

(k) in every suit against the State or its officers, want or insufficiency of notice, as the case may be, should be urged as a preliminary objection and the court should be requested to frame the issues and try it as a preliminary issue.

(2) Whenever the Collector or the Government officer concerned receives a summons to answer for an action brought against the State or its officers, he shall cause an enquiry to be made as to whether there are grounds for proceeding against the plaintiff for security of costs under Order XXV of the Code of Civil Procedure and, if necessary, shall direct the Government Pleader concerned to take action under the said Order.

(3) The officer-in-charge of the suit shall be responsible for seeing that timely action is taken and assisting the Government Pleader concerned at every stage of the suit. He shall make himself fully conversant with the facts of the case and the practice of the department concerned therewith. It shall be his duty to see that the Government Pleader concerned is thoroughly acquainted with the facts of the case and the evidence to be adduced on behalf of the

State and that all the necessary evidence, both oral and documentary, is ready by the proper time. He shall act as a liaison officer between the Government officer, who made the report under rule 31(1) or rule 32(5) and the Government Pleader concerned. Through him, the Government Pleader concerned shall keep the Government officer, who made the report, informed of the progress of the suit, and report to him, if any further information or evidence is required, moving the court, if necessary, from time to time, to postpone the case or adjourn the hearing. If for any reason the officer-in-charge of the suit is unavailable or unhelpful to the Government Pleader concerned, the latter shall report the fact to the Government officer, who made the report under rule 31(1) or rule 32(5) and the head of the department, who shall take suitable action in the matter.

(4) *The officer-in-charge to be present at the trial to aid the Government Pleader concerned.*—When a suit is under trial, an officer-in-charge of the suit shall always be present to instruct the Government Pleader concerned in regard to any matter, which may arise unexpectedly, and to direct his attention to any documents or other evidence, that may become important, at each stage of the trial. The Government Pleader concerned should intimate well in advance, as far as possible in writing and where there is no sufficient time then on phone, to the officer-in-charge concerned about the date on which the part-heard case is subsequently brought on warned list so as to enable the officer-in-charge concerned to be prepared to instruct the Government Pleader concerned on the date fixed for hearing. However, in respect of cases before the City Civil Court or the Small Causes Court at Bombay, the officer-in-charge concerned should himself keep a record of subsequent dates of hearing till the hearing is over and invariably remain present on those days without either seeking or obtaining instructions in that behalf from the Government Pleader in the City Civil Court or the Small Causes Court at Bombay.

(5) *Settlement of difference of opinion.*—If there is any difference of opinion between the Government Pleader concerned or the Special Counsel, appointed by Government in the Law and Judiciary Department, and the Collector or the Government officer concerned or the officer-in-charge as to the manner of conducting the case, a reference shall forthwith be made to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for obtaining his instructions in the matter.

(6) (a) When once the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, accords approval to the draft plaint or draft written statement under rule 31(4)(b) or rule 32(8)(a), the Government Pleader concerned will not ordinarily, find it necessary to obtain further instructions from the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be. The responsibility for the conduct of the suit is in every respect rests with the Government Pleader concerned, who shall thoroughly work upon the law applicable to the case and

see that all the relevant material evidence is led before the court. If, in any case any unusual points arise as to which the Government Pleader concerned experiences any difficulty or doubt, he may consult the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be who will guide him with advice thereon;

(b) the Government Pleader concerned shall also obtain instructions from the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, in all cases where the opposite party by application has—

- (i) served interrogatories to be answered,
- (ii) demanded disclosure of documents, or
- (iii) prayed for any interlocutory order.

The Government Pleader's report in such cases shall state his opinion in the matter and shall be accompanied by a draft answer settled in consultation with the Government officer concerned or the officer-in-charge and by all such papers as are necessary for the consideration of the points at issue;

(c) if Special Counsel is appointed, it shall be the duty of the Government Pleader concerned, subject to the orders of the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, to instruct such Special Counsel and when necessary to prepare his brief, and generally aid him in the conduct of the case;

(d) if an application is made for the withdrawal of a suit, brought against the State or its officers, the Government Pleader concerned shall consult the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, as to whether he should oppose such application;

(e) whenever there is a great delay in taking up and hearing of any suit in which—

- (i) the State or its officers are defendants, or
- (ii) a Revenue officer is a defendant and the defence is undertaken by Government in the Law and Judiciary Department—

such fact should be reported by the Government Pleader concerned, together with his opinion, through the Collector of the district, if necessary, to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for instructions as to whether a certificate should be issued under section 16 of the Bombay Revenue Jurisdiction Act, 1876 (Act X of 1876).

(f) *Examination of witnesses on commission.*—The court, either of its own motion or on the application of any party, has a discretion to issue a commission under Order XXVI of the Code of Civil Procedure, for examination of any

person. If the opposite party seeks a commission, the Government Pleader concerned should insist that his costs, including travelling expenses, should be borne by the party seeking commission and get such expenses taxed in the bill of costs. If the court does not tax these costs, the Government Pleader concerned can draw such expenses from the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

(7) *Decision to be reported by the Government Pleader.*—(a) As soon as a suit is decided, the Government Pleader concerned shall communicate the nature of the decision to the Collector, the Government officer concerned and the officer-in-charge, giving in important cases a brief statement of the grounds thereof. He shall forward a copy of his report to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, so as to reach him within 10 days from the date of the decision;

(b) wherever an uncertified copy of judgment is supplied by the court to the Government Pleader concerned immediately after the decision of the case as per instructions of the High Court under its letter No. P-0703/82, dated the 20th October 1982 (see Appendix D), and if such decision is entirely in favour of the State or its officers, the Government Pleader concerned shall supply such uncertified copy of judgment alongwith his report under clause (a) to the Collector or the Government officer concerned or the officer-in-charge, as the case may be.

(8) *The Government Pleader to obtain and forward copies of judgment and decree.*—The Government Pleader concerned shall then obtain with as little delay as possible three copies, one certified and two uncertified, of the court's judgment and of its decree by following the procedure laid down in paragraph 504(15) of Chapter XXVI of the Bombay High Court Civil Manual, Vol 1. One of the uncertified copies shall be forwarded immediately to the Collector or the Government officer concerned or the officer-in-charge and the other to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be. The certified copy of judgment and decree shall be sent to the Collector as soon as it is received from the court.

(9) *Procedure when the decision is entirely in favour.*—(a) If the decision of the court is entirely in favour of the State or its officers, the Government Pleader concerned may forward the copies of judgment without any comment, to the Collector or the Government officer concerned or the officer-in-charge, who shall communicate the result of the suit to his head of the department.

(b) The head of the department, however, need not communicate the result of the suit to Government in the administrative department concerned, unless he is of the opinion that for special reasons it is desirable to do so. If the decision appears to him to be specially inconvenient or to affect the administration in some unusual manner, he shall submit his report to Government in the administrative department, which may in turn seek the advice of the Remembrancer of

Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

### Part C

34. *Procedure for Land Acquisition Cases and other civil proceedings in the City of Greater Bombay and in the mofussil.*—(1) *Procedure of suits to apply to Land Acquisition Cases.*—The Land Acquisition Case/Reference filed in the High Court (Original Side) at Bombay or any subordinate court under the Land Acquisition Act, 1894, is tried in the same manner as civil suit, the claimant being the plaintiff and the Collector, the defendant. The Collector concerned shall arrange for the defence of such cases through the Government Pleader concerned. The procedure prescribed for the defence of suits shall be deemed to have been modified by the special instructions relating to such proceedings contained in Chapter IX of the Manual of Land Acquisition for State.

(2) *Procedure of suits to apply to other civil proceedings.*—If the Collector or the Government officer concerned deems it necessary to institute or is called upon to defend any miscellaneous civil proceedings in the High Court (Original Side) at Bombay and other subordinate courts, the procedure prescribed for suits shall, *mutatis mutandis*, in so far as it may be applicable, apply to such proceedings.

## CHAPTER V

### CIVIL APPEALS AND OTHER CIVIL PROCEEDINGS IN THE DISTRICT COURTS AND THE HIGH COURT (ORIGINAL SIDE) AND (APPELLATE SIDE).

35. *Procedure if appeal is to be filed on behalf of State.*—(1) If the decision of the subordinate civil court or the High Court (Original Side) at Bombay, in any suit or any other civil proceedings, is either wholly or partially adverse to the State or its officers, the Government Pleader concerned shall at once prepare an additional uncertified copy of judgment and decree and shall submit his report regarding the feasibility of filing of appeal alongwith such copy of judgment and decree and certified copy thereof to the Collector or the Government officer concerned. He shall also at the same time send such report alongwith uncertified copy of judgment and decree to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be. The report shall contain the following particulars:—

(a) (i) The date on which the application for certified copies of the judgment and decree has been made,

(ii) The date on which such copies are likely to be delivered to him,

(iii) The date of delivery of certified copies given by the court.

*Note.*—The Government Pleader concerned working in the mofussil courts shall bring the provisions contained in paragraph 505(2) in High Court Civil Manual, Vol. I, to the notice of the concerned officer of the court and shall insist upon giving the date on which the certified copies would be ready for delivery;

(b) in case the certified copies are not found ready on the date given by the concerned officer, the Government Pleader concerned in the mofussil shall secure the next date and inform the same to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for information;

(c) the two uncertified copies of judgment and decree shall be obtained from the court promptly and the same shall be forwarded to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be;

(d) if in any case it is not possible to send the uncertified copies of judgment and decree or a copy of his report, the Government Pleader concerned shall mention the probable date within which he will forward them and shall also give the reasons for such delay;

(e) whenever several proceedings are disposed of by a common judgment the Government Pleader concerned shall apply for certified copies of the judgment and decree of each of the remaining proceedings along with such common judgment;

(f) the report of the Government Pleader concerned should not be cryptic. It should contain his exhaustive opinion with detailed reasons in support of the stand taken by him;

(g) the Government Pleader concerned shall send separate opinion regarding appeals in respect of each judgment;

*Note.*—(i) Under Article 116 of the Limitation Act, 1963, the period of limitation for an appeal to the District Court is 30 days and that for an appeal to the High Court (Appellate Side) is 90 days, excluding the time taken for obtaining the certified copies of judgment and decree.

(ii) Similarly, under Article 117 of the Limitation Act, 1963, the period of limitation for an appeal against the judgment and decree or order of the High Court (Original Side) at Bombay to the Bench of the said court is 30 days, excluding the time taken for obtaining the certified copies of judgment and decree or order.

(2) (a) *If appeal lies to the District Court or the Bench of the High Court (Original Side) at Bombay.*—If the Government Pleader concerned recommends an appeal to the District Court or the Bench of the High Court (Original Side) at Bombay, as the case may be, he shall within 15 days send his report alongwith a copy of draft memorandum of appeal, the uncertified copy of judgment and decree, as stated in sub-rule (1) and also uncertified copies of such of the exhibits or the relevant portions thereof as he deems necessary to explain the grounds on which the decision is based or on which in his opinion an appeal should be made. In important cases copies of all the material exhibits or the relevant portions thereof shall be sent;

(b) *If appeal lies to the High Court (Appellate Side).*—In case an appeal has to be filed in the High Court (Appellate Side), the procedure as laid down in clause (a) shall be followed except that—

(i) the Government Pleader concerned shall send a certified copy of judgment and decree alongwith grounds of appeal to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, along with his report and uncertified copies of judgment and other exhibits and copies of translations of the same in English, if they are in regional language;

(ii) the report alongwith all relevant copies shall be sent within a month from the date of judgment.

(3) The Collector or the Government officer concerned shall then forward the report and the papers received from the Government Pleader concerned under sub-rule (2) immediately to the Remembrancer of Legal Affairs or the

Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, alongwith his opinion as to whether an appeal should be filed or not.

(4) The Collector or the Government officer concerned shall also forward a copy of his opinion to the head of the department concerned, who if he concurs with it, will merely file it, but if he differs from it, or considers it otherwise, shall submit a separate report to Government in the administrative department concerned, which in turn, if it considers it necessary, consult the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

(5) On receipt of the papers from the Collector or the Government officer concerned, the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, shall decide in consultation with the administrative department concerned, if necessary, whether an appeal should be filed or not. In case of difference of opinion, the opinion of the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, shall prevail.

(6) (a) If an appeal is sanctioned and is to be filed in the District Court, the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, shall send all the case papers alongwith Government Resolution in the *Form No. 4* and memorandum of appeal, duly approved and corrected, direct to the Government Pleader concerned;

(b) the Government Pleader concerned, shall then take necessary steps to file appeal in the District Court. He shall not make any important additions to, or alterations in the memorandum of appeal without obtaining previous approval of the Collector or the Government officer concerned:

Provided that, in urgent or exceptional cases he may move the court for necessary amendment to the memorandum of appeal in anticipation of such approval.

(7) (a) If the appeal is sanctioned and has to be filed in the High Court, the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, shall send all the case papers alongwith the Government Resolution in *Form No. 4* to the Government Pleader concerned in the High Court;

(b) the Government Pleader concerned in the High Court shall then prepare a memorandum of appeal and take all other steps that may be necessary for filing and conducting the appeal. In important or intricate cases, the memorandum of appeal should be submitted to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for approval before being filed in the High Court.

36. *Procedure when appeal is brought by opposite party.*—(1) If an appeal is brought by the opposite party against a decision, either entirely or partly in favour of Government or its officer, either in the District Court or in the High Court, a notice of the appeal will be served by the concerned court either on the Government Pleader concerned or on the Government officer concerned;

(a) in the former case, the Government Pleader concerned shall enter on the back of the notice the date of its receipt. He shall at once obtain an uncertified copy of memorandum of appeal and forward it and the notice received by him to the Collector or the Government officer concerned;

(b) in the latter case the Government officer concerned shall at once send the Government Pleader concerned a Vakalatnama (unless the Government Pleader concerned already holds a general power of attorney from him) and obtain through him an uncertified copy of memorandum of appeal.

(2) *The Collector or the Government officer concerned to report as to the defence.*—(a) The Collector or the Government officer concerned shall, on receipt of the copies of notice and uncertified copy of memorandum of appeal, carefully compare the grounds of appeal with the court's judgment and after consultation with the Government Pleader concerned, submit his opinion to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, stating therein whether an appeal should be defended and making any explanation or remarks that may be needed with reference to the grounds of appeal:

(b) the Collector or the Government officer concerned should also consider the question regarding the desirability of filing cross-objections, where the decision of the lower court was partially in favour of the State or its officers:

(3) *Procedure when defence of appeal is sanctioned.*—(a) On receipt of the report from the Collector or the Government officer concerned, the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, shall decide whether the appeal is to be defended or not;

(b) if the appeal is to be defended, the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, shall forward all the case papers along with the Government Resolution in *Form No. 5* for the defence of appeal to the Government Pleader concerned of the District Court or the High Court, as the case may be;

(c) the Government Pleader concerned shall then prepare a draft reply and after obtaining approval of the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, to the same, shall take necessary steps for the defence of appeal.

(4) *Security of costs.*—The Collector or the Government officer concerned shall ascertain if there is any reasonable ground for an application under Order XLI, rule 10 of the Code of Civil Procedure, requiring the appellant to furnish a security for costs. If the appeal is frivolous or if it is doubtful whether the appellant has sufficient means to pay costs in the event of failure, such applications shall invariably be filed.

37. *Procedure when two or more Government officers are concerned in an appeal case.*—When two or more Government officers of different departments are concerned in a case in which an appeal is to be filed on behalf of the State or in which an appeal is brought by the opposite party, the duties of the Government officers specified in the foregoing rules shall devolve on the principal of such Government officers.

38. *Applicability of certain rules of the civil suits to appeals.*—The provisions of the foregoing procedural rules in Chapter IV in respect of conduct of civil suits shall apply to the conduct of civil appeals except—

(1) that discretion shall be exercised by the Government Pleader concerned in meeting new points raised for the first time in appeal;

(2) if possible, he shall apply for an adjournment to enable him to consult the Government officer concerned or the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, if necessary, on such points on which he may not have been fully instructed, or to which he is not able to furnish an immediate reply; and

(3) that the Government officer shall not be deputed to be present to assist the Government Pleader concerned in the District Court or the High Court, unless express orders are received from Government in the administrative department concerned to that effect, or in emergent cases, a requisition is sent by the Government Pleader concerned.

39. *Procedure in case of appeals against decisions of Small Causes Court at Bombay.*—The provisions of the foregoing rules shall apply, so far as may be, in the case of appeals made to the full Bench of the Small Causes Court at Bombay.

40. *Procedure when an appeal has been decided by a District Court.*—When an appeal from an original decree has been decided by a District Court against which second appeal has to be filed or defended, the same procedure as is prescribed in the foregoing rules for filing or defending an appeal from an original decree shall be followed for filing or defending a second appeal.

*Note.*—The limitation for filing of second appeal to the High Court, against the decision of the lower appellate court, is 90 days under Article 116 of the Limitation Act, 1963, excluding the time taken for obtaining the certified copies of judgment and decree or order.

41. *Revision and Review Applications.*—The procedure prescribed in this Chapter for appeals shall, so far as it may be applicable, apply to the applications for revision or review.

*Note.*—The limitation for filing revision application, under the Code of Civil Procedure, is 90 days from the date of the decree or order sought to be revised and that for review is 30 days from the date of decree or order as per Articles 131 and 124 of the Limitation Act, 1963, respectively, excluding the time taken for obtaining the certified copies of judgment and decree or order.

## CHAPTER VI

### SUITS AND APPEALS BY INDIGENT PERSONS.

#### 42. *Notices served on the Government Pleader in suits by indigent persons.*—

(1) When an application to sue *in forma pauperis* is filed in the court, a notice of the day fixed by the court under Order XXXIII, rule 6 of the Code of Civil Procedure, for receiving evidence as to the applicant's alleged pauperism is served by the court on the Government Pleader concerned, appointed at the headquarters of the court. In such case a period of at least 10 days is allowed to Government for the production of evidence to disprove the alleged pauperism.

(2) On receipt of such notice, the Government Pleader concerned shall at once submit a report to the Collector of the City of Bombay and Bombay Suburban District, if the applicant resides in Greater Bombay, or to the Tahsildar of the Tahsil in which the applicant resides, giving therein—

- (a) the name, description and place of residence of the applicant;
- (b) the relief claimed;
- (c) the particulars of property belonging to the applicant as mentioned in the application; and
- (d) the date fixed for hearing.

(3) He shall also request the court, if necessary, to adjourn the hearing of the application for a period sufficient for the completion of the enquiry by the Collector of the City of Bombay and Bombay Suburban District or the Tahsildar of the Tahsil concerned, as the case may be.

(4) He shall also examine the application and ascertain whether procedure prescribed in rules 2 and 3 of Order XXXIII of the Code of Civil Procedure, has been followed and whether any grounds for rejection, referred to in rule 5 of the said Order, can be raised in respect of such application. If any error or objection is noticed by him, he shall, at the earliest, bring the same to the notice of the court by making an application.

43. *Collector to cause enquiry.*—(1) If the report from the Government Pleader concerned is received by the Collector of the City of Bombay and Bombay Suburban District, he shall, if necessary, with the assistance of the Commissioner of Police, Greater Bombay cause proper enquiries to be made as to the property and means of the applicant.

(2) If the report from the Government Pleader concerned is received by the Tahsildar of the Tahsil concerned, he shall cause an enquiry to be made as to the truth and *bona fides* of the statements contained in the application, and forward the papers, together with his own recommendation, which should be

based, as far as possible, on the documentary evidence collected by him, to the Collector concerned.

44. *Decision by Collector.*—The Collector concerned shall thereon decide whether the application should or should not be opposed. He shall then communicate his decision and also forward all the case papers, relating to the inquiry made into the alleged pauperism of the applicant, to the Government Pleader concerned.

45. *Application when to be opposed.*—(1) The Government Pleader concerned shall oppose the application only if instructed by the Collector concerned to do so. In that case, he shall lead such evidence as appears to him necessary with the assistance of the Government officer concerned. He shall also move the court to award costs to Government.

(2) In case the Collector concerned instructs him not to oppose the application, the Government Pleader concerned shall inform the court by filing *purshis* that Government does not desire to oppose the application.

46. *Application by the Government Pleader for dispaupering.*—The Government Pleader concerned shall file an application under Order XXXIII rule 9 of the Code of Civil Procedure, for dispaupering a plaintiff only after obtaining the permission of the Collector concerned. It is, however, the duty of the Government Pleader concerned to communicate to the Collector concerned any fact which at any time comes to his knowledge and which appears to render it desirable that such an application should be made.

47. *Examination of the decree by the Government Pleader.*—(1) When a copy of a decree made in a suit filed by indigent person, is sent by the court to the Collector concerned under Order XXXIII rule 14 of the Code of Civil Procedure, the Collector concerned shall forward it, in the first instance, to the Government Pleader concerned for scrutiny as to whether the order of the court as to the liability for court fee is proper and whether the claims of Government have been included and charged by the court to one of the parties to the suit. If this has not been done, the Government Pleader concerned shall immediately apply for amendment of the decree.

(2) Where the decree fails to comply with the law or in case there is a distinct omission on the part of the court, which passed the decree, to pass orders under rule 10, 11 or 11A of Order XXXIII of the Code of Civil Procedure, the Government Pleader concerned shall either file an appeal or make an application to the said court under Order XXXIII rule 12 of the Code of Civil Procedure, for an order under Order XXXIII rule 10, 11 or 11A of the said Code.

(3) The Collector concerned shall also inform the Government Pleader concerned, whether the person, liable under the decree for payment of such court fee, possesses any property, or is otherwise possessed of means to satisfy Government's claim in that behalf.

48. *Appeals by indigent persons.*—In case of appeal by indigent person under Order XLIV rule 1 of the Code of Civil Procedure, the procedure as laid down in rules 42 to 47 shall, so far as may be relevant, apply.

## CHAPTER VII

### CRIMINAL MATTERS IN THE SESSIONS COURTS AND HIGH COURT.

#### Part A

49. *Important points respecting the conduct of cases in the Sessions Court.*—

(1) The Public Prosecutor in the Sessions Court shall deal with the District Magistrate or the Commissioner of Police concerned in regard to criminal matters filed in the Sessions Court. The District Magistrate or the Commissioner of Police shall ensure that the Superintendent of Police concerned or the Investigating Officer or some other responsible officer, fully acquainted with the case, shall be deputed to instruct and assist the Public Prosecutor in the conduct of the Sessions Trial, Criminal Appeal, revision or reference or any other criminal proceeding before the Sessions Court on behalf of the State.

(2) In all cases committed for trial to the Sessions Court, the Public Prosecutor shall obtain from the committing Magistrate a copy of commitment order, charge or charges, a report under section 173 of the Code of Criminal Procedure, the First Information Report recorded under section 154 of the said Code and of all other documents or relevant extracts thereof on which the prosecution case is based, including the statements and confessions, if any, recorded under section 161 and 164 of the said Code of all persons when the prosecution proposes to examine as its witnesses and the depositions, if any.

(3) When the Public Prosecutor receives a notice that a case has been committed to the Sessions Court, he shall carefully examine the record and see that the form of the charge is correct and does not require any amendment and that all necessary evidence has been called by the committing Magistrate.

(4) In Sessions trials many a time the witnesses in examination-in-chief support the prosecution version, but in cross examination they give a contradictory version with the result that the courts find it difficult to rely on the version given in examination-in-chief by such witnesses. Sometimes, by way of precaution, the Investigating Officers get the statements of witnesses recorded under section 164 of the said Code. Such statements are useful for corroborating the evidence of the witnesses under section 157 of the Evidence Act, or for contradicting the evidence under section 145 and 151 of the said Act. When, therefore, a witness in the Sessions trial gives a different version, supporting the prosecution case in examination-in-chief and contradicting it in cross examination, it would be possible to strengthen the prosecution case by corroborating the version given in examination-in-chief by the statement made by the witness under section 164 of the said Code and also to argue that what the witness stated in his statement under section 164 of the said Code must be the true version, not because that statement is substantive evidence but because it tallies with the evidence given in examination-in-chief which is substantive evidence (cf. 1952 SCR 812 *Bhagwan Singh versus State of Punjab*). In the

circumstances where witnesses are related to the accused or in cases where there is an apprehension that the witness is likely to oblige the defence by giving damaging replies in cross examination, the Public Prosecutor shall invariably bring the statements made under section 164 of the said Code of Criminal Procedure on record under section 157 of the Evidence Act for corroborating substantial evidence, if any, on record.

(5) In all cases of serious offences, before dropping eye-witnesses, who are cited in the charge-sheet, the Public Prosecutor shall, as far as possible, consult the Investigating Officer concerned or in his absence other Police Officer, who is present for instructing him. Whenever the Public Prosecutor drops the witnesses cited in the charge-sheet in consultation with the Investigating Officer, he shall obtain the consent of the said officer in writing to that effect.

(6) The examination-in-chief is an effective weapon in the hands of prosecution, so also re-examination is a very effective weapon. The Public Prosecutor shall, therefore, ensure that he remains present in the court throughout the trial, particularly when the prosecution witnesses are in the box at the time of the cross examination and put proper objection to the questions that are put by the defence.

(7) (a) The Public Prosecutor shall not withdraw any prosecution without obtaining the sanction of Government in the Home Department. He shall not do so except upon a suggestion by the court or for other special reasons which it may be for him to substantiate, withdraw any prosecution without first consulting the Government in the Home Department through the District Magistrate concerned and other Government officers responsible for the prosecution. When the prosecution has to be withdrawn, the Public Prosecutor is normally expected to consult and obtain sanction of the District Magistrate concerned before applying for the withdrawal of such prosecution and it is only in exceptional circumstances which it will be for the Public Prosecutor to make out, that such consultation can be dispensed with. If necessary, the Public Prosecutor shall make an application to the court for a short adjournment to permit such consultation.

(b) Before the District Magistrate concerned sanctions such withdrawal, the case papers shall be referred to the Law and judiciary Department. If the Remembrancer of Legal Affairs recommends withdrawal of the prosecution, the case papers shall be submitted to the Chief Minister through the Minister (Home) and the Secretary to Government, Home Department for approval.

(c) Under section 321 of the Code of Criminal Procedure, the discretion to withdraw from a prosecution with the consent of the court, vests with the Public Prosecutor. In view of this legal position, the Public Prosecutor is expected to apply his mind to the facts and circumstances of the particular case and place before the court suitable grounds for withdrawing the prosecution in such cases. Under no circumstances can it be placed before a court that the Government desires to withdraw from the prosecution of any case because such a plea is not only contrary to the statutory provisions referred to above but may be used to show that the Public Prosecutor has not applied his mind to that case.

(8) (a) The Public Prosecutor shall report the result of every case to the District Magistrate or the Commissioner of Police, the Superintendent of Police and the Government officer concerned soon after the judgment is pronounced. He shall also apply for a free certified copy of judgment without losing time after the judgment is pronounced;

(b) in a case which has ended in conviction and adequate sentence has been passed, the Public Prosecutor shall send only certified copy of judgment to the District Magistrate or the Commissioner of Police concerned.

(9) (a) *When the decision is adverse to the prosecution.*—In case the Public Prosecutor is not so inclined to recommend an appeal against the order of acquittal or an appeal for enhancement of sentence or any revision or other application to be filed in the High Court, he shall forward the certified copy of judgment alongwith his opinion giving reasons for the same to the District Magistrate or the Commissioner of Police concerned for onward transmission to the Director of Public Prosecutions, Bombay for scrutiny. A copy of his opinion may also be forwarded to the Superintendent of Police or the Government officer concerned. In such case if the District Magistrate, the Commissioner of Police, the Superintendent of Police or the Government officer concerned differs from the Public Prosecutor and considers the case fit for moving the High Court, he may forward the copy of judgment in that case with his remarks for consideration directly to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be;

(b) in a case in which proposal is made by the Assistant Public Prosecutor to the Public Prosecutor recommending an appeal against the order of acquittal or an appeal for enhancement of sentence or any revision or other application but the Public Prosecutor does not consider the case to be a fit one for moving the High Court and the District Magistrate or the Commissioner of Police concerned is also of the same opinion, such proposal need not be forwarded to the Law and Judiciary Department for further scrutiny. However the reasons for not recommending the appeal or revision shall be recorded by the Public Prosecutor and the District Magistrate or the Commissioner of Police concerned. They shall also invariably intimate such decision to the Superintendent of Police concerned in respect of cases arising from the mofussil area.

## Part B

50. *Procedure as regards filing of appeals, revisions or other applications in the High Court when the decision is adverse to prosecution.*—(1) (a) Where in any Sessions Trial, Criminal Appeal, revision or any other criminal proceeding, the decision of the court is adverse to the prosecution and the Public Prosecutor proposes filing of appeal under section 378 of the Code of Criminal Procedure, against the order of acquittal of the accused or an appeal under section 377 of the said Code for enhancement of sentence or any other appeal or an application for revision or any other application to be filed in the High Court, he shall submit his proposal to that effect to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government,

Law and Judiciary Department at Nagpur or Aurangabad, as the case may be alongwith the following information and case papers:—

(i) a copy of grounds of appeal, revision or other application;

(ii) one clean certified copy of judgment. There should not be any marking on this copy. If the certified copy is hand-written, one more uncertified copy should be forwarded;

(iii) four clear and legible uncertified copies of judgment neatly typed in double notch and on one side on thick, durable and foolscap paper, leaving a margin of five to six centimetres;

(iv) the last date of limitation period on which an appeal, revision or other application has to be filed;

(v) a list of correct addresses of the accused against whom appeal, revision or other application is to be filed;

(vi) copies of extracts of relevant evidence and copies of depositions of important witnesses and other material record of the case, including translations in English of any papers which are in any regional language;

(b) he shall at the same time send a copy of his report recommending an appeal, revision or other application alongwith one uncertified copy of judgment, to the District Magistrate or the Commissioner of Police concerned for his perusal and also to the Superintendent of Police or the Government officer concerned.

(2) (a) The District Magistrate or the Commissioner of Police concerned recommending the filing of appeal, revision or other application in the High Court under sub-rule (9)(a) of rule 49, while forwarding his proposal, shall send all relevant case papers, as required under sub-rule (1) above to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be;

(b) he shall, on receipt of the report from the Public Prosecutor under clause (b) of sub-rule (1) above, send his report immediately to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

(3) Any other Government officer connected with the prosecution or the Director of Public Prosecutions, who desires to file an appeal against the order of acquittal or for enhancement of sentence or any other appeal or to file a revision or other application against the decision of any subordinate court to the High Court in any criminal matter, shall forward his opinion alongwith the opinion of the Public Prosecutor concerned and all the relevant case papers, as required under sub-rule (1) above, to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

(4) In every case in which a Government servant, who is prosecuted for any offence in relation to his official duties, is acquitted, the head of the department,

if the case was tried in the Greater Bombay, or the District Magistrate or the Commissioner of Police concerned, if the case was tried in the mofussil, shall, as soon as possible after the case is decided and the Public Prosecutor consulted, send his report alongwith all relevant case papers to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, stating the facts of the case and whether in his opinion an appeal should be filed against the order of acquittal.

(5) If the appeal is to be filed under section 378 of the Code of Criminal Procedure, the proposal under sub-rules (1), (2), (3) and (4) alongwith the relevant case papers shall be forwarded to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, as soon as possible and except in special cases not later than two months from the date of judgment and if the appeal is to be filed for enhancement of sentence or an application for revision or other application is to be filed in the High Court, the proposal to that effect, with all relevant case papers shall be forwarded as soon as possible and except in special cases not later than one month from the date of judgment.

*Note.*—Limitation for filing an appeal in the High Court against the order of acquittal under sub-sections (1) and (3) of section 378 of the Code of Criminal Procedure, is 90 days, excluding the period for obtaining certified copy of the judgment, under Article 114 of the Limitation Act, 1963 and the limitation for filing an appeal in the High Court against the sentence under sub-section (1) of section 377 of the said Code or against any order not being an order of acquittal is 60 days, excluding the period for obtaining certified copy of judgment, under Article 115 of the Limitation Act, 1963.

(6) If an appeal is filed by a complainant under section 378 (4) of the Code of Criminal Procedure, a notice is served by the High Court on the Public Prosecutor concerned in the High Court. In such cases the Public Prosecutor concerned in the High Court shall immediately forward the High Court notice and other enclosures to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, and seek Government's instructions whether the State should support the appeal or not.

(7) On receipt of the proposal under sub-rule (1), (2), (3) or (4) the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, shall submit his report alongwith relevant case papers to the Remembrancer of Legal Affairs for obtaining Government orders thereon. The proposal directly received in the office of the Remembrancer of Legal Affairs shall be scrutinised by him.

(8) If Government in the Law and Judiciary Department does not consider it necessary to file an appeal, revision or other application in the High Court against the order of the lower court, the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary

Department at Nagpur or Aurangabad, as the case may be, shall communicate the decision of Government in *Form No. 6* to the Public Prosecutor concerned and all the concerned Government officers.

(9) (a) If Government in the Law and Judiciary Department decides to file an appeal or an application for revision or any other application, or to support the appeal filed by the complainant, a Government Resolution in *Form No. 7, 8, 9, or 10* authorising the filing of appeal or application for revision or any other application, alongwith all relevant case papers, shall be sent by the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, to the Public Prosecutor concerned in the High Court to which the appeal, revision or application lies;

(b) the memorandum of appeal or application for revision or other application shall then be drawn by the Public Prosecutor concerned in the High Court and filed in the High Court within the period of limitation. In presenting the appeal the Public Prosecutor shall inform the High Court whether the accused person is in prison or not, and if yes, where he is.

(10) *Condonation of delay.*—If the Public Prosecutor in the Sessions Court, District Magistrate, Commissioner of Police, Director of Public Prosecutions or any other Government officer forwards his proposal beyond the time limit specified in sub-rule (5), he shall file an affidavit explaining the delay in sending his proposal from the date of judgment till the date of issue of his letter recommending an appeal, revision or other application. The time taken up from the date of receipt of the proposal in the office of the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, till the date of issue of Government Resolution shall normally be explained by them. In the case of the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, the aforesaid time shall include the time taken up in obtaining Government orders. In case a delay from the date of receipt of the Government Resolution and the connected papers in the office of the Public Prosecutor concerned in the High Court and the date of actual filing of an appeal, revision or other application, such delay shall be explained in the affidavit by the Public Prosecutor concerned in the High Court.

51. *Procedure as regards defence of criminal appeals, revision applications or other criminal proceedings.*—(1) *In cases arising in the City of Greater Bombay.*—(a) The proposals for defending the criminal appeals filed in the High Court at Bombay against the decisions of criminal courts in the City of Greater Bombay or applications for the exercise by the High Court at Bombay of its powers of revision in criminal cases arising in such courts or other criminal proceedings, shall be made by the Public Prosecutor for Greater Bombay. He shall on receipt of a notice from the High Court under section 385 of the Code of Criminal Procedure, consult the Commissioner of Police, Greater Bombay and forward all the necessary papers of the case to the Public Prosecutor, High Court at Bombay, stating whether or not in his opinion, the State

should defend such appeal or application or other criminal proceeding, as the case may be. If the Public Prosecutor, High Court at Bombay disagrees with the Public Prosecutor for Greater Bombay, he shall refer the matter to the Remembrancer of Legal Affairs for decision:

Provided that, if the Public Prosecutor for Greater Bombay is not able to secure all the necessary papers of case in time, he may, without expressing any opinion on such case, communicate the fact to the Public Prosecutor, High Court at Bombay, whose duty it shall then be to peruse the record and decide whether or not the State should defend the appeal, revision or other criminal proceeding. If the Public Prosecutor, High Court at Bombay, is of the opinion that the appeal, revision or other criminal proceeding should not be defended, he shall, as soon as possible, submit the papers of the case with his opinion to the Remembrancer of Legal Affairs for obtaining orders thereon.

(b) The Public Prosecutor, High Court at Bombay shall, either on the instructions of the Public Prosecutor for Greater Bombay or in case he differs from the opinion of the Public Prosecutor for Greater Bombay, then on the instructions from the Remembrancer of Legal Affairs, defend the appeal, revision or other criminal proceeding on behalf of the State.

(2) *In cases arising in the mofussil.*—(a) The proposals for defending the criminal appeals filed in the High court at Bombay, Nagpur or Aurangabad, as the case may be, against the decisions of criminal courts in the mofussil or applications for the exercise by the said High Court of the powers of revision in criminal matters arising in such courts or other criminal proceedings, shall be made by the District Magistrate concerned. He shall, on receipt of a notice from the High Court under section 385 of the Code of Criminal Procedure, consult the Public Prosecutor, who conducted the case and forward all the necessary papers of the case to the Public Prosecutor concerned in the High Court at Bombay, Nagpur or Aurangabad, as the case may be, stating whether or not in his opinion the State should defend the appeal, revision or other criminal proceeding. If the Public Prosecutor concerned in the High Court disagrees with the District Magistrate concerned, he shall refer the matter to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, and the latter in turn shall refer the matter to the Remembrancer of Legal Affairs for obtaining orders thereon.

(b) The Public Prosecutor concerned in the High Court shall, either on the instructions of the District Magistrate concerned or in case he differs from the opinion of the District Magistrate concerned, then on the instructions of the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, defend the appeal, revision or other criminal proceeding on behalf of the State.

(c) If the District Magistrate concerned in the Nagpur and Amravati Divisions receives a notice from the High Court at Nagpur in criminal appeal preferred by the complainants from private complaints, he shall, in the first instance, send such notice to the Joint Secretary or the Deputy Secretary to

Government, Law and Judiciary Department at Nagpur, who will then examine such case on its merits and then, if he considers it necessary, shall entrust the same to the Public Prosecutor, High Court at Nagpur to file appearance on behalf of the State.

(3) Notwithstanding anything contained in sub-rules (1) and (2) above, in all urgent cases, where there is a disagreement between the Public Prosecutor concerned in the High Court and the Public Prosecutor for Greater Bombay or the District Magistrate concerned, as the case may be, and time does not permit a reference to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, the Public Prosecutor concerned in the High Court shall defend the appeal, revision or other criminal proceeding and report the matter to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

(4) Notwithstanding anything contained in sub-rules (1) and (2) above, the Public Prosecutor concerned in the High Court shall appear in all criminal matters heard by the High Court, to which he is attached, either to defend the case or to inform the High Court of the decision not to defend the case on behalf of the State.

52. *Reporting of the result of the case.*—As soon as the appeal, revision or other criminal proceeding has been decided by the High Court, the Public Prosecutor concerned in the High Court shall inform the result of the case to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, and also to the Public Prosecutor concerned in the Sessions Court and all the Government officers concerned. He shall also apply immediately for a certified copy of judgment. If the High Court upholds the State appeal, revision or other application or passes order in favour of the State, the Public Prosecutor concerned in the High Court shall send the certified copy of judgment to the Government officer concerned, who proposed the appeal, revision or other application.

53. *If decision is adverse to the State.*—(1) If the decision of the High Court in any criminal matter is wholly or partially adverse to the State, the Public Prosecutor concerned in the High Court shall within a month submit his detailed report to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, with copies to all the Government officers concerned, giving therein the specific reasons as to why the decision should be acquiesced in or appealed against. If he proposes to challenge the decision of the High Court, his report shall be accompanied by the grounds of appeal, the certified copy of the judgment, the Paper-Book and other relevant case papers.

(2) If Government in the Law and Judiciary Department decides to acquiesce in the decision of the High Court, the Remembrancer of Legal Affairs or the

Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, shall communicate the Government decision in *Form No. 6* to all the officers concerned.

### Part C

54. *Bail matters.*—(1) The Public Prosecutor concerned in the subordinate court and the High Court shall, on receipt of notice of the court seek instructions of the District Magistrate or the Commissioner of Police concerned for opposing the bail applications. If the time does not permit or if the Public Prosecutor concerned does not receive any instructions from the District Magistrate or the Commissioner of Police concerned, he shall use his discretion while opposing such bail application.

(2) *Cancellation of bail.*—(a) If the Public Prosecutor or the District Magistrate or the Commissioner of Police concerned is of the opinion that any person released on bail by any court should be rearrested and committed to custody, he shall immediately send his proposal for cancellation of bail to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, who shall in turn, if considered necessary by Government in the Law and Judiciary Department, issue the Government Resolution in *Form No. 11* and direct the Public Prosecutor concerned to take immediate steps to move the court for cancellation of such bail.

(b) The Public Prosecutor concerned shall effectively resist the grant of bail to the accused by the court in the cases, which are non-bailable, involving atrocities or crimes perpetrated on the members of the Scheduled Castes/Scheduled Tribes and offences under the Protection of Civil Rights Act, 1955. He shall pursue such cases in the court for securing out of turn quick trial, conviction and deterrent punishment.

55. *Transfer of cases.*—(1) When the District Magistrate concerned is of the opinion that a case should be transferred from a Sessions Court, he shall make a report to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, requesting him to instruct the Public Prosecutor concerned in the High Court to make one or more of the motions indicated in clauses (i), (ii), (iii) or (iv) of sub-section (1) of section 407 of the Code of Criminal Procedure. The said report shall state under which of the clauses (a), (b) and (c) of the said sub-section the case falls and it shall also be accompanied by draft affidavit in support of an application for transfer of such case.

(2) If an accused person makes an application to the High Court under section 407(1) of the said Code for transfer of his case, the District Magistrate concerned, on receiving notice of such application shall, if the statements made therein are not admitted, instruct the Public Prosecutor concerned in the High Court to oppose the application. If the allegations made in the affidavit of the accused are held to be false, necessary steps shall be taken by the District Magistrate concerned for the prosecution of the offender.

### Part D. Director of Public Prosecutions, Bombay

56. *Duties and functions.*—The post of the Director of Public Prosecutions, Bombay has been created by the Government for the purpose of pin pointing defects in the Police investigations etc. under the Government. He shall attend specifically to the following duties:—

(1) *Examination of causes of acquittal.*—(a) The Director of Public Prosecutions shall undertake scrutiny of acquittal cases in respect of the offences of murder in the State after such cases are decided and indicate the line on which the prosecution should proceed in order to minimise the number of acquittals. Such scrutiny shall be restricted to cases in which the Public Prosecutor or the District Magistrate concerned do not propose to move Government in the Law and Judiciary Department for an appeal against acquittal or for an appeal for enhancement of sentence or for a revision application.

(b) He shall prepare a note in every case giving appraisal of the cause which led to the acquittal. It shall be submitted to the Law and Judiciary Department if it concerns the Public Prosecutors. In other cases he shall send his scrutiny notes directly to the Superintendent of Police or the Commissioner of Police concerned for taking action in the light of his suggestions. The Superintendent of Police or the Commissioner of Police concerned shall then send his remarks or take action on the suggestions, as the case may be, under intimation to the Inspector General of Police. In case the Inspector General of Police does not agree with the observations of the Director, he shall refer the matter to Government in the Home Department for final decision.

(c) He may on his own, send recommendations to the Law and Judiciary Department for filing an appeal in the cases examined by him. The Law and Judiciary Department or the Home Department may also refer to him the cases of appeal against acquittal handled by it, after they are decided, for such scrutiny as may be considered necessary into the causes of acquittal.

(d) The judgment of a trial court in respect of a case referred to in clause (a) above, together with a copy of his opinion to the Law and Judiciary Department in cases, where appeal has not been recommended, shall be furnished promptly and not later than 4 weeks, to the Director of Public Prosecutions by the District Magistrate concerned. The Director of Public Prosecutions may call for papers of Police investigation including extracts of Police diaries and depositions of witnesses in such cases as he desires and the District Magistrate and the Superintendent of Police concerned shall have them sent to the Director of Public Prosecutions without undue delay. It shall be competent for the Director to correspond directly with the District Magistrate or the Superintendent of Police concerned to obtain such papers and any other information relating to it and they shall furnish such papers and supply such information to the Director as may be called for by him. The Director shall prepare a note commenting in detail on the investigation

and on the conduct of the prosecution, wherever necessary and pointing out any particular aspect which requires to be explained to the Investigating Officer concerned.

(2) *Analysis of acquittal cases with a view to pin point defects in the investigation or conduct.*—The Director shall submit a six-monthly report based on the analysis of acquittal cases examined by him as envisaged in clause (a) of sub-rule (1) above, to Government in the Home Department dealing comprehensively with all the aspects of the investigation and giving an appraisal of the causes of acquittal.

(3) *Suggestions for improvement in Police investigation.*—(a) The Director shall also afford effective guidance to the Police Officers, Assistant Public Prosecutors and, whenever required to the Public Prosecutors (the last through the Law and Judiciary Department) in avoiding defects in investigation and the conduct of a case relating to a murder case. This guidance, shall be extended to the regional headquarters at Thane, Nashik, Aurangabad, Kolhapur, Amravati and Nagpur.

(b) In such murder case as may be considered important by the District Magistrate or the Superintendent of Police concerned or in cases particularly specified by the Director, the copies of Police diaries and statements of witnesses shall be sent to the Director either before the charge-sheet is sent up to the committal court or soon thereafter but before the trial in the committal court begins, to enable the Director to consider propriety or adequacy of the case (including framing of appropriate charges).

(c) In all murder cases, other than those referred to in clause (b) above, the Investigating Officer concerned shall send copies of the Police statements to the Public Prosecutor concerned within four days from the date of commitment order. The Public Prosecutor concerned may, if he considers necessary, consult the Law and Judiciary Department through the Director on any difficult question of law.

(d) Whenever the Director, while examining the case, finds any defect in the investigation or the conduct of the prosecution, he shall bring it to the notice of the Home Department or the Law and Judiciary Department, as the case may be, for such action as may be deemed necessary.

(4) *General.*—The Director shall keep himself in touch with the decisions of the High Court and report to the Law and Judiciary Department or the Home Department, as the case may be, for issuing necessary directions to the Public Prosecutors and Assistant Public Prosecutors to carry out the directions of the High Court.

## CHAPTER VIII

### WRIT PETITIONS AND APPEALS ARISING THEREFROM IN THE HIGH COURT (ORIGINAL SIDE) AT BOMBAY AND WRIT PETITIONS IN THE HIGH COURT (APPELLATE SIDE) AT BOMBAY, NAGPUR AND AURANGABAD.

#### Part A. Writ Petitions.

57. *Procedure for filing of Writ Petitions on behalf of State and its officers.*—
- (1) When a Collector or a Government officer concerned is not satisfied with the orders of any court, tribunal, Board, Commission or other body against which no other remedy is open to get redress, he shall send a proposal to file a Writ Petition under Article 226 and/or 227 of the Constitution against such an order to the administrative department concerned within the shortest possible time. His proposal shall contain the following papers:—
- (a) the grounds for filing Writ Petition giving reasons thereof;
  - (b) Rules, Orders, precedents and notifications relied upon;
  - (c) one certified and three uncertified copies of judgment, decree or order against which the Writ Petition is to be filed.
- (2) The administrative department concerned on receipt of such papers shall send all the case papers alongwith its opinion to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.
- (3) The Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, if satisfied that a Writ Petition be filed, shall issue instructions to the Government Pleader concerned in the High Court for filing a Writ Petition and also send all the case papers to him.
- (4) On receipt of the case papers, the Government Pleader concerned in the High Court shall draft a petition on the basis of the material supplied to him and send it to the administrative department concerned for scrutiny. The administrative department concerned shall then send the draft Writ Petition to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for approval.
- (5) After obtaining approval thereon, the Government Pleader concerned in the High Court shall take necessary steps in getting the Writ Petition filed in the High Court.

58. *Procedure for the defence of Writ Petitions on behalf of State and its officers.*—(1) (a) Whenever a notice or notice of motion in a Writ Petition is served on the Government Pleader concerned in the High Court on behalf of

the State, he shall on the same day, as far as possible, and latest by next day forward copies of the notice accompanied by the copy of Rule i.e. order of the court and connected Writ Petition, affidavit and other annexures to the administrative department concerned and to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

(b) He shall also apprise the administrative department concerned on any of the following points:—

(i) *vires* or legality of any legislative enactment or statutory rule has been challenged;

(ii) executive orders or executive actions of Government and/or its officers have been challenged and the matter is such which not only affects the rights of the rival parties, but also the interest of Government;

(iii) any taxation matter has been challenged;

(iv) any application for stay or any interim order has been made.

(c) He shall, on finding that the Writ Petition falls under any one or more of the above points, put in appearance in the High Court on behalf of the State, at the admission stage without waiting for instructions from the administrative department or the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be. Where he finds that the question is between two private parties and Government's interest is not involved, he shall in the first instance obtain instructions from the administrative department concerned and then file appearance before the High Court for bringing the facts about Government's non-involvement in the case to the notice of the High Court.

(d) In other Writ Petitions he shall file appearance in which the State is impleaded as a party, and obtain adjournment, if no instructions from the administrative department concerned are received by him in time.

(2) Whenever a notice or notice of motion is served on the Government officer concerned, who is impleaded as a party in his official capacity, he shall without the least delay, forward to the administrative department concerned, all the relevant case papers, including a copy of petition, a statement of facts, which are necessary for meeting the allegations in the Writ Petition and his recommendations as to whether the Writ Petition should be opposed or not. He shall also forward the copies of the above case papers to the Government Pleader concerned in the High Court.

(3) The administrative department concerned shall, on receipt of notice or notice of motion and its enclosures under sub-rules (1) and (2), make such enquiry into the facts of the case, as may be necessary and if the Rule is intended to be opposed, shall prepare or obtain parawise report on all the points raised in the Writ Petition and affidavit.

(4) On receipt of or after preparing parawise replies under sub-rule (3), the administrative department concerned shall forward the complete case papers,

as far as possible, within two weeks from the date of receipt by it or in any case before the expiry of the date mentioned in the notice or notice of motion to the Government Pleader concerned in the High Court and also forward the copies of the same to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, alongwith the following papers:—

(a) Recommendations whether the Writ Petition should or should not be opposed;

(b) self-contained note making references to rules, orders and precedents;

(c) such additional information as is likely to help the Government Pleader concerned in the High Court in the conduct of the case.

*Note.*—(i) Generally the Rule is returnable except as otherwise ordered by the High Court, within a period which is not less than 14 days after the service of notice on the opponent;

(ii) the parawise report should not contain cryptic answers such as “not admitted” or “denied” but should contain elaborate factual position and should be invariably accompanied by copies of relevant notifications, rules and orders.

(5) In case where any information or material is to be collected from the subordinate officer/s or the concerned Government officer for the purpose of preparation of parawise report, the administrative department or the Government officer concerned shall, at the earliest opportunity, bring it to the notice of the Government Pleader concerned in the High Court requesting him to take such adjournment as may be necessary for the purpose.

(6) *Drafting and swearing of counter affidavit.*—(a) The Government Pleader concerned in the High Court shall then draft a counter affidavit on the basis of case papers received under sub-rule (4).

(b) The administrative department concerned shall depute a competent officer, conversant with the subject matter of the petition, to assist the Government Pleader concerned in the High Court in drafting of the affidavit. Any information required by the Government Pleader concerned in the High Court in connection with the preparation of the counter affidavit shall be furnished by the administrative department concerned as early as possible.

(c) The Government Pleader concerned in the High Court shall send the draft counter affidavit to the administrative department concerned for verifying the correctness of the facts stated therein.

(d) The administrative department concerned shall then send the draft counter affidavit to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, who in turn shall send it duly approved, to the administrative department concerned for onward transmission by that department to the Government Pleader concerned in the High Court.

(e) The draft counter affidavit shall then be sworn in by the competent officer authorised to do so by the administrative department concerned for

which the date by which the counter affidavit has to be filed in the High Court shall be intimated by the Government Pleader concerned in the High Court to the administrative department and the Government officer concerned, if such date has been fixed by the High Court in any case.

(f) On swearing the counter affidavit by the competent officer, the Government Pleader concerned in the High Court shall file it in the High Court:

Provided that—

(i) except in urgent cases, when no time is available, the draft affidavit shall be sent by the Government Pleader concerned in the High Court to the administrative department concerned for approval; or

(ii) in cases involving the validity of any statute or statutory rule or any complicated issues of general public importance, the Government Pleader concerned in the High Court shall obtain suitable adjournment, if no time is available, and forward the draft counter affidavit with other connected papers to the Remembrancer of Legal Affairs for approval. The Government Pleaders in the High Court at Nagpur and Aurangabad should forward such counter affidavits to the Remembrancer of Legal Affairs through the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

59. *Conduct of Writ Petitions.*—(1) *Important points respecting the conduct of Writ Petitions.*—(a) In view of the expeditious and summary nature of the proceeding, prompt action is necessary at every stage of the Writ Petition on the part of the Government Pleader concerned in the High Court as well as the administrative department and the Government officer concerned.

(b) The administrative department concerned shall depute the competent officer with all instructions and records or such other material as may be required by the Government Pleader concerned in the High Court. The Government Pleader concerned should intimate well in advance, as far as possible in writing and where there is no sufficient time then on phone, to the competent officer concerned about the date on which the part heard case is subsequently brought on the warned list so as to enable the competent officer concerned to be prepared to instruct the Government Pleader concerned on the date fixed for hearing. The competent officer shall not be detained unnecessarily by the Government Pleader concerned unless his presence is essential.

(c) Whenever the question of making a concession or giving an undertaking before the High Court on behalf of the State or a Government officer arises, the Government Pleader concerned in the High Court shall obtain a suitable adjournment and refer the matter to the administrative department concerned for expeditious scrutiny and examination of the pros and cons in consultation with the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, if necessary. This does not, however, preclude the Government Pleader concerned in the High Court from conceding obvious points of law during the course of arguments. However, the invalidity or

unconstitutionality of any statute, rule, ordinance or any Government Resolution, order, etc. shall never be conceded before obtaining instructions of the Remembrancer of Legal Affairs.

(d) All interim orders passed by the High Court shall be communicated in writing by the Government Pleader concerned in the High Court direct to the party concerned for prompt compliance.

(e) The affidavits to be filed in the interlocutory applications such as—

(i) application for grant, vacation or modification of stay orders,

(ii) expedite applications,

(iii) applications for getting the Writ Petitions dismissed on account of having been infructuous, shall be drafted by the Government Pleader concerned in the High Court after obtaining instructions from the administrative department and Government officer concerned.

(2) Government is not bound to defend each and every Writ Petition in which the State and its officers are impleaded as parties. If it transpires to Government in the administrative department concerned or the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, that although the State has been impleaded as a party, it has no direct interest in the subject matter of the petition, it shall be open to Government in the administrative department concerned or the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, to ask the Government Pleader concerned in the High Court to withdraw his appearance. However, before such withdrawal, the Government Pleader concerned in the High Court shall inform the petitioner or his lawyer that Government does not desire to appear in the matter as Government has no direct interest in the subject matter of the petition and that the appearance on behalf of the State will be withdrawn if the petitioner or his lawyer agrees not to claim any costs or other relief against the State. In case where the petitioner or his lawyer refuses to agree as aforesaid, the Government Pleader concerned in the High Court may appear in the proceeding and, after pointing out that the State was not a necessary party, apply to the High Court for an order for the State's costs.

(3) If in any Writ Petition, involving interpretation of All India Services Rules, 1951 and Regulations, only the State and its officers are impleaded as parties, the Government Pleader concerned in the High Court shall move the High Court at the earliest opportunity to implead the Union of India as a party to the said petition. He shall also send the draft of the counter affidavit, proposed to be filed on behalf of the State in such cases, to the Deputy Secretary to Government of India, Department of Personnel Cabinet Secretariat at New Delhi for taking further action.

(4) (a) Whenever a Writ Petition is filed in the High Court under Article 226 and/or 227 of the Constitution against an order passed by an independent

tribunal or a quasi-judicial body like the Maharashtra Revenue Tribunal, Co-operative Tribunal, Industrial Tribunal or an Authority under the Payment of Wages Act etc., and such tribunal or quasi-judicial body is impleaded as a party to such petition it is necessary in the first instance for the tribunal or the quasi-judicial body to examine the averments contained in the petition served upon it. If the tribunal or the quasi-judicial body considers it necessary to oppose the petition or if it observes that any important question of law or policy arises in the case which makes it necessary for the State to appear, the tribunal or the quasi-judicial body shall send its report to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, through the administrative department concerned communicating its views in such matters.

(b) The administrative department concerned, to which by that time the Government Pleader concerned in the High Court would have sent a copy of petition, shall also consider whether it is necessary for the State to appear on the ground that some important question of law or a question affecting Government decision or policy is involved. On receipt of the report from the tribunal or the quasi-judicial body, the administrative department concerned shall finalise its views and make a report to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

(c) On the basis of the report from the tribunal or the quasi-judicial body and the administrative department concerned and the exigencies of the case, the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, shall instruct the Government Pleader concerned in the High Court to appear on behalf of the tribunal or the quasi-judicial body or the State, as the case may be.

(d) Where it is decided to file an affidavit on behalf of the tribunal or the quasi-judicial body, such affidavit shall be sworn in either by the Registrar, the Secretary or the Head Clerk of such tribunal or quasi-judicial body.

60. *Decision to be communicated to all concerned.*—(1) As soon as the Writ Petition is decided, the Government Pleader concerned in the High Court shall communicate the nature of the decision to the administrative department concerned and the Government officer concerned with a copy to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, giving in important cases a brief statement of the grounds on which the decision is based.

(2) He shall on the very day of the decision apply for a certified copy of the judgment and after obtaining the same forward it to the administrative department concerned.

(3) Where the judgment is not adverse to the State but nevertheless contains directions to be complied with by Government or its officers or contains reflections upon their conduct or administration, the Government Pleader concerned in the High Court shall bring it to the notice of all concerned officers and Government departments.

(4) Where the judgment is adverse to the State, the Government Pleader concerned in the High Court shall obtain one certified and two uncertified copies of judgment and send the certified copy of judgment and one uncertified copy of judgment alongwith his opinion, whether an appeal should or should not be filed, to the administrative department concerned. He shall at the same time forward one uncertified copy of judgment alongwith his report to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be. If he recommends an appeal, he shall indicate the last date of limitation within which the appeal is required to be filed.

(5) The administrative department concerned, if it recommends an appeal, shall forward the case papers alongwith the report, received under sub-rule (4) to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

#### **Part B. Appeals arising from Writ Petitions filed in the High Court (Original Side) at Bombay.**

61. *Filing or defence of Appeals before Appellate Court of High Court.*—  
(1) If the Writ Petition under Article 226 of the Constitution is decided by the single Judge sitting on the Original Side of the High Court, an appeal will lie before the Appellate Court constituting a Bench of not less than two Judges.

(2) In such cases on receipt of case papers under sub-rule (5) of rule 60, the Remembrancer of Legal Affairs, shall, if he recommends appeal, send all the case papers to the Government Pleader concerned in the High Court with the directions to file an appeal before the Appellate Court of the High Court.

(3) If the appeal is filed before the Appellate Court of the High Court against the State or its officers, the procedure as laid down in rules 58 to 60, so far as it is relevant, shall, *mutatis mutandis*, apply.

(4) The appeal filed by or against the State or its officers shall, as far as possible, be conducted by the same Government Pleader in the High Court, who conducted the case at the original stage.

*Note (1).*—(a) If the Writ Petition under Articles 226 and 227 of the Constitution is decided by the Bench, sitting on the Appellate Side of the High Court, further appeal lies before the Supreme Court under Articles 132 or 136 of the Constitution.

(b) If the appeal filed before the Appellate Court of the High Court is decided, further appeal lies before the Supreme Court.

*Note (2).*—Limitation for filing an appeal before the Appellate Court of the High Court against the decision of the single Judge of the High Court (Original Side) is 30 days under Article 117 of the Limitation Act, 1963 and that for filing a petition for special leave in the Supreme Court is 90 days under Order XVI, rule 1 of the Supreme Court Rules, 1966 and Article 133(c) of the Limitation Act, 1963, excluding the time required for obtaining the certified copy of judgment.

62. *Habeas Corpus Petitions.*—For the conduct of Writ Petition of *Habeas Corpus*, filed under Article 226 of the Constitution on the Appellate Side of the High Court, the procedure as laid down under rules 58 to 60, so far as it may be relevant, shall, *mutatis mutandis*, apply.

## CHAPTER IX

### CIVIL AND CRIMINAL APPEALS AND OTHER PROCEEDINGS IN THE SUPREME COURT.

63. *Appeals by State.*—(1) Government in the Law and Judiciary Department shall consider the proposal for filing of appeal, whether civil or criminal to the Supreme Court, either received from the Government Pleader or Public Prosecutor in the High Court or other Government officer, interested in the case, through his administrative department, and examine whether there is a strong probability of success and/or substantial question of law of general importance or interpretation of the Constitution is involved.

(2) If it is decided to file an appeal in the Supreme Court against the judgment, decree, order or sentence passed or made by the High Court, or any other court or tribunal, the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, (in the latter case with the approval of the Remembrancer of Legal Affairs) shall send instructions in *Form No. 12* to the Government Advocate for the State, appointed by Government in the Law and Judiciary Department in the Supreme Court, for filing Special Leave Petition in the Supreme Court under Article 136(1) of the Constitution, along with the following case papers:—

(a) The certified and uncertified copies of judgment, decree, order or sentence appealed from;

(b) a Vakalatnama in *Form No. 13*, duly signed by the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department in favour of the Government Advocate;

(c) Paper-Book; and

(d) a detailed note explaining the law and facts of the case.

The copies of the above communication shall also be sent to all concerned.

*Note.*—Limitation period for filing of a petition for special leave to appeal to the Supreme Court is 90 days from the date of the judgment, decree, order or sentence to be appealed from, excluding the period for obtaining certified copy of judgment, under rule 1 of Order XVI of the Supreme Court Rules, 1966 or Article 133(c) of the Limitation Act, 1963:

Provided that, the limitation period for filing special leave to appeal to the Supreme Court in a case involving death sentence is 60 days from the date of the judgment, order or sentence under Article 133(a) of the Limitation Act, 1963.

(3) On receipt of communication under sub-rule (2), the administrative department concerned shall depute a responsible official, having actual knowledge of the case, to contact the Government Advocate for swearing an affidavit in *Form No. 14* in support of the statement of facts and other contents contained in the petition to be filed in the Supreme Court as required under rules 4(2) and 5(ii) of Order XVI of the Supreme Court Rules, 1966.

(4) The Government Advocate shall file a petition for special leave in the Supreme Court within the time limit.

(5) If the special leave to appeal is granted by the Supreme Court, the Government Advocate shall send intimation thereof to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be. The Government Advocate shall then, on payment of additional court fee, if any, within the time, get the special leave petition treated as petition of appeal.

(6) *Condonation of delay.*—If for any reason the State is unable to lodge a petition for special leave to appeal in the Supreme Court within the period of limitation, the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, and the head of the administrative department or the Government Pleader or Public Prosecutor in the High Court, as the case may be, shall send their affidavits explaining the delay caused on their part, to the Government Advocate for being filed in the Supreme Court alongwith the petition for special leave to appeal.

(7) *Remittance of amount after grant of special leave to appeal.*—(a) On receipt of intimation from the Government Advocate regarding grant of special leave by the Supreme Court, the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, shall require the administrative department concerned to remit a sum of Rs. 2,000 or such amount as the Supreme Court might have directed in a particular case, to the Government Advocate within 30 days of the filing of the petition of appeal under rule 6 of Order XV of the Supreme Court Rules, 1966, for depositing it as security for the cost of the respondent in the Supreme Court. No security is payable in respect of criminal appeals;

(b) the amount of expenses for printing or cyclostyling of record, on the basis of estimate prepared by the Registrar of the Supreme Court and intimated by the Government Advocate, shall be borne and paid by the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

(8) The Government Advocate shall then take further steps as per the provisions contained in Order XV of the Supreme Court Rules, 1966.

64. *Appeals against State.*—(1) As soon as the Notice, Notice of Motion of petition or appeal or application, whether civil or criminal, is served on the administrative department concerned of Government, that department shall immediately get typed 5 copies of Notice, Notice of Motion, Special Leave Petition, Petition of Appeal and the application for stay or injunction, as the case may be. The administrative department concerned shall send original copy of Notice alongwith its annexures to the Government Advocate in the Supreme Court. One copy each of the said Notice and its annexures shall also be supplied by the administrative department concerned to the Government Pleader or Public Prosecutor concerned in the High Court, who conducted the case in the High Court, and one copy to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for issuing necessary instructions to the Government Advocate.

(2) The administrative department concerned shall then take immediate steps to prepare the parawise remarks in reply to the Special Leave Petition, Petition of Appeal and application for stay or injunction, as the case may be, and send the same alongwith case papers and necessary instructions, if any, to oppose the admission of petition and stay or injunction application, if any, to the Government Pleader or Public Prosecutor concerned in the High Court. A copy of the parawise remarks and instructions, if any, to oppose the admission of petition and stay or injunction application, as the case may be, shall also be sent by the said department to the Government Advocate for his use and also to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be. The Government officer concerned, who has been made a party in his official capacity, shall send his Vakalatnama in *Form No. 15* in favour of the Government Advocate to him.

(3) The Government Pleader or Public Prosecutor concerned in the High Court shall, if the administrative department concerned so directs, prepare a counter affidavit in reply to the Special Leave Petition, Petition of Appeal and stay or injunction application, as the case may be, on the basis of parawise remarks and instructions received from the administrative department concerned. The counter affidavit shall be sworn in by the competent officer of the administrative department concerned before the Registrar or any competent officer of the High Court at Bombay, Nagpur or Aurangabad, as the case may be. The counter affidavit then shall be sent by the administrative department concerned to the Government Advocate in the Supreme Court so as to reach him within the time fixed for filing it in the Supreme Court. The Government Pleader or Public Prosecutor concerned shall supply a copy of the counter affidavit prepared by him to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for record.

*Explanation.*—It is, however, entirely left to the discretion of the administrative department concerned to entrust the work of drafting of counter affidavit

to the Government Pleader or Public Prosecutor concerned in the High Court or the Government Advocate in the Supreme Court.

(4) A Vakalatnama in *Form No. 13* to be filed on behalf of the State, shall be executed by the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department in favour of the Government Advocate and shall be sent to him alongwith instructions in *Form No. 16*.

(5) As soon as the Government Advocate receives the Vakalatnama and the instructions from the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for contesting the appeal, he shall without any delay draw up the case and lodge the same in the Supreme Court within the time prescribed for.

*Note.*—(i) Limitation for entering appearance on behalf of respondent in the Supreme Court is 30 days of the service on him of the notice of lodgment of the petition of appeal as prescribed under rule 12, Order XV of the Supreme Court Rules, 1966.

(ii) Under rule 35, Order XV of the aforesaid Rules, the respondent has to lodge his case within 30 days from the date of service of a copy of the statement of case lodged by the appellant.

(6) *Filing of Caveat.*—If it is anticipated by the administrative department concerned or the Government Pleader or Public Prosecutor concerned in the High Court that an application for special leave to appeal to the Supreme Court will be made by the opposite party and if it is decided to oppose such application, a brief of the case alongwith opinion on merits of such appeal, shall at once be prepared by it or him and sent to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, who shall with necessary instructions send the same to the Government Advocate for filing of a caveat in the Supreme Court.

*Note.*—It may be noted that until the caveat has been lodged under rule 2, Order XVIII of the Supreme Court Rules, 1966, or a Vakalatnama, has been filed, the State can not be heard in opposition of the special leave petition filed by the opposite party.

65. *Filing or defence of writ petitions, suits and other proceedings.*—The procedure, prescribed under the rules 63 and 64 above shall, *mutatis mutandis*, in so far as it may be applicable, apply to the filing or defence of the original writ petitions under Article 32 of the Constitution, or suits or other proceedings under Article 131 of the Constitution in the Supreme Court on behalf of the State and its officers.

66. *Result of case to be communicated.*—(1) As soon as the case, either filed on behalf of the State or against the State and its officers, is decided by the Supreme Court, the Government Advocate shall communicate the decision to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, and also to the administrative department or Government officer concerned and the Government Pleader or Public Prosecutor concerned in the High Court. He shall also obtain a certified copy of judgment and decree, final order or sentence, as the case may be, passed by the Supreme Court and send it to the administrative department concerned for compliance.

(2) He shall also withdraw all the unspent security deposit after the disposal of the appeal and credit the same to the administrative department concerned of Government.

## CHAPTER X

### EXECUTION OF DECREES.

67. *Interpretation.*—For the purpose of this Chapter a “decree” includes an “order” of a civil court as defined in section 2 of the Code of Civil Procedure.

68. *Satisfaction of decree against State.*—(1) Where a decree has been passed against the State or its officers and it has been decided by Government not to contest further a decision, which is wholly or partly adverse to Government, the Collector or the Government officer concerned shall at once instruct the Government Pleader concerned to pay in the court, whose duty it is to execute the decree, all moneys payable under the decree. They shall see that the decree is fully satisfied within the time fixed for its satisfaction under section 82 of the Code of Civil Procedure.

(2) For this purpose the Government Pleader concerned shall take the following steps for the prompt satisfaction of the decree:—

(a) As soon as it is decided to acquiesce in a decree passed by any civil court against the State or its officers, the Government Pleader concerned shall see that the decree is satisfied promptly. He shall see that no coercive processes against the State or its officers by the litigants for the recovery of costs are started and no attachment orders are passed by the court against the State or its officers. He shall without any loss of time make necessary report and supply necessary information to the Collector, the administrative department or the Government officer concerned.

(b) He shall maintain register showing the particulars of the decree passed against the State or its officers in the *Form No. 17*.

(c) He shall submit to Government in the administrative department concerned, a report every quarter (before the 10th of January, April, July and October) of every year, stating the particulars of the decrees which have remained unsatisfied for more than four months after it is decided to acquiesce in them, the period for which they have so remained unsatisfied and the reasons for the delay.

(3) (a) The Government Pleader, the Collector and the Government officer concerned shall see that in case of adverse decisions no amount should be deposited in the trial court, pending decision of Government in the Law and Judiciary Department, as regards whether the decision of the trial court should be acquiesced in or appealed against.

(b) If Government in the Law and Judiciary Department decides to file an appeal and the appellate court directs the State to deposit the decretal amount in the trial court, before making an order for staying the execution of

decree under sub-rule (5) of rule 5 of the Code of Civil Procedure, a prayer should be made to the appellate court not to allow the opponent to withdraw the deposit till the decision of the State appeal.

*Note.*—Full powers of making payment of decretal dues have been delegated to all administrative departments, heads of departments and regional heads as per Sr. No. 6 in Section IV of the Manual of Financial Powers, 1978. These powers are subject to budgetary provision and observance of usual conditions. All such cases should be reported to the administrative departments by the heads of departments and regional heads.

69. *Procedure where decree is passed in favour of State or its officers.*—

(1) The Government Pleader concerned shall, immediately after the settlement of issues and before the date fixed for final hearing of the case, ask for and obtain from the Collector, administrative department or the Government officer concerned, instructions in writing, having regard to the provisions of Order XXI of the Code of Civil Procedure, as to the mode of execution including as to the process such as arrest, attachment that is desired to be issued in the event of a decree being passed in favour of the State or its officers or both.

(2) As soon as the Government Pleader concerned receives a copy of decree under which any amount is due to Government, he shall see that all necessary steps are taken with all possible expedition to realise the amount due under the decree or get it otherwise satisfied. For this purpose he shall, in the absence of any special instructions to the contrary, proceed as follows:—

(a) if the person from whom the amount is due (hereinafter referred to in these rules as judgment-debtor) or his advocate is known to the Government Pleader concerned and is readily accessible to him, he shall endeavour to recover the amount from him;

(b) if there is a reason to believe that the amount due can not be recovered under clause (a) and the Government Pleader concerned knows of any property of the judgment-debtor from which the amount due or part of it may be realised e.g. immoveable property, securities, money deposited in the court or the subject matter of a suit on which Government has a first charge under Order XXXIII, rule 10 of the Code of Civil Procedure, he shall at once or as soon as he receives necessary information from any source, make an application for execution by attachment, sale etc. of such property;

(c) where no action under clause (a) or (b) is taken, the Government Pleader concerned shall without any delay send the copy of the decree to the Collector concerned, with a report stating *inter-alia*—

(i) the reason for not taking such action,

(ii) the date on which the period of limitation for the execution of the decree will expire, and

(iii) any information which has come to his knowledge and the possession of which is likely to facilitate the recovery of the money due to Government;

(d) where action is taken under clause (a) or (b), the Government Pleader concerned shall, as soon as possible and in any case within one month of the date of receipt by him of the copy of decree, report his action and proceedings to the Collector concerned, and send him the copy of decree, if no longer required by him. He shall also report to the Collector concerned the result of the proceedings on their completion and, if they have not been successful in recovering the whole of the amount due, furnish the information specified in sub-clause (ii) and (iii) of clause (c).

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

71. *Scrutiny of costs awarded to State.*—The Government Pleader concerned shall carefully scrutinise the court's order of costs in all suits, appeals and other civil proceedings and also suits and appeals by indigent persons, in which he appears on behalf of the State or its officers. He shall see that the costs are duly assessed and entered in the decree together with an order specifying the party from whom they are to be recovered. If the order does not properly provide for the Government's costs, he shall at once bring the fact to the notice of the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, in order that the desirability of applying for a review or, if necessary, filing an appeal or application for revision may be considered.

72. *General instructions for the Government Pleaders.*—(1) The Government Pleader concerned shall endeavour to obtain from time to time such information as may lead to the recovery of any money due to Government and furnish to the Collector concerned any information which comes to his knowledge and which is likely to facilitate the recovery of the moneys due to Government.

(2) He shall be responsible for seeing that the execution of any decree is not barred by limitation. When the period of limitation for the execution of any decree is nearly expiring, without such decrees having been fully satisfied, he shall specially bring that fact to the notice of the Collector concerned.

73. *Enquiries as to the property and means of the judgment-debtor.*—(1) The Collector concerned shall, whenever necessary, through the Tahsildar concerned or otherwise, make enquiries as to the property and means of the judgment-debtor and endeavour to recover from him the whole or such portion of the amount due as may be possible.

(2) For the purpose of making any such enquiries, the Collector concerned may employ such trustworthy agency as he may think fit and may pass *bona fide* travelling expenses incurred by the person deputed to make such enquiry.

74. *Arrangements for identification of property to be attached.*—Upon the court issuing orders for the attachment of the judgment-debtor's property the Government Pleader concerned shall at once apply to the Collector concerned to depute some one to accompany the attaching officer and to point out the property.

75. *Procedure in cases where claims are made to attached property.*—In case claims are made by third parties to the property attached, the Government officer on whose report the property was attached shall collect the evidence, which would show that the property belongs to the judgment-debtor, and he shall, if possible, be present in the court and instruct the Government Pleader concerned, when the court is inquiring into the claim.

76. *Grant of rewards for special exertions in the recovery of Government dues.*—When the realisation of the amount of a decree is due to the special exertions of any Government officer, the Collector concerned may sanction the payment of a sum not exceeding 20 per cent. of the amount recovered, as a special reward for such officer. Any Government officer, who considers that he has a claim for this special reward, shall make an application to the Collector concerned, stating the grounds on which the application is based.

77. *Procedure in regard to recovery of the amount due.*—Where any sum due to Government under a decree is recovered otherwise than the agency of a court, the Government Pleader concerned shall certify such recovery to the court under Order XXI, rule 2 of the Code of Civil Procedure.

78. *Recoveries to be credited to the department.*—As soon as the Government Pleader, the Tahsildar or the Government officer concerned recovers any money on behalf of the State or its officers in the execution of a decree, he shall at once credit the amount in the treasury to the receipt head of account of the department concerned to which the decree relates and report the fact to the Collector concerned.

79. *Procedure when a decree is passed by High Court.*—(1) When a decree has been passed in appeal in favour of the State or its officers by the High Court (Appellate Side), the Government Pleader in the High Court, the Collector or the Government officer concerned shall, as soon as he receives copies of the judgment and decree, forward them to the Government Pleader in the civil court, having jurisdiction to execute the decree, with instructions to the mode of execution. On receipt of such decree, the Government Pleader concerned shall immediately apply for its execution in accordance with such instructions.

(2) When a decree is passed in a case in favour of the State or its officers by the High Court (Original Side) in the exercise of its original jurisdiction, the Government Pleader concerned in the High Court shall make an application

for execution of decree in the High Court (Original Side) after obtaining instructions as to the mode of execution from the Collector of the City of Bombay and Bombay Suburban District or the administrative department concerned, as the case may be. For that purpose he shall follow the procedure as laid down in the foregoing rules.

80. *Procedure when a decree is passed by Supreme Court.*—(1) When in an appeal arising out of a decision of the High Court a decree in favour of the State or its officers is passed by the Supreme Court, the Registrar of the Supreme Court transmits the decree to the High Court.

(2) If such a decree relates to a case dealt with by the High Court (Appellate Side) in exercise of its appellate jurisdiction, the decree is transmitted by the High Court (Appellate Side) to the subordinate trial court. As soon as the decree is so transmitted, the Government Pleader concerned in the High Court shall inform the Collector or the administrative department or the Government officer concerned, as the case may be, who shall then send necessary instructions to the Government Pleader in the civil court, having jurisdiction to execute the decree, to take necessary steps for the due execution of the decree.

(3) If such a decree relates to the case dealt with by the High Court (Original Side), in exercise of its original jurisdiction, then the Government Pleader concerned in the High Court shall take necessary steps to execute the decree.

(4) If the Supreme Court passes a decree in favour of the State or its officers in a proceeding other than a Civil Appeal, the Government Advocate in the Supreme Court shall apply to the Judge in the chamber for transmitting the decree to the High Court or any other appropriate court for enforcement. Thereafter the application for the execution of the decree shall be made to the appropriate court by the Government Pleader concerned in the High Court or the Government Pleader in the civil court, as the case may be.

81. *Application for stay of execution to be opposed.*—(1) Unless there are any special reasons to the contrary, every application made by the opposite party to an appellate court for staying the execution of a decree passed in favour of the State or its officers shall be opposed strenuously by the Government Pleader concerned on the following grounds:—

(a) that Government was not responsible for the litigation and had done everything in its power to avoid it, and

(b) that if the decree is reversed in appeal, Government is in a position to refund any amount which may have been recovered in execution.

(2) (a) If the court allows the application for stay under Order XLI, rule 5(3)(c) of the Code of Civil Procedure, the Government Pleader, the Collector or the administrative department or the Government officer concerned, as the case may be, shall see that the security given by the appellant is sufficient to cover the amount decreed and the costs of appeal;

(b) if they consider that the security offered is not good or sufficient, the Government Pleader concerned shall apply to the court to execute the decree at once;

(c) if such application is refused, the Government Pleader concerned shall inform the Collector concerned, who shall endeavour to keep a watch on the property of the judgment-debtor, so as to prevent any fraudulent alienation or concealment of it.

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

83. *Report about unsatisfactory recovery.*—(1) If the Collector concerned considers that the progress made in the recovery of moneys due to Government is unsatisfactory, he shall bring the matter to the notice of the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

(2) The Collector concerned may also consult the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, whenever he requires advice in regard to the steps taken for the recovery of such amounts.

84. *Writing off irrecoverable dues.*—(1) As a rule, steps for the recovery of Government dues shall be unceasingly continued till the period of limitation expires.

*Note.*—The period of limitation for execution of decree is 12 years under Article 136 of the Limitation Act, 1963.

(2) (a) If it appears to the Collector concerned that the judgment-debtor will not be able to pay what is due from him under the decree, or the balance of what is due from him within the period of limitation, or if for any reason the Collector concerned thinks it inexpedient that such person should be further pressed, he may, if the dues are in respect of court fees or dues to Government in a suit or appeal by indigent person, at once write off the amount still due;

(b) in other cases he shall apply to Government in the administrative department concerned through the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for sanction to write it off. When an application is made to write off the decretal amount due to Government, it must be stated therein that the reward was offered but the recovery has failed.

*Note.*—Under rule 146 of the Bombay Financial Rules, 1959 read with Sr. No. 26 in Section I of the Manual of Financial Powers, 1978, the powers to write off irrecoverable decretal dues upto Rs. 2,000 in each case have been delegated to all the Secretaries to Government.

85. *Registers of decretal amounts due to Government.*—The Collector and the Government Pleader concerned and also the Tahsildar concerned, if the Collector concerned so directs, shall keep a register of amounts due to Government under the decrees in *Form No. 18*. Such Register shall be kept in two separate parts. Part I shall contain the amounts due to Government under the decrees in suits, appeals or other civil proceedings to which the State or its officers are parties and Part II shall contain the amounts of court fee and pauper costs payable to Government under Orders XXXIII and XLIV of the Code of Civil Procedure.

86. *Inquiry as to judgment-debtor's property by Revenue Officers on tour.*—A list shall be kept in every village by the Village Accountant of all decretal debts due to Government by any land owner or resident of such village. Such lists shall be inspected by the Collector or the Revenue Officer visiting the village on tour.

## CHAPTER XI

### GENERAL RULES FOR THE CONDUCT OF SUITS, APPEALS AND OTHER CIVIL OR CRIMINAL PROCEEDINGS.

87. *Intervention in pending cases.*—If it appears to the Collector or the Government officer concerned, that the interest of Government requires that it should intervene in any suit, appeal or other civil proceedings to which the State has not been made a party, he shall follow the procedure prescribed in the Chapters for the suits, appeals or other civil proceedings, as the case may be, before applying to the court that the State should be made a party to such case.

88. *Procedure in emergency cases.*—If the Collector or the Government officer concerned considers that there is no sufficient time to receive orders of Government in the Law and Judiciary Department in the cases referred to in rule 87 above or in any miscellaneous civil proceedings, he shall direct the Government Pleader concerned to apply for postponement of the hearing of the case. If the court refuses to adjourn the case, he may, if he thinks that the matter is urgent, take action in anticipation of the orders of Government in the Law and Judiciary Department. He shall, however, at once send a full report, giving reasons for his action to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, through his head of the department and obtain *ex-post facto* sanction in respect of the action taken by him.

89. *Procedure for compromises.*—(1) If the Collector or the Government officer concerned desires that any suit, appeal or other civil proceedings should be settled out of the court or compromised in the court, he can do so only after obtaining the express orders of Government in the administrative department concerned. However, before issuing such orders the administrative department concerned shall consult the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

(2) Whenever Government in the administrative department takes a decision to compromise the litigation with a view to bring an end to it, the administrative department concerned shall give instructions to the Law Officer concerned to draft consent terms of the compromise. The Law Officer shall then file the consent terms in the court concerned after the consent terms are duly approved by the administrative department concerned.

90. *Procedure for production of documents from the Government records in the court.*—(1) When the Collector or the Government officer concerned is summoned by the court to produce any official document for the purpose of giving evidence, the following procedure shall be followed:—

The law relating to the production of unpublished official records as evidence in the courts is contained in sections 123, 124 and 162 of the Indian Evidence Act, 1872 (Act I of 1872), which are reproduced below:—

“ 123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

124. No Public Officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

162. A witness summoned to produce document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it seems fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret unless the document is to be given in evidence and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code (45 of 1860).”

(2) For the purpose of section 123 of the Indian Evidence Act quoted above, the expression “ officer at the head of department ” may be held to mean the Minister-in-charge, who is the political head of the department concerned, if not, the Secretary of the department concerned, who is the departmental head (*cf.* AIR 1961 S.C. 504 and AIR 1964 Orissa 113). Only the Minister-in-charge or the Secretary of the department concerned should be treated as the authority to withhold or give the necessary permission for the production of official documents in evidence.

(3) When a document is called for from a Government officer, who is not the head of the department, he should refer the matter for orders to the Secretary of his department. The Secretary of the department should then carefully consider whether the production of the document should or should not be objected to.

(4) In respect of documents emanating—

(a) from a higher authority, viz., the Government of India, or the State Government, or which have formed the subject of correspondence with such higher authority; or

(b) from other Governments, whether foreign or of Indian States, the head of the department should obtain the orders of Government before agreeing to produce the documents in the court, or allowing evidence based

on them, unless the papers are intended for publication, or are of a purely formal or routine nature, when a reference to Government may be dispensed with.

(5) In the case of documents other than those specified in sub-rule (4) above, the production of documents should be withheld only when the public interest would, by their disclosure be injured, or where disclosure would be injurious to national defence, or to good diplomatic relations or where the practice of keeping a class of documents secret is necessary for the proper functioning of the public service. Broadly speaking privilege should be claimed under section 123 in respect of the following documents:—

(a) administrative instructions and guidance notes secretly given to various departments of Government;

(b) documents embodying the minutes of the Council of Ministers and the advice given to the Governor;

(c) advice tendered by the Public Service Commission to the Council of Ministers and its report;

(d) documents embodying the minutes of the discussion between private party and a State Minister and indicating the advice given by the Minister.

(6) For claiming privilege under section 123 read with section 162 of the Indian Evidence Act, the following points should be noted:—

(a) Section 162 makes it clear that when the State or a Government officer is summoned to produce a document in respect of which he desires to claim privilege on the ground that it relates to any affairs of the State, he is bound in the first instance to appear and bring it in a sealed cover to the court under section 162 notwithstanding any objection that he may have as to its production or advisability and then claim privilege for it in the proper way of an affidavit;

(b) the head of the department should have document before him and give careful attention before claiming privilege and his affidavit should contain an indication as to the nature of the document, as to why privilege is claimed, what injury to public interests is apprehended or what affairs of the State are involved. The sole and the only test which should determine the decision of the head of the department is injury to public interest and nothing else (*cf.* State of Punjab vs. Sodhi Sukhdeo Singh AIR 1961 S.C. 504). The privilege should not be claimed on the ground that the document is a State document or "Official" or marked as "Confidential" or the document if produced would defeat the defence raised by the State or it may adversely affect the department, or the head of the department or the Minister-in-charge of the department or Government or it may provoke public criticism or censure in the Legislature;

(c) the privilege should be claimed generally in the form of an affidavit by the Minister-in-charge, if not, the Secretary of the department concerned;

(d) it is for the court to decide whether the documents in question relate to any affairs of the State. In this enquiry which the court has to make, though it cannot inspect the document, it may take other evidence to determine the character or nature of the document and also to decide the validity of such claim;

(e) if the court comes to the conclusion that the document does not relate to any affairs of the State, it can reject the claim of privilege. However, if the court holds that the document is an unpublished official records relating to any affairs of the State, the question whether the disclosure of contents could be against public interest and whether privilege should be claimed or not is entirely left to the discretion of the head of the department. Hence in every affidavit made for claiming privilege in respect of any document it must be emphasised that the document called in evidence is derived from unpublished official records relating to the affairs of the State, the disclosure of which would lead to injury to public interest.

(7) For claiming privilege under section 124 the following points should be noted:—

(a) The occasion for claiming privilege under section 124 arises only when the evidence sought to be given is a communication made to a public officer "in official confidence";

(b) the court is the sole judge to decide whether or not the communication to a public officer, who desires to claim privilege, was made to him in "official confidence". For this purpose the court has the power to inspect the document as also to take other evidence under section 162. Where there is a right to inspect a document, section 76 gives a right to a copy of it. If it determines that the communication was not made in official confidence the claim for privilege of such document stands rejected;

(c) if the court holds that the communication was made in official confidence, it rests exclusively with the public officer to withhold or allow disclosure on the ground whether or not public interest would suffer. Generally, communication in official confidence include all matters communicated by one officer to another in the performance of their duties;

(d) the privilege should be claimed by the official concerned.

(8) The foregoing provisions apply to all cases irrespective of the fact whether the State or its officers are parties or not to any suit or other proceeding. In cases in which the State or its officers are parties much will depend upon the legal advice or to the value of the documents, but before they are produced in the court, the considerations stated above must be borne in mind and a reference to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, shall be made, when necessary.

(9) A Government officer other than the head of the department, who is summoned to produce an official document, should first determine whether the document is in his custody and he is in a position to produce it. Generally,

all official records are supposed to be in the custody of the head of the department and it is only under special circumstances that an official document can be said to be in the custody of an individual Government officer. If the document is in the custody of any Government officer summoned, he should first determine whether the document is an unpublished official record relating to affairs of the State and privilege under section 123 should be claimed in respect of it. If he is of the opinion that such privilege should be claimed or if he has any doubt about the correct position, in both the cases he should refer the matter to the Secretary of his administrative department, who shall then issue necessary instructions and shall also furnish the affidavit in *Form No. 19* in suitable cases. If the document is such that privilege under section 123 cannot be claimed but if the Government officer considers that the document is a communication made to him in official confidence and that the public interest would suffer by its disclosure, he should claim the privilege under section 124 in *Form No. 20*. In doubtful cases, he should seek the advice of the Secretary of his administrative department.

(10) The Government officer, who is to attend a court as a witness with official documents should, where permission under section 123 has been withheld, be given an affidavit in *Form No. 19*, duly signed by the Secretary of his administrative department. He should produce it when he is called upon to give evidence and should explain that he is not at liberty to produce the document before the court or to give any evidence derived from the document. He should, however, take with him the papers in a sealed cover, which he has been summoned to produce.

(11) The Government officer, who is summoned to produce official documents, in respect of which privilege under section 124 has to be claimed, will make an affidavit in *Form No. 20*.

(12) When the Government officer is not in a position to attend the court himself, he shall send the documents to the court with some responsible person who should submit the affidavit with the application in *Form No. 21*, himself or through the Government Pleader, to the court when called upon to produce the documents. The person concerned, however, should not hand over the documents to the court unless the court directs him to do so. The documents should not be shown to the opposite party.

(13) The Secretary of the administrative department should abstain from entering into correspondence with the Presiding Officer of the court concerned in regard to the grounds on which the documents have been called for. He should obey the court's order and should appear personally, or arrange for the appearance of another officer in the court concerned, with the documents and act as indicated above and produce the necessary affidavit if he claims privilege.

91. *Substitution of legal representatives in case of death of the person.*—In case of death of a defendant/respondent in any suit, appeal or other civil proceeding filed by the State, it shall be the duty of the head of the department or the Government officer concerned to ascertain and intimate the names of legal

representatives of the deceased defendant/respondent alongwith their addresses to the Government Pleader concerned for making an application to the court for substitution of names of the legal representatives of the deceased within the limitation prescribed therefor, i.e., 90 days from the death of the defendant/respondent.

92. *Procedure when the Government officer sued by name and designation.*—If any proceeding has been filed against the Government officer by name and designation and Government in the administrative department decides that the Government officer has acted in the discharge of his official duties, the case should be referred to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for sanctioning the defence of case on his behalf. In such matter no question of grant of legal assistance to him and reimbursement of expenses by the administrative department, would arise. However, attention of the Law Officers and Government officers concerned is invited to the High Court of Bombay's decision, dated the 28th April 1972 in Letters Patent Appeal No. 37 of 1971, whereby the ruling reported in 67 Bombay Law Reporter 823 has been set aside and it has been held that neither the State of Maharashtra nor the Union of India can be vicariously held liable for the acts of the Government servants, undertaken by them pursuant to the exercise of sovereign functions of the State.

93. *Conduct of civil and criminal cases by the Law Officers on behalf of State owned Authorities, Corporations and Boards.*—The Law Officers may appear in any civil or criminal case on behalf of any Authority, Corporation or Board under the control of Government provided such case does not conflict with the interest of the State and other Government litigation does not suffer. In such case the Law Officers would be entitled to fees as laid down in the Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules, 1984 payable by Government in the administrative department concerned.

94. *Law Officers to use their own discretion in conducting cases.*—The Law Officers shall use their own discretion as to the manner in which the cases should be conducted by them. But they shall be guided by any instructions that may be issued to them by the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be. Unless otherwise specifically directed, their arguments need not, however, be limited to those stated in such instructions:

Provided that, they should not admit or make any statements before the court while arguing cases, which would land Government in an embarrassing position, without obtaining the written instructions from the administrative department or the Government officer concerned.

95. *Special directions or orders may be given in particular cases.*—Notwithstanding anything contained in these rules, Government in the administrative

department may, in any particular case, issue such directions or orders as it may deem fit and it should be the duty of the Law Officers concerned to comply with such special directions or orders.

96. *Cases not falling under the Rules applicable to Law Officers.*—(1) The following types of cases do not fall under the Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules, 1984, namely:—

- (a) All cases under the Industrial and Labour Laws;
- (b) cases under the Payment of Wages Act, 1936;
- (c) cases under the Minimum Wages Act, 1948;
- (d) cases under the Workmen's Compensation Act, 1923;
- (e) Arbitration cases;
- (f) Election Petitions;
- (g) cases under the Bombay Public Trusts Act, 1950;
- (h) cases before the Motor Accident Claims Tribunal;
- (i) cases before the Sales Tax Tribunal.

In such cases neither the sanction of Government in the Law and Judiciary Department for the engagement of any Law Officers for the institution or defence of the cases is necessary nor their fees and law charges are debitable to the grants at the disposal of the Law and Judiciary Department. If the administrative departments and the Government officers under their control desire to engage the services of the Law Officers for the institution or defence of cases falling under the aforesaid categories, they may do so. In such cases fees and law charges of the Law Officers are payable directly by the administrative departments concerned.

(2) The courts like Labour Courts, Industrial Courts, Revenue Courts, Courts of Rent Controller, Co-operative Courts or Tribunals such as Sales Tax Tribunal, are not "courts" within the definition of "civil courts" under the Bombay Civil Courts Act, 1869.

(3) It is not within the duties of the Law Officers to appear in the cases mentioned in sub-rule (1) or filed before the courts or tribunals mentioned in sub-rule (2) or before any Appellate Authority or Commissioner of Payments on behalf of the State or its officers. However, if the administrative departments concerned and the Government officers under their control desire to engage the services of the Law Officers in such cases they may do so for which neither the sanction of Government in the Law and Judiciary Department is necessary nor their fees and law charges are debitable to the grants at the disposal of that department. The administrative departments concerned or the Government officers under their control should settle the fees of the Law Officers, to be engaged by them, in advance, which are payable to them direct by the administrative departments concerned, as soon as the case is decided. It is, however, for the Law Officers to ask for an advance, either for fees or for expenses, if they accept brief in such cases. Once the fees and law charges are

settled in advance, the question of certifying reasonableness of fees payable to the Law Officers by the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, does not arise.

(4) The administrative departments may, if they deem fit necessary, draw up a Panel of Counsel or engage any private counsel on permanent basis to appear on behalf of their departments concerned and the Government officers under their control in the Labour Courts, Industrial Courts or any other tribunals. The rate of fees and other law charges payable to such counsel may also be got fixed up in consultation with the Commissioner or Deputy Commissioner of Labour of the division concerned, as the case may be. As the payment of legal fees to such counsel falls under the category of special contingencies of non-recurring nature, prior sanction of Government in the administrative department is necessary. However, the counsel, so engaged are not the Special Counsel, within the meaning of these rules and as such they are not entitled to any special fees.

(5) If the Government officer concerned desires to have an opinion on any legal point in any such case, he may refer the matter to his administrative department concerned, which may, if it deems fit, seek the opinion of the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

97. *Exemption from filing stamped Vakalatnama.*—The Law Officers, when engaged on behalf of the State or its officers, are exempted from filing a stamped *Vakalatnama* on account of the provisions of Order XXVII, rule 2 and 8 of the Code of Civil Procedure (also see Appendix E).

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

99. *Correspondence and Government Resolutions to be deemed strictly confidential.*—All correspondence and all resolutions of Government on the subject of suits, appeals or other civil or criminal proceedings are to be regarded by all Government officers and the Law Officers concerned, into whose hands they may come, as strictly confidential. No Government officer, for any reason, whatsoever, grant copies of any such correspondence or such Government Resolution during the pendency of the suit, appeal or any civil or criminal proceedings, or before it is finally decided by the highest court before which it

may go in appeal, and no such copies shall be granted at any time after such final decision without the previous sanction of the Secretary of the administrative department concerned.

100. *Purchase of judgment-debtor's property for Government forbidden.*—The practice of deputing Government servants to bid on behalf of Government at court auction with a view to purchase the property of a judgment-debtor from whom money is due to Government is, as a matter of general principle, objectionable, as it is likely to involve Government in further litigation and should not, therefore, be resorted to, save with the sanction of Government in the administrative department obtained through the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

101. *Records relating to suits, appeals and other civil or criminal proceedings.*—The Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, shall keep in his office a record of the correspondence (other than unimportant papers) connected with every suit, appeal or other civil or criminal proceeding in which the State or its officers are concerned. The records of the inquiries made prior to the institution of a suit, appeal or any other civil or criminal proceeding or any other records or papers, which are not required to be sent to him under any of the rules, will be kept in the office of the Government officer concerned or dealt with in accordance with the rules of that office regarding the preservation of records. It is, however, desirable that important documents should be permanently preserved. The case papers relating to the execution of decrees should be kept till the execution is completed.

102. *Suits, appeals and other civil or criminal proceedings filed or to be filed in other States.*—The Government officer, through his head of the department, who wants to institute or defend any suit, appeal or any other civil or criminal proceeding in the court situated in other State shall approach the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be. While doing so, he shall follow the procedure as laid down in the foregoing rules. On receipt of the report and the relevant documents from the head of the department concerned, the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, shall correspond with the Remembrancer of Legal Affairs of the State Government concerned for asking their Law Officer to appear on behalf of this State or its officers or both in such suit, appeal or any other civil or criminal proceeding. On receipt of the intimation from the Remembrancer of Legal Affairs of the State Government concerned about the engagement of a particular Law Officer, the Government officer concerned shall make available all the information required by such Law Officer. The fees for the conduct of such case, as certified by the Remembrancer of Legal Affairs of the State Government concerned on the basis of the rules

prescribed by the State Government concerned for payment of fees to its Law Officers, shall be paid from the grants of the Remembrancer of Legal Affairs of this State.

103. *Orders as regards costs to be scrutinised.*—(1) In all suits and applications in which the Government Pleaders concerned appear on behalf of the State and especially in suits and applications filed by indigent persons to sue in *forma pauperis*, they shall scrutinise 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 Government costs, they shall at once bring the fact to the notice of the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, in order that the desirability of applying for a review or, if necessary, filing an appeal or application for revision may be considered.

(2) In some cases court returning a plaint in a suit against the State for presentation to the proper court under Order VII, rule 10 of the Code of Civil Procedure, has, instead of awarding Government costs, ordered that the costs should abide the result of the suit although it holds that the objection as to want of jurisdiction taken on behalf of the State is valid. Such an order is directly against the ruling in *Moshingan vs. Mosari Sajad*, (cf ILR 12 Cal. 271 at p. 272). In such case the Government Pleader concerned shall draw the attention of the court to this ruling and section 35 of the Code of Civil Procedure and request it to award costs to the State which has been wrongly sued in such case.

104. *Cost of Paper-Books to be deposited in court.*—In cases in which First Appeals have been filed in the High Court by the State, the District Government Pleader concerned shall, when called upon to do so, deposit in the District Court the estimated cost of preparing the Paper-Books.

105. *Copies of papers.*—When the exhibits in original suit or other proceeding are so numerous or so important, as to necessitate the Government Pleader concerned to obtain copies thereof for his own use or for that of a Special Counsel, and whenever a Government Pleader for any reason whatever obtains copies of any such exhibits, he shall take care to have them legibly written on one side only of the paper with a quarter margin (the Paper-Books of the ordinary foolscap size in use in official correspondence), so that they may be afterwards used without any difficulty at every subsequent stage of the case and the expense of procuring fresh copies from time to time may thus be avoided. It should be borne in mind that correct uncertified copies (which need not bear any court-fee stamp), are for all purposes, except for filing in the court, as good and as useful as certified stamped copies and copies of the latter kind should therefore only be obtained when they are required in filing in the court or when these rules expressly state that the certified copies should be procured.

106. *Recovery of documents filed on behalf of State.*—The Government Pleader concerned should take back from the court all exhibits filed on behalf of the State which are liable to be destroyed under the rules made by the High Court under section 3 of the Destruction of Records Act, 1917 (V of 1917), but which may be of use in future and forward the documents so obtained to the Collector or other officer concerned.

107. *List for bringing on record legal representatives of deceased defendants or respondents.*—(1) In suits, appeals or other proceedings in which the State or its officer is the plaintiff, appellant or applicant, the District Government Pleader and the Subordinate Government Pleader concerned shall send a list of cases for bringing on record the legal representatives of the deceased defendant or respondent to the Collector concerned on the first day of each month in *Form No. 22*.

(2) The Government Pleader concerned in the High Court shall send a similar list on the first day of each month to the Collector of the district in which the case originated.

(3) The Government Pleader concerned shall carefully fill in the first three columns of the list in *Form No. 22* and also so far as his actual knowledge permits, column 4 and 5, before sending it to the Collector concerned. The Collector concerned shall fill in the remaining particulars required and return the list to the Government Pleader concerned without delay. On return of the list with the required information filled in, if it appears that any defendant, respondent or opponent had died, the Government Pleader concerned shall at once report the fact to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, so that if the case is one in which an application is required under Order XXII, rule 4 of the Code of Civil Procedure, steps may be taken accordingly.

108. *Filing of caveat.*—If it is anticipated by the Collector or the Government officer concerned that in any suit, appeal or any other civil proceeding, the litigants are likely to obtain an *ex-parte* order from the court against the State or its officers, which may result in unnecessary complications or loss to Government, the Collector or the Government officer concerned shall at once send his instructions to the Government Pleader concerned in the High Court or the subordinate court, as the case may be, for filing of a caveat in the concerned court. The Collector or the Government officer concerned shall thereafter give intimation of the same to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for obtaining his sanction to the same.

## CHAPTER XII

### GRANT OF LEGAL ASSISTANCE TO GOVERNMENT SERVANTS.

109. *Grant of legal assistance to Government servants in civil and criminal proceedings.*—(1) Government in the administrative department may grant legal assistance to its officers, who have to institute civil or criminal proceedings in respect of acts done, in good faith, by or purported to have been done by them in the discharge of their official duties or to defend such proceedings in which they have been sued by name and designation, or in their personal capacity, for the acts done by them in the discharge of their official duties and it appears to Government in the administrative department that they have acted in good faith and in due discharge of their official duties. Such assistance may consist of—

(a) engagement of a counsel at Government expense to appear in such proceedings on behalf of the officer concerned; or

(b) reimbursement to the officer concerned of whole or part of the expenses incurred by him in such proceedings.

(2) A Government servant, who intends to institute or defend such proceedings or who has instituted or defended such proceedings and who desires to obtain legal assistance from Government must immediately refer the matter to his official superior.

(3) (a) The official superior to such Government servant, shall then refer the case to Government in the administrative department concerned through his head of the department.

(b) The head of the department or the Collector/District Magistrate, District/Sessions Judge of the district, in which the Government servant resides, as the case may be, if time does not permit, may sanction the employment of a counsel in any case in which the counsel engaged is either the Government Pleader in civil cases or the Public Prosecutor in criminal cases or when the services of the Government Pleader or the Public Prosecutor are not available, any other duly qualified counsel :

Provided that, the fees proposed to be paid to such counsel shall not exceed the fees admissible to the Government Pleader or Public Prosecutor under the Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules, 1984:

Provided further that, intimation of such engagement shall be reported to Government in the administrative department immediately thereafter.

(c) Whenever it is proposed to pay the counsel at a higher rate, then the sanction of Government in the administrative department shall be obtained before the counsel is engaged.

(4) (a) On receipt of reference under sub-rule (3), Government in the administrative department shall, after consulting the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, issue a Government Resolution granting assistance to such Government servant. In issuing such resolution regard shall be had to the provisions of sub-clause (d) of clause (3) of Article 320 of the Constitution;

(b) if the Government Pleader or Public Prosecutor is to be engaged then on the basis of such Government Resolution, the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, shall issue necessary instructions to the Government Pleader or Public Prosecutor concerned to appear on behalf of such Government servant.

*Explanation.*—If any proceeding has been filed against an officer by name and designation and Government in the administrative department decides that the officer has acted in good faith in the discharge of his official duties, the case should be referred to the Remembrancer of Legal affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for sanctioning the defence of the case as usual. In such cases no question of grant of legal assistance to him under these rules would arise.

(5) All applications for the reimbursement of expenses incurred by a Government servant must be made to Government in the administrative department concerned through the official superior to him, as soon as possible, after the conclusion of the proceedings.

(6) (a) Where a Government servant conducts his defence himself, the question of reimbursement of reasonable expenses incurred by him for his defence may be considered in case the proceedings conclude in his favour. In determining the amount to be reimbursed, Government in the administrative department concerned shall consider how far the court has vindicated the acts of the Government servant. The conclusion of the proceedings in favour of the Government servant will not by itself justify reimbursement.

(b) Where a Government servant proposes to conduct his defence himself and applies to Government in the administrative department for assistance to enable him to meet the expenses of his defence, Government in the administrative department may sanction, at its discretion an interest-free advance not exceeding Rs. 500 or the Government servant's substantive pay for three months, whichever is higher, after obtaining from him a bond in *Form No. 23*. The amount advanced shall be subject to adjustment against the amount, if any, to be reimbursed under clause (a).

(7) (a) Where a Government servant is required to vindicate his conduct in a Court of Law, the question whether the expenses incurred by him should be reimbursed by Government in the administrative department and if so, to what extent, shall be considered by Government in the administrative department in the light of the proceedings. In determining the amount to be reimburs-

Government in the administrative department shall consider how far the court has vindicated the acts of the Government servant and the conclusion of the proceedings in favour of the Government servant will not by itself justify the reimbursement.

(b) In such cases also, Government in the administrative department may, on an application by a Government servant, sanction an interest-free advance, in suitable instalments, of an amount to be determined by it in each case separately on the execution of a bond by the Government servant in *Form No. 23*.

(8) In all orders sanctioning the employment of a Government Pleader or Public Prosecutor or any counsel at Government expense under sub-rule (4), it shall be expressly stated that any sum which may be recovered by the Government servant concerned from the other party as compensation, damages or costs shall be paid to Government in the administrative department in reimbursement of the cost incurred by Government and only the balance, if any, remaining thereafter, shall be retained by such Government servant. Where it is intended to reimburse to a Government servant the expenses incurred by him, only the excess, if any, of such expenses over any compensation, damages or costs that may be recovered by him from the party shall ordinarily be borne by Government in the administrative department.

(9) Every bill of fees and law charges of the Government Pleader or Public Prosecutor or any counsel engaged under this rule and every bill for reimbursement of expenses incurred by the Government servant shall be submitted for the countersignature of the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, by the official superior to the Government servant concerned through the administrative department concerned. The amount of every such bill shall be debited to the grants of the Remembrancer of Legal Affairs.

(10) In cases in which the State itself prosecutes its officer for offences alleged to have been committed by him in his official capacity and in which such officer is acquitted, it may be deemed desirable to reimburse to him the whole or a part of the expenses incurred by him in defending himself. Each case of this nature shall be considered on its merits, and if after such consideration, Government in the administrative department decides to reimburse to the officer, the whole or a part of the expenses he has incurred, the amount of such expenses shall be met by the administrative department concerned and not from the grants at the disposal of the Remembrancer of Legal Affairs.

(11) (a) The provisions of sub-rules (1) to (3), (5) to (8) and (10) of this rule do not apply to Police Officers in the Police department who have to defend themselves in civil and criminal proceedings in respect of acts done by them in the discharge of their official duties;

(b) the procedure to be followed for the grant of legal assistance to such officers is prescribed in the rules 297 and 298 in section IX of Chapter VIII of the Bombay Police Manual, 1959, Vol. 1.

## CHAPTER XIII

### CASES BEFORE THE MAHARASHTRA REVENUE TRIBUNAL.

110. *Conduct of cases before Maharashtra Revenue Tribunal.*—(1) When a notice of an application or appeal is received from the Maharashtra Revenue Tribunal (hereinafter referred to in this Chapter as "the Tribunal") by the Commissioner concerned, he shall take the necessary steps to forward the same together with his parawise comments and necessary documents and instructions, if any, to the Special Government Pleader attached to the Tribunal, where the application or appeal is fixed for hearing, to appear before the Tribunal, if appearance on behalf of the State is considered necessary.

(2) The Commissioner concerned shall forward the copies of application or appeal, as the case may be, and his parawise comments to Government in the Revenue and Forests Department.

(3) On receipt of instructions under sub-rule (1), the Special Government Pleader concerned shall appear on behalf of the State before the Tribunal.

(4) As soon as a case is decided by the Tribunal, the Special Government Pleader concerned shall communicate the nature of the decision to the Commissioner and the Collector concerned, giving a brief statement of grounds thereof and shall forward a copy of his report direct to Government in the Revenue and Forests Department, so as to reach it within seven days from the date of the decision.

(5) The Special Government Pleader concerned shall then obtain, with as little delay as possible, four copies, one certified and three uncertified, of the Tribunal's judgment. One each of the uncertified copies shall be sent immediately to the Commissioner and the Collector concerned and also to Government in the Revenue and Forests Department.

111. *Procedure when decision is adverse to State.*—(1) Where the decision is either wholly or partially adverse to the State, the Special Government Pleader concerned shall, while forwarding an uncertified copy of judgment under sub-rule (5) of rule 110, submit a report to the Commissioner and the Collector concerned and also to Government in the Revenue and Forests Department within two weeks of the decision, stating his opinion, with full reasons, as to whether the decision should be acquiesced in or a review should be sought in respect of it. In case in which he recommends review, the report shall be accompanied by a draft of review application.

(2) The Collector concerned shall, within four weeks from the date on which judgment was delivered by the Tribunal, forward, the report received from the Special Government Pleader concerned, to Government in the Revenue and

Forests Department, with his opinion as to whether a review should be sought. He shall send a copy of his opinion to the Commissioner concerned.

(3) Government in the Revenue and Forests Department shall, on receipt of the report and opinion from the Collector concerned, immediately consider whether the Tribunal's decision should be acquiesced in or an application for review thereof should be filed in respect of it. Where, Government in the Revenue and Forests Department considers that a review should be made, or is doubtful about the legal position, it shall, after setting out its own view make a reference to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, forwarding all necessary information, papers and files.

(4) The Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, shall then advise Government in the Revenue and Forests Department, whether the decision of the Tribunal should be acquiesced in or a review application should be made.

(5) If Government in the Law and Judiciary Department decides to file a review application, then the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, shall, in consultation with the Revenue and Forests Department, send the necessary memorandum of instructions to the Special Government Pleader attached to the Tribunal to which the review application lies.

(6) The draft review application shall then be drawn by the Special Government Pleader concerned and present it to the Tribunal within the period of limitation. He shall send copies of the review application so filed to the Revenue and Forests Department, the Collector and the Commissioner concerned and also to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for information.

(7) All the Government officers and departments concerned shall treat the matter at every stage as very urgent, so that the review application shall be filed within the period of limitation.

112. *Procedure to file writ petition.*—If the Special Government Pleader attached to the Tribunal proposes to file a writ petition in the High Court against the decision of the Tribunal, the provisions of rules contained in Chapter VIII regarding filing of writ petition shall, *mutatis mutandis*, apply.

## CHAPTER XIV

### INSTITUTION AND DEFENCE OF SUITS ON BEHALF OF CENTRAL GOVERNMENT.

113. *Suits by or against Central Government.*—(1) The institution or defence of the suits by or on behalf of the Central Government or its officers (except the Indian Posts and Telegraphs Department) cannot be sanctioned by the State. Such sanction must be given by the concerned department of the Central Government.

(2) On receipt of sanction under sub-rule (1) the head of the concerned department of the Central Government shall inform the Government Pleader concerned of this State and send him a report which shall as nearly as possible comply with the requirements of rules 31(1) and 32(5) in Chapter IV.

(3) A copy of such report shall also be sent to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, who shall issue formal instructions to such Government Pleader to represent the Central Government or its officers:

Provided that, if the time does not permit, the Government Pleader concerned shall not insist for such instructions from the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

(4) The provisions of the rules contained in Chapter IV shall, as nearly as possible, apply to such suits.

(5) The fees and law charges of such Government Pleaders for the conduct of such cases shall be regulated by the Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules, 1984 and shall be paid by the concerned department of the Central Government.

114. *Suits by or against Posts and Telegraphs Department.*—(1) The litigation pertaining to the Indian Posts and Telegraphs Department is subject to the control of Government in the Law and Judiciary Department whose sanction has to be obtained for the institution and defence of the suits by or on behalf of that department.

(2) The fees and law charges of the Government Pleaders concerned for the conduct of such suits on behalf of that department shall, however, be borne by the Director General of Posts and Telegraphs.

115. *Procedure on receipt of Summons on behalf of Central Government.*—When a suit is instituted against the Central Government or the Central Government is added as a party to the suit by the order of the court and in such case if the summons is served on the Government Pleader concerned,

he shall, on receipt of such summons, give immediate information to the head of the concerned department of the Central Government, unless it relates to a matter in respect of which powers have been delegated to the State, when such information shall be given to the Collector or the Government officer concerned.

116. *Performance of duties for officers of Central Government.*—(1) Except the Advocate-General, the Law Officers shall perform the same functions for the following officers of the Central Government as they perform on behalf of the State or its officers :—

- (a) the General Officer Commanding-in-chief, Southern Command, Pune;
- (b) the General Officer Commanding, Headquarters Maharashtra and Gujarat area, Bombay;
- (c) the Commanders of Bombay sub-area at Bombay and Pune Brigade area at Pune;
- (d) the Deputy Director of Stocks, Simla and the Officer Commanding Supply Depot Companies at Pune;
- (e) all the heads of the departments of the Central Government in the State.

(2) References by the officers mentioned in sub-rule (1) may be made directly to the Law Officers concerned:

Provided that, all references to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, as regards matters affecting the revenue of the State or in which the State may also be concerned or interested, shall be made through Government in the administrative department concerned.

117. *Verification of Pleading, etc. by officers of Central Government.*—(1) (a) By Government of India, Ministry of Law, Notification No. S.R.O.-351, dated the 25th January 1958, as amended from time to time, issued in exercise of the powers conferred by rule 1 of Order XXVII in the First Schedule to the Code of Civil Procedure, the Central Government has appointed officers, specified in the Schedule to the said Notification, who shall sign and verify the plaints and written statements in the suits by or against the Central Government (other than the railway administration).

(b) By Government of India, Ministry of Railways, Notification No. G.S.R.-1138, dated the 11th September 1961, issued in exercise of the powers conferred by rule 1 of Order XXVII in the First Schedule to the Code of Civil Procedure, the Central Government has appointed officers specified in the Schedule of the Notification, who shall sign and verify the plaints and written statements in the suits by or against the Central Government in respect of the railway administration.

(2) By Government of India, Ministry of Law, Notification No. G.S.R.-3, dated the 11th February 1958, issued in exercise of the powers conferred by rule 2 of Order XXVII in the First Schedule to the Code of Civil Procedure,

the Central Government has authorised officers specified in the Schedule to the Notification No. S.R.O.-351, dated the 25th January 1958, referred to in sub-rule (1), to act for that Government in respect of any judicial proceeding.

(3) By Government of India, Ministry of Law, Notification No. G.S.R.-1412, dated the 25th November 1960 (see Appendix F), as amended from time to time, issued in exercise of the powers conferred by clause (a) of rule 8B of Order XXVII in the First Schedule to the Code of Civil Procedure, the Central Government has appointed the persons specified in the second column of the Schedule to that Notification as its Government Pleaders for the purpose of the said Order, in relation to any suit by or against the Central Government or against its officers, whose defence has been undertaken by it, not being a suit (other than a suit on the Original Side of the High Court or a Special Civil Application on the Appellate Side of the said High Court) relating to the Railways mentioned therein.

(4) By Government of India, Ministry of Law, Notification No. G.S.R.-36, dated the 6th January 1961, in pursuance of rules 1 and 2 read with clause (a) of rule 8B of Order XXVII in the First Schedule to the Code of Civil Procedure, the Central Government has authorised the officers appointed as the Government Pleaders by the Government of India, Ministry of Law, Notification No. G.S.R.-1412, dated the 25th November 1960, referred to in sub-rule (3), to act in any court for which they have been so appointed for the Central Government and its officers, whose defence has been undertaken by the Central Government, in respect of any judicial proceeding by or against the Central Government, not being a judicial proceeding relating to Railways mentioned therein.

*Note.*—The Government of India's notifications mentioned in the sub-rules (1) to (4) have been published in the *Gazette of India*, Part II and reproduced in the General Statutory Rules and Orders (1962 Edition) of the Government of India, Volume IV, pages 436 to 461 and also in the supplement to the said Rules and Orders at pages 343 to 389 (1971 Edition).

## CHAPTER XV

### LAW OFFICERS ESTABLISHMENTS, ACCOUNTS MATTERS, BILLS AND RETURNS.

#### Part A. Establishments.

118. *Permanent establishments to Law Officers.*—(1) The following Law Officers shall be provided with regular permanent pensionable establishments by Government in the Law and Judiciary Department:—

- (a) The Advocate-General,
- (b) The Government Pleader and Public Prosecutor, High Court at Bombay,
- (c) The Government Pleader, High Court (Original Side) at Bombay.
- (d) The Additional Government Pleader, High Court (Appellate Side) at Bombay,
- (e) The Government Pleader and Public Prosecutor, High Court at Nagpur,
- (f) The Government Pleader and Public Prosecutor, High Court at Aurangabad,
- (g) The Public Prosecutor for Greater Bombay, City Sessions Court at Bombay,
- (h) The Government Pleader, City Civil Court at Bombay.

(2) Each District Government Pleader and Public Prosecutor in the mofussil shall have some clerks allotted for his work from the permanent District Judicial Establishment (*vide* Government Resolution, Finance Department, No. 3433, dated the 22nd September 1913).

119. *Law Books and Official Publications.*—(1) Government in the Law and Judiciary Department may sanction from time to time by any special or general order, such Law books to its Law Officers as it may deem necessary.

(2) The Law Officers, included in the free distribution list prepared and maintained by the Law and Judiciary Department, shall receive free supply of official publications mentioned in the Government Resolution No. 1749/D, dated the 31st January 1967 (*see* Appendix G) and Government Circular, Law and Judiciary Department No. 8070/R, dated the 6th April 1972 (*see* Appendix H) as amended from time to time.

(3) In addition to the Law books and official publications supplied to them, the Law Officers can make use of the libraries of the courts to which they are attached.

120. *Stationery.*—(1) The Law Officers are supplied with certain Government stationery (*vide* Government Circular No. 6497, dated the 4th December 1934 and Government Memorandum No. 3144, dated the 18th March 1939).

(2) The Law Officers shall properly furnish their requirements about supply of stationery articles to the District Courts concerned well before the court's indent is prepared so that their requirements can be included in the court's indent.

121. *Inspection of the offices of the Law Officers.*—The offices of the Law Officers shall be inspected periodically by the Remembrancer of Legal Affairs or any officer of the Law and Judiciary Department, authorised by him in this behalf. He may also conduct surprise inspection of the offices of the Law Officers, whenever considered necessary.

122. *Submission of reports regarding refusal or non-attendance of Government work by Public Prosecutors.*—The Law Officers must conduct the cases assigned to them and a brief should not be returned except for compelling reasons as return of such brief disrupts the Government work. The Public Prosecutor shall report to the Remembrancer of Legal Affairs in the month of June and December of every year, the number of cases conducted by all the Prosecutors under him and those refused or returned by them. He shall also recommend the names of such Prosecutors to be removed from the list of regular Prosecutors because of their failure to take sufficient Government work. He shall also consider whether, as an alternative, such Prosecutors should be put on panel or dropped altogether.

123. *Preservation and destruction of records.*—(1) The Law Officers other than those having permanent pensionable establishments may destroy the records or case papers in their possession after the expiry of the period shown against the respective items shown in column No. 3 in the list given below:—

Serial No.	Nature of the papers	Period for which to be preserved
1	2	3
1	Office copies of <i>yadis</i> written to Mamlatdars and Mahalkaris in connection with pauper applications.	Three years after the application is disposed of.
2	Applications for enhanced fees under the Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules, 1984 and the orders of the Remembrancer of Legal Affairs sanctioning such fees.	Three years.
3	Quarterly Returns and Progress Reports.	Do.
4	Office copies of contingent bills.	Do.
5	Office copies of monthly pay bills.	Do.
6	Copies of papers in Sessions Cases.	One year.
7	Copies of papers in criminal appeals.	Do.

Serial No.	Nature of the papers	Period for which to be preserved
1	2	3
8	Copies of charge in committed cases.	One year.
9	Authorities for appearance in criminal cases and appeals.	Do.
10	Office copies of reports of decisions in committed cases and criminal appeals sent to the District Magistrate and the committing or convicting Magistrate.	Do.
11	Office copies of <i>yadis</i> written to Magistrates for the purpose of obtaining information about criminal matters.	Do.
12	Office copies of monthly returns.	Do.
13	Correspondence with the Collector or the Remembrancer of Legal Affairs regarding the recovery or writing off the pauper costs or amounts due to Government in suits and appeals, to which the State or its officer is a party, or in rejected applications, to sue in <i>forma pauperis</i> .	One year after the date of recovery or writing off, of the costs or amounts due.
14	Record relating to civil suits and appeals and references under the Land Acquisition Act, 1894, which have been finally decided more than three years ago and in which no appeal is pending in the High Court or Supreme Court.	Three years from the date of the decree or final order.
15	Opinion files and Recovery Registers.	To be preserved permanently.

*Note.*—The period shown in column No. 3 is the minimum period for which the case papers or records must be preserved. But after that it is left to the discretion of the Law Officers concerned to destroy them or not, as they find it convenient. If it is proposed to destroy papers other than those specified in the above list, then the Law Officers shall obtain special orders of the Remembrancer of Legal Affairs in that behalf.

(2) The records and case papers pertaining to the offices of the Law Officers, who have been provided with permanent pensionable establishments, shall be preserved under the normal rules of Government issued from time to time for preservation of such records.

### Part B. Accounts

124. *Permanent Advances.*—The following Law Officers have been sanctioned permanent advances shown against them by Government in the Law and Judiciary Department, in relaxation of rule 56 of the Maharashtra Contingent

Expenditure Rules, 1965, for defraying all charges as they arise to enable them to meet the incidental minor charges such as court-fee stamps and expense incurred for obtaining first certified copy of judgment or copies of documents from a court:—

Serial No.	Designation of the Law Officer	Amount of Permanent Advance sanctioned
1	2	3
		Rs.
1	The Government Pleader and Public Prosecutor, High Court at Bombay.	500
2	The Government Pleader, High Court (Original Side) at Bombay.	2,500
3	The Additional Government Pleader, High Court (Appellate Side) at Bombay.	2,500
4	The Government Pleader and Public Prosecutor, High Court at Nagpur.	2,000
5	The Government Pleader and Public Prosecutor, High Court at Aurangabad.	1,000
6	The Public Prosecutor for Greater Bombay, City Sessions Court at Bombay.	500
7	The Government Pleader, City Civil Court at Bombay.	400
8	The Government Pleader, Small Causes Court at Bombay.	200
9	The District Government Pleader and Public Prosecutor, Thane.	200
10	Do. .. Alibag. ..	200
11	Do. .. Ratnagiri. ..	200
12	Do. .. Nashik. ..	110
13	Do. .. Dhule. ..	50
14	Do. .. Jalgaon. ..	50
15	Do. .. Ahmadnagar. ..	140
16	Do. .. Pune. ..	200
17	Do. .. Satara. ..	200
18	Do. .. Sangli. ..	200
19	Do. .. Solapur. ..	90
20	Do. .. Kolhapur. ..	200
21	Do. .. Aurangabad. ..	200
22	Do. .. Parbhani. ..	200
23	Do. .. Beed. ..	200

Serial No.	Designation of the Law Officer	Amount of Permanent Advance sanctioned
1	2	3
		Rs.
24	The District Government Pleader and Public Prosecutor, Nanded.	200
25	Do. Osmanabad. ..	200
26	Do. Jalna. ..	200
27	Do. Latur. ..	200
28	Do. Buldana. ..	150
29	Do. Akola. ..	200
30	Do. Amravati. ..	200
31	Do. Yavatmal. ..	300
32	Do. Wardha. ..	200
33	Do. Nagpur. ..	200
34	Do. Bhandara. ..	200
35	Do. Chandrapur. ..	200

*Note 1.*—The law charges in Land Acquisition matters are not to be incurred from the permanent advance, as the expenditure in such matters is not debitable to the grants of the Remembrancer of Legal Affairs. In such matters the Law Officer concerned may send an advance bill either to the Land Acquisition Officer or the officer of the department concerned. The Law Officers having personal ledger account may incur expenditure for Land Acquisition matters and appeals therefrom from that account which may be recouped later on.

*Note 2.*—If any Government officer or the department concerned requires an additional certified copy of judgment or any other documents, the charges for obtaining such certified copy or copies shall not be incurred from the permanent advance. The charges for supply of additional certified copies of judgment etc. to the Government officer or the department concerned, on their demand, shall be borne by that department.

125. *Account Books.*—An account of all receipts and disbursements in connection with his duties shall be kept by every Law Officer in the form of a day book, with such subsidiary ledgers as would make it possible to ascertain without difficulty the whole of the charges connected with each case.

126. *District and Subordinate Government Pleaders not to incur contingent charges.*—The Judges of the courts to which District and Subordinate Government Pleaders are respectively attached are authorised to cause their letters

and packets to be franked as if they are issued from their own offices, and also to pay any bearing charges on official covers which they may receive. The Collectors shall also from time to time provide District Government Pleaders with service postage stamps to the value of Rs. 5 in order to meet urgent cases that may arise whenever the District Judge's Court is closed on account of holidays and vacations (*vide* Government Resolution in the Revenue Department No. 8791, dated the 2nd December 1897). The Government Pleaders are responsible for seeing that such letters, packets and covers are *bona-fide* despatched or received On India Government Service only. The District and Subordinate Government Pleaders must not incur any contingent expenses apart from the necessary charge connected with the cases which they have to conduct.

127. *Drawal of Retainer.*—The Law Officer's retainer (including office allowances), should be drawn on bills in the forms prescribed in that behalf. Such bills should be submitted directly, in Bombay to the Pay and Accounts Office, and at other places to the respective treasuries.

### Part C. Fees, Law Charges and Travelling Allowances

128. *Taxing of fees by court.*—(1) According to paragraph 583 in Chapter XXIX of the Civil Manual, 1960, Vol. I as amended by High Court Notification No. P-0704/62, dated the 1st April 1962, the court has to tax an advocate's fee to an advocate, who is enrolled as an advocate under the Advocates Act, 1961, in accordance with the rules contained in that behalf in the rules framed by the High Court for computation of advocate's fees.

(2) In cases where the court has not taxed the fees, the Law Officer shall insist the court for taxing such fees.

129. *Fees as per Bills of Costs.*—(1) In civil cases filed in the subordinate courts in the mofussil and on the Appellate Side of the High Court, the Government Pleaders concerned shall, unless the fees are prescribed by Government in the Law and Judiciary Department, be entitled to fees as taxed by concerned courts in the bills of costs prepared on the basis of the rules framed by the High Court for computation of advocate's fees in Schedule A of Chapter XIV of the Bombay High Court Appellate Side Rules, 1960.

(2) The Government Pleaders concerned appointed in the City Civil Court at Bombay are entitled to the fees as taxed by the said court in the bills of costs prepared on the basis of the rules framed by the High Court governing the practice and procedure of the Bombay City Civil Court.

(3) The Government Pleader appointed in the Small Causes Court at Bombay is entitled to the fees as taxed by the said court in the bills of costs prepared on the basis of the scale laid down in the rules 14, 14A and 14B of the Presidency Small Cause Court Rules framed by the High Court.

130. *Administrative Departments to bear costs of civil cases.*—In respect of civil cases, including writ petitions, by or against the State or its officers, the administrative department concerned shall have to make payment of costs of the case, including cost of adjournment.

131. *Fees for conduct of non-cognizable cases.*—(1) In non-cognizable case the costs, including the fees of the Public Prosecutor or a Special Counsel, are to be borne by the concerned administrative department of this Government or Central Government, as the case may be. The Public Prosecutor shall, therefore, claim his fees for his appearance in such cases from the concerned administrative department or the Central Government, as the case may be:

Provided that, when the Public Prosecutor appears for the State, in support of the conviction, in criminal appeals against convictions for non-cognizable offences under the Central Acts, he shall not claim separate fees from the Central Government or any of its officers.

(2) In cognizable cases conducted on behalf of the State, the fees of the Public Prosecutor shall be debited to the grants of the Remembrancer of Legal Affairs.

132. *Law Officer's claim for Travelling Allowances and Daily Allowances.*—  
(1) Under Note 2 below rule 377 of the Bombay Civil Services Rules, as amended from time to time, the following principal Law Officers have been declared Grade I officers for the purpose of claiming travelling allowance and daily allowance:—

- (a) The Advocate-General,
- (b) The Government Pleaders and Public Prosecutors in the High Court at Bombay, Nagpur and Aurangabad,
- (c) The Public Prosecutor for Greater Bombay, City Sessions Court at Bombay,
- (d) The Government Pleader, City Civil Court at Bombay,
- (e) The Government Pleader, Small Causes Court at Bombay,
- (f) All the District Government Pleaders and Public Prosecutors in the mofussil.

(2) All other Law Officers are treated as Grade II officers. They are entitled to daily allowance at the rates mentioned against Pay slab of Rs. 750—999 vide paragraph 12 of Government Resolution, Finance Department, No. TRA/1077/156-C/SER-5, dated the 11th August 1977, as amended from time to time.

(3) The Law Officers can claim road kilometrage incidental to Rail, Steamer or Air Journey for such incidental journeys as laid down in paragraph 4 of Government Resolution, Finance Department, No. TRA 1077/156-C/SER-5, dated the 11th August 1977, as amended from time to time.

(4) The Law Officers are entitled to draw travelling allowance advance under rule 142(c) of the Bombay Financial Rules, 1959, whenever they are required to go out of their headquarters in connection with the Government work. In such case the travelling allowance advance shall not exceed the amount of actual fare charges required for journey to and fro. The advance taken by the Law Officers should be accounted for by them by submitting the detailed travelling allowance bills immediatly after the journey is performed. In case

the detailed travelling allowance bill is not submitted within a period of one month from the date of completion of journey by the Law Officers, to whom the travelling allowance advance is granted, the amount of travelling allowance advance shall be deducted from their bills of fees and settled finally.

#### Part D. Bills

133. *Bills of Law Officers in High Court.*—(1) *In Criminal Cases.*—(a) The following Law Officers in the High Court at Bombay shall submit to the Remembrancer of Legal Affairs each month the bills in respect of fees earned and other expenses incurred by them in criminal cases in the preceding month:—

(i) The Advocate-General,

(ii) The Government Pleader and Public Prosecutor in the High Court at Bombay,

(b) The Government Pleader and Public Prosecutor, High Court at Nagpur or Aurangabad shall submit each month his bills of fees earned and other expenses incurred by him in criminal cases in the preceding month to the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

(2) *In Civil Cases.*—(a) (i) The bills in connection with the civil cases, excluding appeals arising out of Land Acquisition Cases, on the Original and Appellate Side of the High Court at Bombay shall be submitted by the Government Pleader concerned in the High Court at Bombay to the Remembrancer of Legal Affairs as soon as possible after each case is decided.

(ii) The bills in connection with the civil cases, excluding appeals arising out of Land Acquisition Cases, in the High Court at Nagpur or Aurangabad shall be submitted by each of the Government Pleader concerned in the High Court at Nagpur or Aurangabad to the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad as the case may be, as soon as possible after each case is decided:

Provided that, where the Government Pleader has to incur expenditure from the permanent advance, he shall submit advance bills regularly at the end of each month irrespective of the amount in balance in the permanent advance:

Provided further that, when he has to pay a large sum at once, he may submit a separate bill for such sum immediately.

(b) A bill submitted as per clause (a) above on the conclusion of any civil case must include the whole of the charges incurred and the fees earned by the Government Pleader concerned in the High Court at Bombay, Nagpur or Aurangabad, as the case may be, in connection with that case and any sums which may have been drawn previously under provisos to clause (a) above should be shown at the end of the bill and deducted.

(3) If the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, passes any bill submitted under sub-rule (1) or (2) he shall countersign it and return it to the Government Pleader concerned in the High Court for encashment.

134. *Bills of Public Prosecutor for Greater Bombay, City Sessions Court at Bombay.*—(1) The Public Prosecutor for Greater Bombay, City Sessions Court at Bombay shall submit a bill, in respect of fees earned and other expenses incurred by him in criminal matters conducted either by him or the Additional Public Prosecutors or the Special Public Prosecutors from the panel, to the Remembrancer of Legal Affairs as soon as possible after a Sessions case is over in the case or cases in the City Sessions Court at Bombay and as soon as a case is over in the Metropolitan Magistrate's Court.

(2) If the Remembrancer of Legal Affairs passes any bill, he shall countersign it and return it to the Public Prosecutor for Greater Bombay for encashment.

135. *Bills of Government Pleader, City Civil Court at Bombay.*—(1) The Government Pleader, City Civil Court at Bombay shall submit his bills in connection with his fees and all charges to the Remembrancer of Legal Affairs for scrutiny and countersignature as soon as possible after each case is decided. Such bills shall be accompanied by voucher or by a copy of decree or by a certificate from the Registrar, City Civil Court at Bombay, showing the number of cause or proceedings, date of decree or order, name of the Government Pleader who appeared on the date when decree or order was passed and the amount of advocate's fees payable in the matter under the rules in force in support of every item contained in the bills:

Provided that, where the Government Pleader has to incur expenditure from the permanent advance, he shall submit advance bills regularly at the end of each month irrespective of the amount in balance in the permanent advance:

Provided further that, when he has to pay a large sum at once, he may submit a separate bill for such sum immediately.

(2) A bill submitted on the conclusion of any civil case must include all the charges incurred and the fees earned by the Government Pleader, City Civil Court at Bombay, in connection with that case and any sums which may have been drawn previously under sub-rule (1) should be shown at the end of the bill and deducted.

(3) If the Remembrancer of Legal Affairs passes any bill, he shall countersign it and return it to the Government Pleader, City Civil Court at Bombay for encashment.

136. *Bills of Government Pleader, Small Causes Court at Bombay.*—(1) The Government Pleader, Small Causes Court at Bombay shall submit his bills in connection with his fees and all charges to the Remembrancer of Legal Affairs for scrutiny and countersignature, as soon as possible after each case is decided. Such bills shall be accompanied by vouchers or by a copy of the court's decree in support of every item contained in it:

Provided that, where the Government Pleader has to incur expenditure from the permanent advance he should submit advance bills regularly at the end of each month, irrespective of the amount in balance in the permanent advance.

Provided further that, when he has to pay a large sum at once, he may submit a separate bill for such sum immediately.

(2) A bill submitted on the conclusion of any civil case must include a statement of the charges incurred and the fees earned by the Government Pleader, Small Causes Court at Bombay in connection with that case and any sums which may have been drawn previously under sub-rule(1) shall be shown at the end of the bill and deducted.

(3) If the Remembrancer of Legal Affairs passes any bill, he shall countersign it and return it to the Government Pleader, Small Causes Court at Bombay for encashment.

137. *Charges in criminal cases in mofussil Sessions or Magistrate's Courts.*—

(1) A Public Prosecutor in the mofussil shall submit his bills for fees in criminal cases and any incidental charges incurred by him in connection with such cases (including travelling allowances) directly to the treasury.

(2) Such bills shall be accompanied by a certificate from the Judge or Magistrate concerned regarding the accuracy of dates mentioned in the bills, as well as by the original authority to appear, in all cases where these are required as vouchers in support of the bills.

(3) The bills in respect of fees earned and charges incurred in any month shall be prepared and submitted in the next following month, whether the case to which they relate has been finished or not.

(4) The bills in the submission of which there has been a delay of more than six months shall not be paid without the specific orders of the Remembrancer of Legal Affairs.

138. *Charges in civil cases in mofussil District or Civil Courts.*—(1) A Government Pleader shall submit his bill for fees and all charges (including travelling expenses) incurred by him in connection with civil cases to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for scrutiny and countersignature.

(2) Such bills shall be accompanied by vouchers or by a copy of the court's decree in support of every item contained in it.

(3) Such bills shall be submitted as soon as possible after each case has been decided:

Provided that, where the Government Pleader has to incur expenditure from the permanent advance, he should submit advance bills regularly at the end of each month, irrespective of the amount in balance in the permanent advance:

Provided further that, when, as in the case of a court-fee chargeable on an appeal for a large amount, a Government Pleader has to pay a large sum at once, he may submit a separate bill for such sum immediately.

(4) A bill submitted on the conclusion of any case shall include the whole of the charges incurred and the fees earned by the Government Pleader in connection with that case, and any sums which may have been drawn previously under sub-rule (3) shall be shown at the end of the bill and deducted.

(5) If the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, passes any such bill, he shall countersign it and return it to the Government Pleader, who will then cash it at the treasury.

139. *Charges in Land Acquisition Cases and appeals arising therefrom.*—

(1) Under footnote 178 of the Budget Manual, the bills of fees in the Land Acquisition Cases are not debitable to the grants of the Remembrancer of Legal Affairs but are debitable to the grants from which the land was acquired.

(2) If the land acquired is for a department of the Government of India or for a Railway, or other body, the Government Pleader concerned shall submit his bill in such Land Acquisition Case to the Collector of the concerned district who shall scrutinise and countersign it and arrange for its prompt payment.

(3) (a) If the land acquired is for a department of the Government, the Government Pleader concerned shall submit a bill in that respect to the local officer concerned alongwith the following information in brief:—

(i) number and date of final notification;

(ii) the purpose for which the land has been acquired;

(iii) the page number and the date of the *Official Gazette* in which the notification has been published;

(iv) the amount of compensation awarded by the Collector and the amount of compensation claimed in the reference to the court (supported by an extract in this behalf from the judgment of the court and also a copy of the decree and voucher supporting every item of the bill).

(b) The local officer shall then point out the source from which these charges are to be met and also fill in the expenditure figures in the allotment columns of the bill and then forward the bill to the administrative department concerned which shall, after confirming the source, forward the same to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for countersignature.

*Note.*—The local officers shall see that the bills submitted to them by the Law Officers are forwarded through the administrative departments concerned to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, within a period of two months from the date of receipt of the bills by them and in any case such bills shall reach the office of the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, on or before the 31st December of the year.

(c) If the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, passes the bill, he shall send it duly countersigned to the Government Pleader concerned with an order directing how the amount billed for should be met.

(4) (a) When the appeals are preferred in the High Court against the decisions in Land Acquisition Cases, the advance bills for the purchase of court-fee, stamp etc. shall be paid by the concerned Collector or the local officer. Such bills shall not be sent to the Law and Judiciary Department for scrutiny and countersignature. In case of emergency the Government Pleader in the High Court shall spend the required amount from his personal ledger account and shall recoup it on the receipt of the amount from the department concerned.

(b) The final bills for fees and law charges may, however, be sent to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for scrutiny and countersignature, after the conclusion of the case. He shall see that the bills are accompanied by the decree or bill of costs and vouchers etc., in support of the claim for fees and law charges so as to avoid any delay in payment. The procedure laid down in sub-rules (1), (2) and (3), except sub-clauses (i) to (iv) of clause (a), shall *mutatis mutandis* apply to such bills.

(c) Such bills shall include the whole of the charges incurred and the fees earned by the Government Pleader in the High Court in connection with the appeal and any sums which may have been drawn previously under clause (a) shall be shown at the end of the bills and deducted.

140. *Bills of Special Government Pleaders attached to Maharashtra Revenue Tribunal.*—(1) The Special Government Pleaders attached to the Maharashtra Revenue Tribunal shall submit their bills of fees and other charges (including travelling expenses), incurred by them in connection with the Maharashtra Revenue Tribunal cases in which they appear, to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for scrutiny and countersignature, as soon as possible, after each case has been decided, together with all vouchers and a certificate from the Registrar of the Maharashtra Revenue Tribunal, stating therein that the Special Government Pleader concerned has put in appearance and that the case is finally decided.

(2) If the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, passes any such bill, he shall countersign it and return it to the Special Government Pleader concerned, who will then cash it at the treasury.

141. *Bills of Special Counsel, Special Public Prosecutor and Panel Counsel.*—(1) (a) The bills of a Special Counsel or Special Public Prosecutor or Panel Counsel engaged in the cases filed in the High Court at Bombay, Nagpur or Aurangabad or City Sessions or Civil Court at Bombay shall be prepared by the

Government Pleader or Public Prosecutor concerned in the High Court or City Sessions or Civil Court at Bombay and submitted to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for countersignature;

(b) if the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, passes such bill, the payment to the Special Counsel or Special Public Prosecutor or Panel Counsel shall be made by the Government Pleader or Public Prosecutor concerned in the High Court at Bombay, Nagpur or Aurangabad or the City Sessions or Civil Court at Bombay, as the case may be.

(2) (a) The bills of a Special Counsel or Special Public Prosecutor engaged in the cases filed in the mofussil subordinate courts shall be prepared in the office of the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for which the Government Pleader concerned in the mofussil court shall forward the memorandum of fees and expenses given by the Special Counsel or Special Public Prosecutor, engaged in the case, together with a certificate, in original of the dates of attendance in the court;

(b) the payment of fees to the Special Counsel or Special Public Prosecutor shall also be made by the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

142. *Bills of counsel engaged in Supreme Court.*—(1) The Government Advocate in the Supreme Court shall forward a memorandum of fees given by the counsel, engaged by him on behalf of the State in any case, to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for scrutiny.

(2) If the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, passes such claim of fees, a bill shall be prepared by his office.

(3) The payment shall then be made to the counsel by the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

143. *Important points for Law Officers in respect of submission of Bills.*—(1) (a) The Law Officers shall claim their fees and law charges on Bill Form No. MTR 31 appended to the Maharashtra Treasury Rules, 1968.

(b) As soon as the suit or appeal or any civil proceeding in which fees are payable as per bill of costs is finally decided, the Law Officer shall procure a copy of the decree or bill of costs drawn up in the suit or appeal or any civil proceeding and he shall prepare two bills, one for fees and the other for law charges separately on Bill Form No. MTR 31. The fees bill shall contain

only the fees admissible as per fees taxed by the court in the decree in accordance with Law. Similarly, the expenditure incurred in connection with the law charges in a suit shall be shown in the law charges bills showing the items of bills as per items of the law charges drawn up in the decree and if any of the items of the law charges is not taxed in the decree, it shall be supported by voucher or certificate issued by the court. If any advances are drawn in a particular case from time to time, the advances so drawn shall be accounted for in the bill by quoting the number and date of the memorandum from the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad as the case may be, by which the advance bill or bills were returned to the Law Officer, duly countersigned and it shall be deducted from the claim made in the bill or otherwise a certificate shall be recorded on the bill itself that no advance was taken and no bill was preferred in this case before the case is finally decided.

(2) *Submission of Advance Bills.*—The advance bill is only a bill for recoupment of the amount from the permanent advance. While submitting such an advance bill in Form No. MTR 31 it should be noted that the bill is in duplicate and care should be taken to see that every item of expenditure is specifically stated and that the case number, the year of the institution and names of parties are stated clearly. Such advance bills are to be submitted only once a month.

(3) Enhanced or special fees shall not be included in any bill unless they are actually sanctioned by Government in the Law and Judiciary Department.

(4) Bills for fees shall be submitted to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad or to the Pay and Accounts Office or treasury, as the case may be, with as little delay as possible. Serious inconvenience is caused by delay in the submission of claims.

(5) *Certificate by Judges and Magistrates.*—All Judges and Magistrates shall state in the certificates of attendance, issued to the Government Pleaders and Public Prosecutors, for work done by them outside their headquarters, the time when the case was to commence and when it ended on each day of hearing.

(6) The Government Pleader shall not claim fees in remand cases, if he has already claimed fees in the original suit before remand.

(7) The procedure prescribed under rules 133, 135 and 137 to 140 shall apply *mutatis mutandis* to the bills of fees and law charges of the subordinate Law Officers except that such bills shall be submitted by them, through the principal Law Officers concerned, to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

(8)(a) The principal Law Officers, while submitting the bills of fees to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary

to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, shall quote the relevant rule, or attach the sanction order under which the fees claimed is admissible and also record a certificate on each bill certifying that the claim preferred in that bill has not been preferred earlier and that only one court was allotted to himself or the subordinate Law Officer concerned, as the case may be, wherever the fees are prescribed by Government in the Law and Judiciary Department on *per day* basis.

(b) In the bills of fees prepared as per Bill of Costs awarded by the court concerned, the principal Law Officer shall record a certificate as per the requirements of rule 28 of the Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules, 1984.

(9) The bills of fees, which are to be submitted directly to the Pay and Accounts Office or Treasury shall contain a certificate of such payment in the manner specified below:—

“ The fee claimed in the bill is in accordance with the scale prescribed under rule . . . . of the Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules, 1984 or as per the rate prescribed under Government Resolution No. . . . . , dated . . . . . and that no departure from the rules or sanction order is made ”.

*Note.*—The Remembrancer of Legal Affairs is empowered to countersign the bills of fees and other law charges of the Government Pleaders or Public Prosecutors or other counsel under rule 22 read with entry “ 21-Administration of Justice ” in Appendix III of the Maharashtra Contingent Expenditure Rules, 1965. These powers have been delegated to the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad as the case may be, in respect of bills of fees of the Government Pleaders or Public Prosecutors or other counsel for their appearances in the cases arising out of Nagpur and Amravati Divisions (*vide* Government Resolution, Law and Judiciary Department, No. 23088/C, dated the 7th October 1974), (*see* Appendix I) or arising out of the districts to which the jurisdiction of the High Court at Aurangabad extends (*vide* Government Resolution, Law and Judiciary Department, No. EST-1084/1961-II, dated the 28th September 1984) (*see* Appendix J).

### Part E. Returns

144. *Monthly and Annual Returns.*—(1) The District Government Pleaders and Subordinate Government Pleaders appointed in the subordinate courts in the mofussil shall send returns in *Form No. 24* to the Remembrancer of Legal Affairs on the first day of every month. When there are no cases to be entered in the return it shall be sent blank.

(2) They shall also before 31st January of each year send similar returns giving requisite information for the preceding year.

(3) They shall also send a list of all pending civil cases, as on 31st January of each year, in the courts by or against the State or its officers on whose behalf Government in the Law and Judiciary Department has undertaken the institution or defence of cases, in *Form No. 25*.

(4) In addition to the above information they shall also send by first day of each month a list of all Government cases which have been decided by the courts in the preceding month in *Form No. 26*.

(5) All the Government Pleaders or Public Prosecutors in the High Court and subordinate courts shall send to the Remembrancer of Legal Affairs an annual report regarding the work done and income earned by them, in the first week of April every year for the period from 1st April to 31st March in *Form No. 27* for themselves and the subordinates working under them.

(6) The Government Pleaders or Public Prosecutors from the Nagpur and Amravati divisions shall send the copies of all the above mentioned returns to the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur and those who are responsible for reporting to the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Aurangabad, shall send such returns to him.

(7) The Advocate-General, the Government Pleader, High Court (Original Side) and the Additional Government Pleader, High Court (Appellate Side) at Bombay shall, before expiry of the months January/April every year, submit to the Remembrancer of Legal Affairs in quadruplicate, the annual returns in *Form No. 28* and *Form No. 29* in respect of cases filed during the preceding calendar year/financial year and the distribution of briefs and fees paid to each counsel engaged during the preceding financial year.

### Part F

145. *Repeal and Savings.*—(1) The Rules for the Conduct of the Legal Affairs of Government, 1939 are hereby repealed.

(2) Notwithstanding such repeal anything done, any action is taken or an order issued under the repealed Rules which is not inconsistent with the provisions of these rules, shall be deemed to have been done, taken or issued, the case may be, under the corresponding provisions of these rules.

## FORM No. 1

[see rules 31(3) and 32(8)(a)(i)]

Suit : Bombay.  
(Subject matter)

## GOVERNMENT OF MAHARASHTRA

## LAW AND JUDICIARY DEPARTMENT

## Resolution No.

Mantralaya, Bombay-400 032, dated the

Letter from .....

In the ..... Court at  
Bombay.

Suit No.

..... Plaintiff/s.

vs.

..... Defendant/s.

No. ....

dated the .....

requesting Government's sanc-  
tion for the \*institution/defence  
of the suit noted in the margin  
and also requesting Govern-ment to authorise Shri ..... to sign and  
verify the pleadings.Letter from the Government Pleader, .....  
Court at Bombay, No. ...., dated .....stating that \*it is advisable to file the suit/the suit noted in the margin is defensi-  
ble and requesting sanction for the \*institution/defence of the suit.*Resolution.*—Sanction is accorded to the \*institution/defence of the suit on  
behalf of .....Under Order XXVII, rule 1 of the First Schedule to the Code of Civil  
Procedure, 1908, Shri ..... is  
authorised to sign and verify the pleadings.

By order and in the name of the Governor of Maharashtra,

Under Secretary to Government.

To  
The ..... Department.

The Government Pleader, .....

The Officer concerned.

## FORM No. 2

[see rules 31(3) and 32(8)(a)(i)]

Suit : (Name of the district)

(Subject matter)

## GOVERNMENT OF MAHARASHTRA

LAW AND JUDICIARY DEPARTMENT,

Resolution No.

Dated the

Letter from the ..... No. ....

In the Court of the Civil Judge (S.D.),

.....

\*Spl. C.S./ R.C.S. No.

..... Plaintiff/s

vs.

..... Defendant/s

dated the .....  
forwarding the papers in  
the suit noted in the  
margin and requesting  
sanction to its \*institu-  
tion/defence.

*Resolution.*—Sanction is accorded to the \*institution/defence of the suit on behalf of ..... on the lines of the \*plaint/written statement as approved under ..... Office Memorandum No. .... dated the .....

By order and in the name of the Governor of Maharashtra,

(Name and designation of the officer)

To

The ..... Department,

The District Government Pleader, .....

The Collector, .....

\* (Strike off whichever is not applicable.)

## FORM No. 3

[see rules 31(4)(b) and 32(8)(a)(i)]

## GOVERNMENT OF MAHARASHTRA

No.

OFFICE OF THE

Dated:

*Subject:***Memorandum**

With reference to his letter No. ...., dated the ..... forwarding a draft [copy of the \*plaint/written statement for approval, the ..... Government Pleader, ..... is informed that the draft \*plaint/written statement forwarded by him is hereby approved, subject to the following amendments which he is requested to incorporate in the \*plaint/written statement before filing the same in the court and in case the \*plaint/written statement as drafted by him has already been filed by him in the court, he is requested to apply to the court for necessary amendments.

(Here state the proposed amendment)

(Name)  
Superintendent.

To

The ..... Government Pleader, .....

Copy forwarded for information to:

The ..... Department/Desk .....  
reference ..... dated the .....

## FORM No. 4

[see rules 35(6)(a) and (7) (a)]

Appeal : (Name of the District)

(Subject matter)

## GOVERNMENT OF MAHARASHTRA

LAW AND JUDICIARY DEPARTMENT,

Resolution No.

Dated the

*Read.*—Government Resolution, Law and Judiciary Department  
No. .... dated the .....

Letter No. .... dated the ..... from the

Government Pleader

In the ..... Court

Case No. ....

Plaintiff/s

vs.

Defendant/s

.....  
informing the decision  
of ..... court,  
dated .....  
and also forwarding his  
report in the case noted  
in the margin.

2. \*Letter/U.O.R. No. .... dated .....  
from ..... \*officer/Department forwarding \*his/its  
remarks in the case noted in the margin.

*Resolution.*—Sanction is accorded to the filing of appeal in .....  
Court in the case noted in the margin.

By order and in the name of the Governor of Maharashtra,

(Name and designation of the officer).

To

(1) ..... Department.

(2) The Government Pleader, .....

(3) The officer concerned.

FORM No. 5

[see rule 36(3)(b)]

Appeal : (Name of the District)  
(Subject matter)

## GOVERNMENT OF MAHARASHTRA

LAW AND JUDICIARY DEPARTMENT,

Resolution No.

Dated the

*Read*—Government Resolution, Law and Judiciary Department,  
No. dated the

Letter from the ..... No. ....

In the High Court at \*Bombay/Nagpur/Aurangabad  
or District Court .....

Appeal No. ....

Appellant/s

vs.

(1) The State of Maharashtra ..... Respondent/s

(2) .....

dated the .....  
forwarding papers in the  
appeal noted in the  
margin and requesting  
sanction to its defence.*Resolution.*—Sanction is accorded to the defence of the appeal noted in the  
margin on behalf of .....

By order and in the name of the Governor of Maharashtra,

(Name and designation of the officer).

To

The ..... Department.

The Government Pleader .....

The officer concerned .....

(\* Strike off whichever is not applicable)

## FORM No. 6

[see rule 50(8) and 53(2)]

No.

LAW AND JUDICIARY DEPARTMENT,

Dated the

To

*Subject.—*

Sir,

With reference to your letter No. .... dated the ..... on the subject noted above, I am directed to inform you that Government does not consider this to be a fit case for filing an appeal to the High Court/Supreme Court, Certified copy of the Judgment is returned herewith.

Superintendent.

Copy w. c. to—

FORM No. 7  
[see rule 50 (9) (a) ]

Petition of appeal

In the High Court at \*Bombay/  
Nagpur/Aurangabad against the  
order of acquittal.

GOVERNMENT OF MAHARASHTRA

LAW AND JUDICIARY DEPARTMENT,

Resolution No.

Dated the

Letter from the \*Public Prosecutor/District Magistrate .....

In the Court of .....

Case No.

STATE

vs.

Accused.

Offence under section. ....

No: .....

dated the .....

forwarding the papers in the  
case noted in the margin and  
requesting that an appeal  
under section 378(1) of the

Code of Criminal Procedure, 1973, may be made to the High Court at  
..... against the order of acquittal passed by the .....  
..... on ..... in  
respect of the accused in the case noted in the margin.

*Resolution.*—The Public Prosecutor, High Court at \*Bombay/Nagpur/  
Aurangabad is directed to file an appeal in the High Court at \*Bombay/Nagpur/  
Aurangabad under section 378(1) of the Code of Criminal Procedure, 1973,  
against the order of acquittal passed by the ..... on  
..... in respect of the accused in the case  
referred to in the margin.

By order and in the name of the  
Governor of Maharashtra,

(Name and designation of the officer)

To

The Home Department,

The Public Prosecutor,

The Public Prosecutor, High Court at \*Bombay/Nagpur/Aurangabad.

(with papers of the case received with the letter referred to above and a copy of the note recorded in the Law and Judiciary Department).

The \*District Magistrate/Commissioner of Police,

The Superintendent of Police,

The Assistant Commissioner of Food and Drugs Administration.

The officer concerned.

---

(\*Strike off whichever is not applicable)

FORM No. 8  
[see rule 50 (9) (a) ]

Petition of appeal.

In the High Court at \*Bombay/  
Nagpur/Aurangabad for enhance-  
ment of sentence.

GOVERNMENT OF MAHARASHTRA,  
LAW AND JUDICIARY DEPARTMENT,  
Resolution No.  
dated the

Letter from the \*Public Prosecutor/District Magistrate, .....

In the Court of .....  
STATE  
vs.  
..... Accused  
Offence under section .....

No. ....  
dated the .....  
forwarding the papers in the  
case noted in the margin and  
requesting that an appeal  
under section 377 (1) of the

Code of Criminal Procedure, 1973, may be made to the High Court at \*Bombay/  
Nagpur/Aurangabad for enhancement of sentence passed by the .....  
on ..... in respect of the accused in the  
case noted in the margin.

*Resolution.*—The Public Prosecutor, High Court at \*Bombay/ Nagpur/  
Aurangabad is directed to file an appeal in the High Court at \*Bombay/Nagpur/  
Aurangabad under section 377(1) of the Code of Criminal Procedure, 1973,  
for enhancement of sentence passed by the ..... on  
..... in respect of the accused in the case referred to  
in the margin.

By order and in the name of the  
Governor of Maharashtra,

(Name and designation of the officer)

To

The Home Department,  
The Public Prosecutor,  
The Public Prosecutor, High Court at \*Bombay/Nagpur/Aurangabad.  
(with papers of the case received with the letter referred to above and  
a copy of the note recorded in the Law and Judiciary Department),  
The \*District Magistrate/Commissioner of Police,  
The Superintendent of Police,  
The officer concerned.

(\*Strike off whichever is not applicable)

## FORM No. 9

[see rule 50 (9)(a)]

Criminal Revision Application.

In the High Court at \*Bombay/  
Nagpur/Aurangabad against the  
order of discharge.

## GOVERNMENT OF MAHARASHTRA

LAW AND JUDICIARY DEPARTMENT,

Resolution No.

dated the

Letter from the \*Public Prosecutor/District Magistrate, .....

In the ..... Court  
Case No. ....

STATE

vs.

..... Accused  
Offence under section.....

No. ....

dated the .....

forwarding the papers in the  
case noted in the margin and  
requesting that Criminal Revi-  
sion Application under section  
397(1) of the Code of CriminalProcedure, 1973, may be made to the High Court at \*Bombay/Nagpur/  
Aurangabad against the order of discharge passed by the .....  
..... on ..... in respect of the  
accused in the case noted in the margin.

*Resolution.*—The Public Prosecutor, High Court at \*Bombay/Nagpur/  
Aurangabad is directed to file Criminal Revision Application in the High Court  
at \*Bombay/Nagpur/Aurangabad under section 397(1) of the Code of Criminal  
Procedure, 1973, against the order of discharge passed by the .....  
..... on ..... in respect of the  
accused in the case referred to in the margin.

By order and in the name of the  
Governor of Maharashtra,

(Name and designation of the officer)

To

The Home Department,

The Public Prosecutor,

The Public Prosecutor, High Court at \*Bombay/Nagpur/Aurangabad  
(with papers of the case received with the letter referred to above and  
a copy of the note recorded in the Law and Judiciary Department),

The \*District Magistrate/Commissioner of Police.

The Superintendent of Police,

The Assistant Commissioner of Food and Drug Administration,

The officer concerned.

---

(\*Strike off whichever is not applicable)

FORM No. 10  
[see rule 50 (9) (a)]

Petition of appeal.

In the High Court at \*Bombay/  
Nagpur/Aurangabad against the  
order of acquittal.

GOVERNMENT OF MAHARASHTRA

LAW AND JUDICIARY DEPARTMENT,

Resolution No.

dated the

Letter from the Public Prosecutor, High Court at \*Bombay/ Nagpur/  
Aurangabad, No. ....

In the High Court at \*Bombay/Nagpur/  
Aurangabad.

\*Criminal Appeal/Application No.

Appellant/s

vs.

Accused

Offence under section.....

dated the .....  
forwarding the High Court  
notice with enclosures and  
requesting whether the State  
intends to file appeal in the  
case noted in the margin.

*Resolution.*—The Public Prosecutor, High Court at \*Bombay/Nagpur/  
Aurangabad is directed to file an appeal in the High Court at \*Bombay/Nagpur/  
Aurangabad under section 378(1) of the Code of Criminal Procedure, 1973,  
against the order of acquittal passed by the ..... on  
..... in respect of the accused in the case referred to  
in the margin.

By order and in the name of the  
Governor of Maharashtra

(Name and designation of the officer)

To

The Home Department,

The Public Prosecutor,

The Public Prosecutor, High Court at \*Bombay/Nagpur/Aurangabad,

(with papers of the case received with the letter referred to above and  
a copy of the note recorded in the Law and Judiciary Department).

The \*District Magistrate/Commissioner of Police,

The Superintendent of Police,

FORM No. 11

[see rule 54 (2)]

Criminal Application in the High Court at \*Bombay / Nagpur / Aurangabad for cancellation of bail.

## GOVERNMENT OF MAHARASHTRA

LAW AND JUDICIARY DEPARTMENT,

Resolution No.

dated the

Letter from .....

In the ..... Court .....

Case No.

STATE

vs.

Accused.

Offence under section

No. ....

dated the .....

forwarding the papers in the case noted in the margin and requesting that an application under section 439 (2) of the Code of Criminal Procedure,

1973, may be made to the High Court at \*Bombay/Nagpur/Aurangabad for cancellation of bail granted by the ..... Court at ..... on ..... in respect of the accused in the case noted in the margin.

*Resolution.*—The Public Prosecutor, High Court at \*Bombay/Nagpur/Aurangabad is directed to file an application in the High Court at \*Bombay/Nagpur/Aurangabad under section 439(2) of the Code of Criminal Procedure, 1973 for cancellation of bail granted by the ..... Court ..... at ..... on ..... in respect of the accused in the case referred to in the margin.

By order and in the name of the  
Governor of Maharashtra,

(Name and designation of the officer).

To,

The Home Department,

The Public Prosecutor,

The Public Prosecutor, High Court at \*Bombay/Nagpur/Aurangabad (with papers of the case received with the letter referred to above and a copy of the note recorded in Law and Judiciary Department).

The \*District Magistrate/Commissioner of Police,

The Superintendent of Police,

The Assistant Commissioner of Food and Drug Administration.

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(\*Strike off whichever is not applicable).

FORM No. 12

[see rule 63(2)]

## GOVERNMENT OF MAHARASHTRA

## LAW AND JUDICIARY DEPARTMENT,

No.

Dated the

To

Shri  
Government Advocate,  
Supreme Court,  
Supreme Court Compound, Tilak Marg,  
New Delhi 110 001.

*Subject :*

Sir,

With reference to the subject noted above, I am directed to inform you that it has been decided to file an appeal to the Supreme Court against the judgment and order dated the ..... of the High Court at ..... in ..... No. .... You are, therefore, requested to file Special Leave Petition to the Supreme Court under Article 136 of the Constitution. A Vakalatnama duly executed in your favour is forwarded herewith.

The following documents are forwarded for filing Special Leave Petition in the Supreme Court:—

- (1) Certified copy of High Court judgment in .....
- (2) Uncertified copy of High Court judgment in .....
- (3) Paper-Book prepared in .....

The \*Government Pleader/Public Prosecutor, High Court at ..... is being requested to forward other relevant papers direct to you.

Yours faithfully,

(Name and designation of the officer).

## Copy to—

1. The \*Government Pleader/Public Prosecutor, High Court at ..... with a request to send other relevant papers direct to the Government Advocate, Supreme Court, New Delhi under intimation to this department.
2. The Under Secretary, ..... Department, Mantralaya, Bombay 400 032, with reference to his U.O.R./Letter No. .... dated the .....
3. The officer concerned.

## FORM No. 13

[see rule 63(2)(b) and 64(4)]

## VAKALATNAMA

## IN THE SUPREME COURT OF INDIA

\*PETITION/APPEAL No. OF 19

FROM JUDGMENT OF THE HIGH COURT OF JUDICATURE AT  
BOMBAY AT ..... IN \*PETITION/APPEAL No. OF 19

BETWEEN .. Appellant/s

AND .. Respondent/s.

## VAKALATNAMA

The State of Maharashtra \*Appellant/Respondent in the above \*petition/appeal do hereby appoint and retain Shri ..... Advocate-on-Record of the Supreme Court to act and appear for the State of Maharashtra in the above \*petition/appeal and on behalf of the State of Maharashtra to conduct and \*prosecute/defend the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceedings in taxation and applications for Review, to file and obtain return of documents and to deposit and receive money on its behalf in the said \*petition/appeal and in applications for Review and to represent the said State and to take all necessary steps on its behalf in the above matter. The Governor of Maharashtra agrees to ratify all acts done by the aforesaid Advocate-on-Record in pursuance of this authority.

IN WITNESS WHEREOF these presents are duly executed on behalf of the Governor of Maharashtra this the ..... day of .....

(Name and designation of the officer).

Law and Judiciary Department on behalf of  
the Governor of Maharashtra.

Accepted.

Advocate-on-Record.

The address for service of the said Advocate-on-Record is —

(\*Strike off whichever is not applicable)

FORM No. 14

[see rule 63(3)]

## IN THE SUPREME COURT OF INDIA

\*CRIMINAL/CIVIL APPELLATE JURISDICTION

S.L.P. (\*CIVIL/CRIMINAL) No.

OF 19

.. Petitioner(s)

*versus*

.. Respondent(s)

## AFFIDAVIT

I, \_\_\_\_\_ S/o \_\_\_\_\_ aged \_\_\_\_\_  
 about \_\_\_\_\_ R/o \_\_\_\_\_  
 do hereby solemnly affirm and say as follows:—

1. I say that I am working in the \_\_\_\_\_ (mention the  
 department) as \_\_\_\_\_ (mention designation).

2. I am conversant with the facts of this case and I have perused record of  
 this case. I am, therefore, competent to swear this affidavit.

3. I say that what is stated in the petition for Special Leave to Appeal is  
 based on information derived from the record of the case maintained in my  
 office and I believe the same to be true. The submissions made therein are based  
 on legal advice. I say that nothing has been concealed herefrom.

Deponent.

At

Dated this the \_\_\_\_\_ day of \_\_\_\_\_ 19.

FORM No. 15

[see rule 64(2)]

VAKALATNAMA

IN THE SUPREME COURT OF INDIA

APPELLATE JURISDICTION

APPEAL No.                      of 19 .

FROM JUDGMENT OF THE HIGH COURT OF JUDICATURE AT  
 BOMBAY AT ..... IN .....  
 APPEAL No.                      OF 19 .

BETWEEN

.. Appellant/s

AND

.. Respondent/s.

VAKALATNAMA

(Here write designation of the officer) \*Appellant/Respondent in the above \*petition/appeal do hereby appoint and retain Shri ..... Advocate-on-Record of the Supreme Court to act and appear for the officer in the above \*petition/appeal and on behalf of the officer to conduct and \*prosecute/defend the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceedings in taxation and applications for Review, to file and obtain return of documents and to deposit and receive money on his behalf in the said \*petition/appeal and in applications for Review and to represent the said officer and to take all necessary steps on his behalf in the above matter. The (Here write designation of the officer) agrees to ratify all acts done by the aforesaid Advocate-on-Record in pursuance of this authority.

IN WITNESS WHEREOF these presents are duly executed on behalf of the (Here write designation of the officer) this the .... day of ..... 19 .

(Name and designation of the officer).

Accepted

• Advocate-on-Record.

The address for service of the said Advocate-on-Record is

(\*Strike off whichever is not applicable)

FORM No. 16

[see rule 64(4)]

## GOVERNMENT OF MAHARASHTRA

No.

LAW AND JUDICIARY DEPARTMENT

Dated the

To

Shri  
Government Advocate,  
Supreme Court,  
Supreme Court Compound, Tilak Marg,  
New Delhi 110 001.

*Subject.*—Special Leave to Appeal(\*Civil/Criminal) No. ....  
of .....

Sir,

I am forwarding herewith a Notice of Motion served on the State of Maharashtra in the aforesaid matter and a blank *Vakalatnama* duly signed and to request you to file your appearance on behalf of the State of Maharashtra on ..... when the matter will be heard for admission. You are requested to seek detail instructions from the Secretary, ..... Department for the grounds on which the petition is to be opposed.

2. .... Department is being requested to send you necessary instructions. Shri ..... Advocate, Supreme Court is appearing on behalf of the Petitioner.

Yours faithfully,

(Name and designation of the officer).

## Copy forwarded to—

1. The Under Secretary, ..... Department, Mantralaya, Bombay-400 032, with a request to instruct Shri ..... the Government Advocate, Supreme Court, New Delhi, the grounds on which the petition is to be opposed. \*He is also requested to send parawise remarks to the Government Pleader, High Court at ..... (copy to this department) to enable him to prepare the draft affidavit in reply and send it to the Government Advocate, Supreme Court, New Delhi, in time. He is also requested to pursue or direct the officer concerned to pursue the matter with the Government Advocate, Supreme Court till the Special Leave to Appeal is finally decided. Pages ..... containing Notice of Motion are forwarded to the Government Advocate, Supreme Court, New Delhi for necessary action. That department's papers received under U.O.R. dated the ..... are returned herewith.

\*2. The Government Pleader/Public Prosecutor, High Court at ..... with a request to see that the draft affidavit in reply is drafted and forwarded to the Government Advocate, Supreme Court, New Delhi in time. Copy of the affidavit should also be sent to this department.

3. The officer concerned.

---

(\*Strike off whichever is not applicable)

## FORM No. 17

[see rule 68(2)(b)]

Serial No.	Decree in which it is decided to acquiesce in	Date on which decree is passed	Date on which it is decided to acquiesce in	Steps taken for satisfaction of decree	Date on which decree is satisfied
1	2	3	4	5	6

[see rule 85]

Serial No. of case	Name of Court which passed the decree	Number and year of suit, appeal or application	Names of parties	Date of decree	Date on which the period of limitation expires	Judgment-debtor			Amount due to Government	
						Name	Residence	Occupation		
1	2	3	4	5	6	7	8	9	10	11

Steps taken for recovery	Recoveries effected		Written off as irrecoverable		Net balance to be recovered	Remarks (Here enter any information available as to, judgment-debtor's pecuniary circumstances, what property, if any, he owns etc.)		
	Nature of steps	Date of taking steps.	How recovered	Date			Amount	
12	13	14	15	16	17	18	19	20

## FORM No. 19

[see rule 90(9) and (10)]

## AFFIDAVIT FORM FOR S. 123

I, (here mention name and designation in full), do hereby solemnly affirm and state as follows :—

1. That summonses, bearing No. ...., dated the ..... requiring production of the following documents in the above suit have been duly received on ..... :—

(Here insert the list of documents summoned).

2. That I, as Head of the Department of ..... am in charge and control of these documents.

3. That I have carefully considered the contents of the documents at Nos. ....

4. That these documents are unpublished official records relating to affairs of the State and their disclosure will be prejudicial to public interest for the following reasons :

(Here insert the reasons disclosing the nature of the document and the injury expected).

I, therefore, do not give permission to any one to produce the said documents in para 3 or to give any evidence derived therefrom.

5. That the aforesaid documents are privileged under section 123 of the Indian Evidence Act, while the rest are \*being produced,  
not in my custody.

Solemnly affirmed at ..... this, ... day of .....

Name and designation of the person  
making the affidavit.

(\*Strike off whichever is not applicable)

## FORM No. 20

[see rule 90(9) and (11)]

## AFFIDAVIT FORM FOR S. 124

I, (Here mention name and designation in full) do hereby solemnly affirm and state as follows :—

1. That summonses, bearing No. .... dated the ..... requiring production of the following documents in the above suit have been duly received on..... :—

(Here insert the list of documents summoned);

2. That I, as Head of the Department of, ..... am in charge and control of these documents.

3. That I have carefully considered the contents of documents at Nos. ....

4. That these documents contain communication made in official confidence and public interest would suffer by their disclosure, for the following reasons :—

(Here insert the reasons disclosing the nature of the documents and the injury expected).

5. That the aforesaid documents in para 3 are privileged under section 124 of the Indian Evidence Act, and the same is herewith claimed.

The rest are \*being produced/not in my custody.

Solemnly affirmed at ..... this ..... day of .....

Name and Designation of the person  
making the affidavit.

(\*Strike off whichever is not applicable)

## FORM No. 21

[see rule 90 (12)]

## FORM OF APPLICATION

In the Court of .....

Suit No. of

.. Plaintiff/s.

*versus*

.. Defendant/s.

**Sir,**

The documents summoned from ..... in the above suit have been brought to the court but privilege in respect of Nos. .... is claimed for reasons disclosed in the accompanying affidavit. It is, therefore, prayed that the documents may not be taken in evidence and may be allowed to be taken back.

Government Pleader/person  
bringing the document.

(As the case may be)

## FORM No. 22

[see rule 107 (1) and (3)]

Name of court	Number on file of a court	Parties and their addresses	Are all the defendants, respondents or opponents still alive?	If any of the said parties is dead, state the date of death and also state name, age, residence and occupation of legal representatives and relationship to deceased.
1	2	3	4	5

Submitted by the Government Pleader ..... to the  
Collector of ..... with reference to rule .....  
of the Rules for the Conduct of the Legal Affairs of Government, 1984.

Dated the ..... Government Pleader, .....

Returned completed to the Government Pleader, .....

Dated the ..... Collector, .....

*Note.*—(a) Columns 1 to 3 should be filled in by the Government Pleader.

(b) Columns 4 and 5 should be filled in by the Government Pleader so far as his actual knowledge permits.

(c) Columns 4 and 5 shall be filled in by the Collector, so far as the required information has not been entered by the Government Pleader.

(d) The report of the death of a party shall be made by the Government Pleader to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, on return of the list, duly completed to the Government Pleader.

## FORM No. 23

[see rule 109(6)(b) and 7(b)]

## BOND

KNOW ALL men by these presents that I, (1) .....  
 ..... of ..... am held  
 and truly bound unto the Governor of Maharashtra in the sum of Rupees  
 (2) ..... to be paid to  
 the Governor, for which payment will and truly to be made. I bind myself,  
 my heirs, executors, administrators and legal representatives by these presents.  
 Sealed this ..... day of ..... one thousand,  
 nine hundred and .....

WHEREAS Shri (3) .....  
 (hereinafter referred to as "the Bounden") being (4) desirous of instituting/  
 required to institute Proceedings (4) desirous of conducting/required to conduct  
 his defence, in the matter of (4) a Criminal/Civil case filed by/against him in  
 the ..... Court of .....  
 being (4) Case/Suit No. ..... (.....) has  
 applied to the Government of Maharashtra (hereinafter referred to as "the  
 Government") for assistance to enable him to meet the legal expenses therefor.  
 AND WHEREAS the Government has for the said purpose advanced to the  
 Bounden a sum of Rs. (in lump sum) free of (4) interest/having agreed to advance  
 to the Bounden for the said purpose a sum of R s. ....  
 free of interest by ..... instalments, has paid the  
 sum of Rs. .... by way of first instalment and has  
 agreed to pay the remaining instalment/s on the ..... day of  
 each and every succeeding month.

NOW THIS BOND is conditioned to be void if the Bounden shall—

(i) use the said sum of Rs. .... only for meeting  
 the legal expenses in the said (4) Criminal/Civil case filed (4) by/against him  
 in the ..... Court of .....  
 and for no other purpose whatsoever, and

(ii) produce within ..... days after the passing of the  
 decree or final order therein details of legal expenses incurred by him, and

(iii) return to the Government forthwith the excess of the said sum of Rs. .... over the sum, if any, directed by the Government to be reimbursed to him or the whole of the said sum of Rs. .... if no amount is directed by Government to be reimbursed to him. Otherwise this Bond shall remain in full force and virtue.

AND in the event of the Bounden committing a breach of any of the above terms and conditions the Bounden shall forthwith pay to the Government the aforesaid sum of Rs. .... / (4) the sum of Rs. .... (in the event of further instalments not having been paid) and the amount so payable shall without prejudice to any other rights and remedies of the Government be recoverable from the Bounden as arrears of Land Revenue.

Signed this ..... day of ..... 19 ..

Signature of the officer.

In the presence of—

Witness (1) .....

Witness (2) .....

- Note.—(1) Name of the officer and particular of the post held by him.  
 (2) Here mention double the amount sanctioned as legal assistance.  
 (3) Name of the officer with particulars of the post held by him.  
 (4) Strike off whichever is not applicable.

## FORM No. 24

[see rule 144(1)]

Court in which instituted	Nature of case (i.e. whether an original suit, appeal or other civil proceeding and amount and description of claim).	Number of case	Date of institution	Parties		Date fixed
				Plaintiff, Appellant or Petitioner	Defendant, Respondent or Opponent	
1	2	3	4	5	6	7

## FORM No. 25

[see rule 144(3)]

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Court in which instituted	Number of case	Names of parties	Nature of case and relief claimed
1	2	3	4

---

## FORM No. 26

[see rule 144(4)]

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Court in which instituted	Number of case	Names of parties	Nature of case and relief claimed	Whether decided in favour of State or against State
1	2	3	4	5

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## FORM No. 27

[see rule 144(5)]

Year 19.....

Civil Work				
Serial No.	Name of Law Officer and his designation	Duration of post held	No. of cases conducted	Fees earned
1	2	3	4	5

Criminal Work					Remarks
Average monthly income	No. of cases conducted	Fees earned	Average monthly income	Total average monthly income (Col. 5 and 8)	
6	7	8	9	10	11

## FORM No. 28

[see rule 144(7)]

Information regarding distribution of briefs during the calendar year, i.e.  
1st January 19... to 31st December 19...

Briefs	Total No. of cases filed	Total No. of cases finally decided by court	Total No. of cases finally decided against State	Total No. of cases finally decided in favour of State	Costs awarded to State by court. Whether recovered and credited to Government. If not, then reasons	Brief particulars about important cases finally decided in favour of or against State
1	2	3	4	5	6	7
(Please attach a separate note in this behalf).						
Writ Petitions						
2. Misc. Petitions						
3. Sales Tax References.						
4. Land Acquisition References.						
5. Stamp References.						
6. Suits						
7. Appeals in High Court.						
8. Appeals in Supreme Court						
9. Other matters						
10. Total						

## FORM No. 29

[see rule 144(7)]

*Distribution of briefs and fees paid to Counsel during the financial year  
(i.e. 1st April 19      to 31st March 19      )*

Serial No.	Name and designation of Counsel	Total No. of cases conducted by Counsel	No. of matters		Total amount of fees claimed by Counsel	Total amount of fees paid to the Counsel
			Favourable	Un- favourable		
1	2	3	4	5	6	7

## APPENDIX A

*see rule 23)*

## EXTRACT FROM THE REGULATION FOR THE ARMY, 1962

\* \* \* \* \*

*Para 421.—Defence of Soldiers Charged with Criminal Offences.*—The following are the rules for the defence of soldiers charged with criminal offences and prosecuted by Government in civil courts :—

(a) When soldiers are to be tried by a civil court upon any criminal charge, the Bde/Sub Area Commander should consult the District Magistrate, and arrange with him for the selection and remuneration of a pleader, advocate or barrister, as the importance and necessities of the case may require.

(b) Except in cases in which the Central Government are interested the maximum amount that be paid to the pleader, advocate or barrister is \*Rs. 150 for each day that he appears in the case, on behalf of one or more accused, before a High Court, a Judicial Commissioner's court or Sessions Court, or \*Rs. 75 for each day that he appears in the case on behalf of one or more accused before any other court. These amounts include expenses of every description which counsel may incur. These fees are maxima and should not be paid in every case but terms arrived at for the whole case, omitting, for instance, days on which counsel appears merely to ask for an adjournment. In a joint trial, when the local military authority is satisfied that the accused require different lines of defence he may authorise the separate payment of fees for each accused so defended.

(c) (i) The Brigade/Sub Area Commander is only to appoint a pleader, advocate or barrister in cases where he thinks it desirable. The amount to be paid to counsel will be definitely settled before hand, subject to the maxima laid down in clause (b) above. If suitable counsel cannot be obtained for the remuneration admissible under these rules the case will be reported to superior authority and the orders of Government obtained.

(ii) In High Courts in which counsel may not plead unless instructed by a solicitor, a solicitor may be employed and his bill of costs, which should include counsel's fee (subject to the restrictions laid down in clause (b) above and all other expenses incurred in the case, should be submitted to the Legal Remembrancer of the local Government and his certificate obtained that the amount of bill is reasonable before it is submitted for the orders of Government.

(d) When counsel is provided for the defence of a soldier at the first trial in a civil court, counsel can also be provided when considered necessary on appeal, subject to the limitations laid down in clauses (b) and (c) above.

(e) For the purposes of this concession the term soldier used in clause (a) above, includes all JCOs., WOs., NCOs and sepoys when at duty and reservists called up for training or called out for service. It does not include

JCOs, WOs., NCOs and sepoy when on leave, enrolled non-combatants or any other classes not mentioned above.

Any special case not specified may be reported to the superior authority and the orders of the Central Government obtained.

\**Note.*—The case for enhancement of fees from Rs. 150 to Rs. 250 and from Rs. 75 to Rs. 150 is under consideration by the Ministry.

## APPENDIX B

(see rule 26)

## BY THE HIGH COURT OF JUDICATURE AT BOMBAY

No. P-1630/57.—In exercise of the powers conferred by sub-section (2) of section 304 of the Code of Criminal Procedure, 1973 (II of 1974) and with the previous approval of the Government of Maharashtra, the Honourable the Chief Justice and Judges of the High Court of Judicature at Bombay are pleased to make the following rules:—

1. *Short title and commencement.*—(1) These rules may be called “the Legal Aid to unrepresented accused person in cases before the Court of Sessions Rules, 1982”.

(2) These rules shall come into force with effect from 27th October 1982.

2. *Definitions.*—In these rules, unless the context otherwise requires,—

(a) “Court” means Court of Sessions established under the Code of Criminal Procedure, 1973 (II of 1974);

(b) “Indigent person” means a person who in the opinion of the Court has no means to engage a Legal Practitioner of his own for the defence of his Sessions Case or appeal before the Court of Sessions;

(c) “Legal Aid” means Legal Aid given to an unrepresented accused person in all or any of the following modes, namely:—

(i) payment of Court-fees, process fees, expenses of witnesses and all other charges payable or incurred in connection with any proceedings before the Sessions Court;

(ii) representation by a Legal Practitioner in proceedings before the Sessions Court;

(iii) supply of certified copies of judgements, orders, notes of evidence and other documents in proceedings before the Sessions Court;

(iv) drafting of legal documents;

(d) “unrepresented accused person” means an indigent person who in the opinion of the Court has no means to engage a Legal Practitioner of his own for the conduct of his case before a Sessions Court.

*Explanation.*—A person whose gross income from all sources does not exceed Rs. 5,000 per annum or such amount as Government may prescribe from time to time shall ordinarily be considered to be a person who has no means to engage a Legal Practitioner.

3. *Availability of Legal Aid.*—The Legal Aid shall be given to—

(a) every unrepresented accused person entitled to such aid in a case before a Sessions Court;

(b) a person who is in incommunicado condition or to an indigent person entitled to recover maintenance allowance under section 125 of the Code of Criminal Procedure, 1973 (II of 1974);

(c) an indigent person who desires to defend a proceeding before the Sessions Court:

Provided that, no Legal Aid under these rules shall be given in cases involving economic offences or offences against social laws such as the Protection of Civil Rights Act, 1955, the Suppression of Immoral Traffic in Women and Girls Act, 1956 or child abuse.

4. *Duty of the Court.*—(1) The Presiding Officer of the Court shall explain to every unrepresented accused person, the provisions of the Rules of Legal Aid as soon as he is produced before him for the first time and shall certify under his signature the fact of having done so in the record of the case to that effect. After explaining to such unrepresented accused person the provisions of the Rules if the said unrepresented accused person states that his income does not exceed Rs. 5,000 per annum, he shall be asked if he desires to submit an application in the Form specified in the Schedule appended to these Rules.

(2) The Presiding Officer shall ascertain whether the unrepresented accused person is desirous of availing of free legal assistance.

(3) No unrepresented person shall be compelled to avail of free legal assistance against his wish.

(4) The Presiding Officer of the Court shall, at the time of awarding sentence of imprisonment or imprisonment in default of a payment of fine, acquaint the convict of his right of appeal and the right to get the Legal Aid for preferring an appeal.

5. *Authority to decide capacity of person to engage a Legal Practitioner.*—(1) Every Presiding Officer of the Court is authorised to certify or report whether the person applying for Legal Aid is not able to engage a Legal Practitioner at his own cost.

(2) Every application for Legal Aid shall be made to the Court before which the proceeding is to be instituted or pending, as the case may be, and shall be in the Form specified in the Schedule appended to these Rules. No Court-fee shall be payable on such application.

6. *Panel of Legal Practitioners for Legal Aid.*—(a) The appointment of a Legal Practitioner for the unrepresented accused person under these Rules shall be made from a panel of Legal Practitioners constituted for each Court by the Presiding Officer of the Court in consultation with the President and the Office Bearers of the Bar Association, if any. Where there is no Bar Association, the Presiding Officer shall draw up the panel in consultation with the Senior Advocates of the concerned Bar. The panel may include the President of the Bar Association, Senior Advocates of the Bar and the junior members of the Bar having at least a standing of five years as practising lawyers. In every case where an offence is punishable with sentence of death or imprisonment for 7 years or more a Senior Advocate with a Junior Advocate from the

panel shall be appointed for defending the unrepresented accused. As far as possible, the Presiding Officer shall not make an appointment from outside the panel but he may do so for any exceptional reason to be recorded in writing.

(b) Notwithstanding anything to the contrary, in a case pending on the date of commencement of these Rules against an unrepresented accused person an application in that behalf to the Court, the Legal Practitioner engaged by him shall be deemed to be the Legal Practitioner appointed by the Court under these Rules and shall be paid fees admissible under these Rules.

7. *Constitution of Panel of Legal Practitioners.*—(1) the panel shall be constituted normally for every two years from the 1st day of January onwards or according to the convenience of the Presiding Officer of the Court:

Provided that, a Legal Practitioner shall continue in a case, for which he is appointed till its completion if the case is not closed in that year.

(2) Every person included in the panel shall express in writing to the Presiding Officer of the Court his willingness to serve on the panel and thereupon such persons shall accept appointment in any case and appear in Court when so appointed.

(3) Any person in the panel may tender his resignation in writing to the authority constituting the panel.

(4) Any vacancy in the panel caused by resignation or otherwise may be filled up by the Presiding Officer of the Court from the Legal Practitioners practising in the Sessions Court but the term of the person so appointed will expire on the date of coinciding with the period for which the said panel is constituted.

(5) If any Advocate after having agreed to serve on a panel neglects or refuses to accept an appointment, he shall forthwith cease to be a member of the panel and shall be debarred from being reappointed on the panel. If an Advocate refuses or neglects an appointment his name shall be reported by the Presiding Officer of the Court to the Bar Council of Maharashtra.

(6) If any Legal Practitioner after accepting an appointment, neglects or refuses to discharge his duties properly, the authority which sanctioned the appointment shall remove the Legal Practitioner and appoint another in his place. Such removal will entail the consequences mentioned in sub-rule (5)

(7) Any person serving on a panel shall be eligible for reappointment.

(8) Cases in which Legal Aid is sanctioned, as far as may be, distributed among the members of the panel equitably.

8. *Cancellation of Legal Aid.*—The Court may either on its own motion or otherwise cancel the Legal Aid granted to an unrepresented persons in the following circumstances, namely :—

(a) If the Legal Aid was obtained by misrepresentation or fraud;

(b) If the aided person does not co-operate with the Legal Practitioner assigned by the Court;

(c) If the aided person engage a Legal Practitioner other than the one assigned by the Court.

9. *Facilities to the Legal Practitioners.*—The Presiding Officer of the Court shall provide the Legal Practitioner or Legal Practitioners appointed on behalf of the unrepresented accused person such facilities as would be necessary for the conduct of the case such as holding interviews, tendering advice and supplying certified copies of judgments, orders, notes of evidence and other documents free of charge.

10. *Fees payable to Legal Practitioners on the panel.*—(1) The Senior Legal Practitioners appearing for the unrepresented accused shall work as *amicus curiae* and shall not be entitled to any fees.

(2) The Junior Legal Practitioner appearing for the unrepresented accused shall be paid the following fees:—

In a Sessions case or appeal before the City Civil and Sessions Court at Bombay—

(a) the Legal Practitioner on the panel shall be paid Rs. 75 per day of effective hearing subject to a maximum of Rs. 450 in any one case;

(b) In a Sessions case or appeal before any other Sessions Court, the fees shall be Rs. 50 per day of effective hearing subject to a maximum of Rs. 300 in any one case;

(c) In cases where the Senior Legal Practitioner certifies that the Junior Legal Practitioner assisting him in the case deserves enhanced fees, on account of the number of days involved, special labour put in and the marked industry and ability displayed by him, the Junior Legal Practitioner shall be entitled to such enhanced fees as the Remembrancer of Legal Affairs may sanction on the recommendations of the Court.

11. *Recovery of Fees.*—In case of cancellation of Legal Aid on the ground of misrepresentation or fraud, fees paid to the Legal Practitioner shall at the discretion of the Court be recovered from the person to whom the aid is given as arrears of Land Revenue.

12. *Disbursement of fees.*—(1) Every bill of fees and other expenses incurred shall be submitted by the pleader appointed in the case for the counter-signature of the Member-Secretary of the Maharashtra State Legal Aid and Advice Board, Bombay, through the Court appointing him.

(2) The Bill shall be accompanied by the order authorising such pleader to appear in the case, together with certificate from the Court concerned as prescribed in rule 13.

(3) If the Member-Secretary of the Board is satisfied that the Bill is in order, he shall countersign it and return it to the Pleader concerned, who shall then present it at the treasury for payment.

(4) The amount of every such Bill shall be debited to the provision made for the purpose so far as pleaders in Greater Bombay and in mofussil are concerned under the budget head "214-Administration of Justice-m-Legal Advisers and Counsel—m (iii) Legal Aid and Advice Board—(4) Payment for Professional and Special Service".

13. *Certificate.*—The Certificate to be submitted to the Court shall contain the following details :—

- (a) the number of days on which actual work is done;
- (b) the duration of work for each day;
- (c) statement that the Legal Practitioner has not received any fees from the unrepresented accused person or from any other source;
- (d) the fees payable to him as per these rules.

14. *Legal Practitioner not to receive any fee from party.*—The Legal Practitioner to whom fee is due or paid under these Rules shall not be entitled to, nor shall he receive, any fee from the party or from any other source.

15. *Saving.*—Notwithstanding anything contained in these Rules it shall be competent for the Government to issue from time to time any direction or instruction with a view to implementing the scheme for Legal Aid to the unrepresented accused person having regard to the special circumstances of any case.

## SCHEDULE

(see rules 4 and 5)

**Form of Application for Legal Aid**

1. Name of the Court .....
2. Number of Sessions Case/Appeal .....
3. Name, description and place of residence of the applicant. ....
4. Average monthly income of the applicant from all sources; .....

I/We am/are the .....  
 in ..... No. ....  
 noted above my/our average monthly income from all sources is Rs. ....  
 I/We am/are not in a position to engage a Legal Practitioner of my/our own in  
 the above, ..... I/We, therefore, pray that the Court  
 may be pleased to appoint a Legal Practitioner for me/us in the above. ....

The above statements are true to the best of my personal knowledge and belief.

Signature of applicant/s.

Forwarded to ..... for enquiry  
 and report ..... before .....

Presiding Officer.

High Court, Appellate Side  
 Bombay, 19th October 1982

G. B. TERDALKAR,  
 Additional Registrar.

## APPENDIX C

(see rule 26)

## BY THE HIGH COURT OF JUDICATURE AT BOMBAY

No. P 1630/57.—In exercise of the powers conferred by sub-section (2) of section 304 of the Code of Criminal Procedure, 1973 (II of 1974) and with the previous approval of the Government of Maharashtra, the Honourable the Chief Justice and Judges of the High Court of Judicature at Bombay are pleased to make the following rules, namely :—

1. *Short title and commencement.*—(1) These rules may be called “the Legal Aid to unrepresented accused person in Criminal Cases other than those before the Court of Sessions Rules, 1982.”

(2) These rules shall come into force with effect from 27th October 1982.

2. *Definitions.*—(a) “Court” means a Criminal Court other than a Court of Sessions established under the Code of Criminal Procedure, 1973 (II of 1974) or Court exercising criminal jurisdiction under any law for the time being in force;

(b) “Indigent Person” means a person who in the opinion of the Court has no means to engage a Legal Practitioner of his own for the defence of his criminal case;

(c) “Legal Aid” means Legal Aid given to an unrepresented accused person in all or any of the following modes, namely :—

(i) payment of Court-fees, process fees, expenses of witnesses and all other charges payable or incurred in connection with any criminal proceedings;

(ii) representation by a legal practitioner in criminal proceedings;

(iii) supply of certified copies of judgments, orders, notes of evidence and other documents in criminal proceedings;

(iv) drafting of legal documents;

(d) “Unrepresented accused person” means an indigent accused person who is not represented by a pleader and who in the opinion of the Court has no means to engage a Legal Practitioner of his own for the conduct of his case before a Court.

*Explanation.*—A person whose gross annual income from all sources does not exceed Rs. 5,000 or such amount as Government may prescribe from time to time shall ordinarily be considered to be a person who has no means to engage a Legal Practitioner.

3. *Availability of Legal Aid.*—The Legal Aid shall be given to—

(a) every unrepresented accused person entitled to such aid in a case before a Criminal Court;

(b) a person who is in incommunicado condition or an indigent person entitled to recover maintenance allowance under section 125 of the Code of Criminal Procedure, 1973 (II of 1974);

(c) an indigent person who desires to defend a criminal proceeding :

Provided that, no Legal Aid under these Rules shall be given in cases involving economic offences or offences against social laws such as the Protection of Civil Rights Act, 1955, the Suppression of Immoral Traffic in Women and Girls Act, 1956 or child abuse.

4. *Duty of the Court.*—(1) The Presiding Officer of the Court shall explain to every unrepresented accused person, the provisions of the Rules of Legal Aid as soon as he is produced before him for the first time and shall certify under his signature the fact of having done so in the record of the case to that effect. After explaining to such unrepresented accused person the provisions of the Rules, if the said unrepresented accused person states that his income does not exceed Rs. 5,000 per annum, he shall be asked if he desires to submit an application in the Form specified in the Schedule appended to these Rules.

(2) The Presiding Officer shall ascertain whether the unrepresented accused person is desirous of availing of free legal assistance.

(3) No unrepresented person shall be compelled to avail of free legal assistance against his will.

(4) The Presiding Officer of the Court shall, at the time of awarding sentence of imprisonment or imprisonment in default of payment of fine, acquaint the convict of his right of appeal and the right to get the Legal Aid for preferring an appeal.

5. *Authority to decide capacity of person to engage Legal Practitioner.*—(1) Every Presiding Officer of the Court is authorised to certify or report whether the person applying for Legal Aid is not able to engage a Legal Practitioner at his own cost.

(2) Every application for Legal Aid shall be made to the Court before which the proceeding is to be instituted or pending, as the case may be, and shall be in the Form specified in the Schedule appended to these rules. No Court-fee shall be payable on such application.

6. *Panel of Legal Practitioners for Legal Aid.*—(a) The appointment of a Legal Practitioner for the unrepresented accused person under these rules shall be made from a Panel of Legal Practitioners constituted for each Court by the Presiding Officer of the Court in consultation with the President and the Office Bearers of the Bar Association, if any. Where there is no Bar Association, Presiding Officer shall draw up the panel in consultation with the Senior Advocates of the concerned Bar. The panel may include the President of the Bar Association, Senior Advocates of the Bar and the junior members of the Bar having at least a standing of three years as practising lawyer. In every case where an offence is punishable with a sentence of imprisonment for two years or more, a Senior Advocate with a Junior Advocate from the panel

shall be appointed for defending the unrepresented accused. As far as possible the Presiding Officer shall not make an appointment from outside the panel but he may do so for any exceptional reason to be recorded in writing.

(b) Notwithstanding anything to the contrary, in a case pending on the date of commencement of these Rules against an unrepresented accused person, on application in that behalf to the Court, the Legal Practitioner engaged by him shall be deemed to be the Legal Practitioner appointed by the Court under these Rules and shall be paid fees admissible under these rules.

7. *Constitution of Panel of Legal Practitioners.*—(1) The panel shall be constituted normally for every two years from the 1st day of January onwards or according to the convenience of the Presiding Officer of the Court and a copy thereof will be sent to the District and Sessions Judge by him :

Provided that, a Legal Practitioner shall continue in a case, for which he is appointed, till its completion if the case is not closed in that year.

(2) Every person included in the panel shall express in writing to the Presiding Officer of the Court his willingness to serve on the panel and thereupon such person shall accept appointment in any case and appear in Court when so appointed.

(3) Any person in the panel may tender his resignation in writing to the authority constituting the panel.

(4) Any vacancy in the panel caused by resignation or otherwise may be filled up by the Presiding Officer of the Court from the Legal Practitioners practising in the Court but the term of the person so appointed will expire on the date coinciding with the period for which the said panel is constituted.

(5) If any Advocate after having agreed to serve on a panel neglects or refuses to accept an appointment, he shall forthwith cease to be a member of the Panel and shall be debarred from being reappointed on the panel. If an Advocate refuses or neglects an appointment, his name shall be reported by the Presiding Officer of the Court to the Bar Council of Maharashtra.

(6) If any Legal Practitioner after accepting an appointment, neglects or refuses to discharge his duties properly, the authority which sanctioned the appointments shall remove the Legal Practitioner and appoint another in his place. Such removal will entail the consequence mentioned in sub-rule (5).

(7) Any person serving on a panel shall be eligible for reappointment.

(8) Cases in which Legal Aid is sanctioned, as far as may be, distributed among the members of the panel equitably.

8. *Cancellation of Legal Aid.*—The Court may either on its own motion or otherwise cancel the Legal Aid granted to an unrepresented person in the following circumstances, namely :—

(a) If the Legal Aid was obtained by misrepresentation or fraud;

(b) If the aided person does not co-operate with the Legal Practitioner assigned by the Court;

(c) If the aided person engages a Legal Practitioner other than the one assigned by the Court.

9. *Facilities to the Legal Practitioners.*—The Presiding Officer of the Court shall provide the Legal Practitioner or practitioners engaged on behalf of the unrepresented accused person such facilities as would be necessary for the conduct of the case such as holding interviews, rendering advice and supplying certified copies of judgments, orders, notes of evidence and other documents free of charge.

10. *Fees payable to Legal Practitioners on the Panel.*—(1) The Senior Legal Practitioners appearing for the unrepresented accused shall work as *amicus curiae* and shall not be entitled to any fees.

(2) The Junior Legal Practitioner appearing for the unrepresented accused shall be paid the following fees :—

(a) in all legal proceedings in Courts at the headquarters of the Districts and in the Courts of Metropolitan Magistrate in Greater Bombay, Rs. 50 per day of effective hearing, subject to a maximum of Rs. 300 in any one case;

(b) in all legal proceedings in Courts in Taluka places other than Greater Bombay and Talukas having headquarters at District places, Rs. 25 per day of effective hearing, subject to a maximum of Rs. 200 in any one case;

(c) in cases where the Senior Legal Practitioner certifies that the Junior Legal Practitioner assisting him in the case deserves enhanced fees, on account of the number of days involved, special labour put in and the marked industry and ability displayed by him, the Junior Legal Practitioner may be paid such enhanced fees as the Rememberancer of Legal Affairs may sanction on the recommendation of the Court.

11. *Recovery of Fees.*—In case of cancellation of Legal Aid on the ground of misrepresentation or fraud, fees paid to the Legal Practitioner shall at the discretion of the Court be recovered from the person to whom the aid is given as arrears of Land Revenue.

12. *Disbursement of fee.*—(1) Every bill of fees and other expenses incurred shall be submitted by the Pleader appointed in the case for the countersignature of the Member Secretary of the Maharashtra State Legal Aid and Advice Board through the Court appointing him.

(2) The Bill shall be accompanied by the order authorising such pleader to appear in the case, together with certificate from the Court concerned as prescribed in Rule 13.

(3) If the Member, Secretary of the Board is satisfied that the Bill is in order, he shall countersign it and return it to the pleader concerned, who shall then present it at the treasury for payment.

(4) The amount of every such Bill shall be debited to the provision made for the purpose so far as pleaders in Greater Bombay and in mofussil are concerned under the budget head "214-Administration of Justice-m- Legal Advisors and Counsel—m-(iii) Legal Aid and Advice Board (4) Payment for Professional and Special Services".

13. *Certificate.*—The Certificate to be submitted to the Court shall contain the following details :—

- (a) The number of days on which actual work is done;
- (b) the duration of work for each day;
- (c) Statement that the Legal Practitioner has not received any fees from the unrepresented accused person or from any other source;
- (d) the fees payable to him as per these rules.

14. *Legal Practitioners not to receive any fee from party.*—The Legal Practitioner to whom fee is due or paid under these Rules shall not be entitled to, nor shall he receive, any fee from the party or from any other source.

15. *Saving.*—Notwithstanding anything contained to these Rules, it shall be competent for the Government to issue from time to time any direction or instruction with a view to implementing the scheme for legal aid to the unrepresented accused person having regard to the special circumstances of any case.

## SCHEDULE

(see rules 4 and 5)

**Form of Application for Legal Aid**

1. Name of the Court. ..
2. Number of Criminal Case. ..
3. Name, description and place of residence of the applicant. ..
4. Average monthly income of the applicant from all sources.

I/We am/are the ..... in .....  
 No ..... noted above, my/our  
 average monthly income from all sources is Rs. ....

I/We am/are not in a position to engage a Legal Practitioner of my/our own  
 in the above ..... I/We, therefore, pray that the Court  
 may be pleased to appoint a Legal Practitioner for me/us in the above .....

The above statements are true to the best of my personal knowledge and  
 belief.

Signature of applicant/s.

Forwarded to ..... for enquiry and  
 report ..... before .....

Presiding Officer.

High Court, Appellate Side,  
 Bombay, 19th October 1982.

G. B. TERDALKAR,  
 Additional Registrar.

## APPENDIX D

[see rule 33(7)(b)]

No. P. 0703/82

Dated 20th October 1982

From

Sudhakar D. Karwande, B.Com., LL.B.,  
 Additional Registrar,  
 High Court, Appellate Side,  
 Bombay-400 032.

To

The District and Sessions Judges (All 26).

*Subject.*—Supply of copies of Judgments or orders in Civil Proceedings.

Sir,

I am directed by the Honourable the Chief Justice and Judges to state that it has come to the notice of Their Lordships that many a time filing of Appeal by Government is delayed on account of non-receipt of uncertified copies of judgments from the Copying Sections in Subordinate Courts in time. In the context of these circumstances Government have requested Their Lordships to direct the Subordinate Courts to supply uncertified copies of Judgments in Civil Proceedings to Government Pleaders conducting the matters to enable Government to consider the Judgments and the views of Government Pleaders before taking decision as regards filing of appeals.

I am therefore directed to state that after due consideration of the suggestion made by Government, Their Lordships are pleased to direct that the stenographers should be directed to take out an additional copy of Judgment and issue uncertified copy of Judgment or order to Government Pleader conducting the matter only after the original is signed by the Presiding Officer.

Yours faithfully,

(Signed) .....  
 Additional Registrar.

## APPENDIX E

(see rule 97)

No. P. 1308/59

Dated the 5th September 1967

From

C. S. Trivedi, Esquire, B.A. (Hons.), LL.B.,  
Deputy Registrar,  
High Court, Appellate Side,  
Bombay-32.

To

The District and Sessions Judge.

*Subject.—Vakalatnama* — Filing of on behalf of any Official of  
Government.

Sir,

I am directed to state that it has been brought to the notice of Their Lordships that in one Court the Government Pleader was asked to file a Power of Attorney when representing a Government Official in a proceeding filed against the said Government Official in his Official capacity. In this connection, I am directed to forward herewith copies of High Court letters of even number, dated the 25th March 1960 and 12th December 1961 addressed to the Special Officer, High Court of Bombay at Nagpur and the Deputy Secretary to the Government of Maharashtra, Law and Judiciary Department, Nagpur, respectively for information and guidance. I am to request you kindly to bring the contents of the said High Court letters to the notice of all the Courts under your control.

Yours faithfully,

(Signed) .....

Deputy Registrar.

**A Copy of High Court letter No. P. 1308/59, dated the 25th March 1960, addressed to the Special Officer, High Court of Bombay at Nagpur.**

*Subject.—Vakalatnama* — Filing of on behalf of any official of the Government.

Sir,

With reference to your letter No. 609/Admn, dated the 26th September 1959, on the subject noted above, I am directed to inform you that whenever the Government Pleader in accordance with the provisions contained in Order XXVII, Rule 8 of the Civil Procedure Code puts in a note of intimation or application stating that he has been authorised by the Government to appear and plead on behalf of the Government Official acting in his official capacity in a particular case and that his appearance should be noted in that case, no stamped *Vakalatnama* with the Court fee stamp is required to be filed by the Government Pleader on behalf of the Government Official. Attention in this connection is invited to the case reported in A.I.R. 1954 Calcutta at page 455 and to the commentry in Chitale's Code of Civil Procedure, Vol. II A.I.R. VI Edition at page 2121 under Order III Rule 4 (Note 14) and also to the commentry in the same work in Vol. III at page 3383 under Order XXVII, Rule 8.

**A copy of High Court letter No. P. 1308/59, dated the 12th December 1961 addressed to the Deputy Secretary to the Government of Maharashtra, Law and Judiciary Department, Nagpur (subject as mentioned above).**

Sir,

With reference to Government Letter, Law and Judiciary Department, No. 2233-NLD-2344/Nag., dated the 12th August 1961, addressed to the Special Officer, High Court of Bombay at Nagpur, on the subject noted above, I am directed to state that the District Government Pleaders when engaged on behalf of Government Officials in their official capacity in the mofussil are exempted from filing a stamped *Vakalatnama* on account of the provisions of Order XXVII, Rules 2 and 8 of the Code of Civil Procedure and also in view of rule 121(2) of the Rules for the Conduct of Legal Affairs of Government.

APPENDIX F  
[see rule 117 (3)]

MINISTRY OF LAW AND JUSTICE  
(DEPARTMENT OF LEGAL AFFAIRS)

Notification

New Delhi, the 25th November 1960

G.S.R. 1412.—In exercise of the powers conferred by clause (a) of rule 8B of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), and in supersession of the notification of the Government of India in the Ministry of Law No. S.R.O. 3920, dated the 5th December 1937, the Central Government hereby appoints the persons specified in the second column of the Schedule annexed hereto as Government Pleaders for the purpose of the said Order in relation to any suit by or against the Central Government, not being a suit (other than a suit on the Original Side of the High Court at Bombay or Calcutta or a Special Civil Application on the Appellate Side of either of the said High Court or a suit in the City Civil Court, Calcutta) relating to

1. The Central Railway.
  2. The Eastern Railway.
  3. The North Eastern Railway.
  4. The North East Frontier Railway.
  5. The Northern Railway.
  6. The South Eastern Railway.
  7. The Southern Railway.
  8. The Western Railway.
  9. The Chittaranjan Locomotive Works, Chittaranjan.
  10. The Integral Coach Factory, Perambur.
  11. The Indian Railways Locomotive Component Works, Varanasi.
  12. The Railway Electrification, Calcutta.
  13. The Dandakaranya-Bolangir-Karihuru Railway Project, Waltair,
- or against a Public Officer in the service of the Central Government in any court specified in the first column of the said Schedule.

Schedule to Note No. GSR 1412.

(7) *Maharashtra*

- (a) High Court (Appellate Side) (i) Government Pleader, High Court (excepting Special Civil Applications, Appeals under section 269H of the Income Tax Act, 1961, and appeals under section 54 of the Foreign Exchange Regulation Act, 1973 and section 23EE of the Foreign Exchange Regulation Act, 1947).

(ii) Assistant Government Pleader, High Court (excepting Special Civil Applications, appeals under section 269H of the Income Tax Act, 1961, and appeals under section 54 of the Foreign Exchange Regulation Act, 1973 and section 23EE of the Foreign Exchange Regulation Act, 1947).

(iii) (a) Shri S. V. Natu, Central Government Standing Counsel, High Court of Bombay, Nagpur Bench, Nagpur.

(b) Shri V. G. Bhangde, Additional Central Government Standing Counsel, High Court, Bombay, Nagpur Bench, Nagpur

(iv) In respect of Special Civil Applications of the Central Government including those of the Central and Western Railways.

(a) Shri J. G. Savant, Joint Secretary and Legal Adviser, Central Government Advocate.

(b) High Court (Original Side) ... (i) Shri N. C. Gupta, Joint Secretary and Legal Adviser.

(ii) Central Government Advocates, Ministry of Law, Justice and C. A. Department of Legal Affairs, Branch Sectt., Bombay.

(iii) Shri J. G. Savant, Additional Legal Adviser.

(iv) Shri C. K. Krishnan, Assistant Legal Adviser.

(c) City Civil Court ... (i) Shri S. R. Rajguru, Government Pleader  
(ii) Assistant Government Pleaders.

(d) Court of Small Causes ... (i) Shri S. V. Sikhare.

(e) Other Courts ... (i) District Government Pleaders.  
(ii) Addl. District Government Pleaders.  
(iii) Asstt. Government Pleaders.  
(iv) Sub-Government Pleaders.

Nagpur Bench ... (i) Shri S. V. Natu, Central Government Standing Counsel.  
(ii) Shri V. G. Bhangde, Addl. Central Government Standing Counsel.

## APPENDIX G

[see rule 119 (2)]

कार्यालयीन प्रकाशने :

प्रती पुरविण्याबाबत—महाराष्ट्र शासनाचे विधी अधिकारी, जिल्हा सरकारी वकील, सरकारी अभियोक्ते, अपर सरकारी वकील व त्यांचे सहाय्यक आणि दुय्यम वकील यांना

महाराष्ट्र शासन

विधी व न्याय विभाग

शासन निर्णय क्रमांक १७४९/ड

सचिवालय, मुंबई ३२, दिनांक २१ जानेवारी १९६७/पौष १, १८८८

शासन निर्णय, विधी व न्याय विभाग क्रमांक १७९७४८, दिनांक १३ जुलै १९६० पहावा.

शासन निर्णय.—उपरोक्त निर्णयाने दिलेला आदेश ह्या निर्णयाने रद्द करून नवा आदेश देण्यात येत आहे की,—

१. यापुढे खालील प्रकाशनापैकी प्रत्येक प्रकाशनाची एक प्रत ह्या शासन निर्णयास जोडलेल्या सूची १ मध्ये नमूद केलेल्या प्रत्येक विधी अधिकाऱ्यास पुरविण्यात आली पाहिजे :—

- (१) प्रत्याघन मालिका (Replacement Series) आणि वेळोवेळी प्रसिद्ध केलेली सलग पृष्ठे यांसह मुंबई अधिनियम संग्रहाचा (Bombay Code) एक पूर्ण संच;
- (२) प्रत्याघन मालिकासह मुंबई स्थानिक नियम व आदेश;
- (३) महाराष्ट्र शासन राजपत्र, भाग चार, चार-अ, चार-ब, चार-क व सहा.
- (४) वेळोवेळी काढलेल्या दुरुस्ती चिठ्ठ्यांसह उच्च न्यायालय दिवाणी व फौजदारी परिपत्रके.

२. खालील प्रकाशनापैकी प्रत्येक प्रकाशनाची एक प्रत ह्या शासन निर्णयास जोडलेल्या सूची २ मध्ये नमूद केलेल्या प्रत्येक विधी अधिकाऱ्यास पुरविण्यात आली पाहिजे :—

- (१) प्रत्याघन (Replacement Series) आणि वेळोवेळी प्रसिद्ध केलेली सलग पृष्ठे यांसह मुंबई अधिनियम संग्रहाचा (Bombay Code) एक पूर्ण संच;
- (२) प्रत्याघन मालिकासह मुंबई स्थानिक नियम व आदेश;
- (३) महाराष्ट्र शासन राजपत्र भाग ४ व ६.

३. संचालक, मुद्रण व लेखन सामग्री विभाग, मुंबई यांनी ह्या निर्णयात नमूद केलेल्या ज्या कोणी विधी अधिकाऱ्यास यापूर्वी जी प्रकाशने पुरविण्यात आलेली असतील अशी प्रकाशनेच विधी अधिकाऱ्यास पुरविण्यात यावी. तसेच ज्यावेळेस अशी प्रकाशने सरकार पुनर्मुद्रित करील तेव्हा ती पुनर्मुद्रित प्रकाशने सर्व विधी अधिकाऱ्यास थेट पुरविण्यात यावी. त्याप्रमाणे ज्या कोणा विधी अधिकाऱ्यास यापूर्वी प्रकाशने पुरविली गेली नसतील त्यांनाही ती प्रकाशने ह्या निर्णयास जोडलेल्या सूची क्रमांक १ व २ मध्ये नमूद केल्याप्रमाणे ती पुरविण्यात यावी.

४. अशा तऱ्हेची प्रकाशने अद्यावत सुव्यवस्थित ठेवली जातील याची योग्य ती काळजी प्रत्येक विधी अधिकाऱ्यानी घेतली पाहिजे. तसेच दुसऱ्या विधी अधिकाऱ्याकडे आपल्या पदाचा कार्यभाग सोपविताना त्यांना पुरविण्यात आलेली सर्व प्रकाशने त्या नवीन अधिकाऱ्यास देण्यात यावी.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

प्र. श्री. नाडकर्णी,

उप सचिव,

विधी व न्याय विभाग.

## APPENDIX H

[see rule 119(2)]

*Maharashtra Rules and Orders :*  
Distribution of —

## GOVERNMENT OF MAHARASHTRA

LAW AND JUDICIARY DEPARTMENT

Circular No. 8070/R

Sachivalaya, Bombay-32, 6th April 1972/Chaitra 17, 1894

CIRCULAR.—The seventh edition of the Maharashtra Rules and Orders “under State Acts” has been published. This edition is bound in loose-leaf style with a view “to maintaining it up to date by inserting replacement pages”, containing subsequent amendments, which are proposed to be issued at short intervals. This is being done on the lines of the Bombay Code. The Departments are, therefore, requested to make arrangements to keep the copies supplied to them up to date by inserting replacement pages as and when issued. If copies of these volumes are kept up to date, the need to take out any reprints of Manuals containing rules and orders by Administrative Departments may not arise.

2. Copies of Volumes I to IX are being distributed by the Director, Government Printing and Stationery, Bombay-4.

3. The Work-study Group of the General Administration Department has suggested—

“Each Sachivalaya Department, Head of Department and all Law Officers should be supplied with *not more* than 2 sets. These copies should normally be kept in the Office Library for reference by all sections and brought up to date.”

Accordingly, Government has decided that each Secretariat Department should be given 2 copies of the Rules and Orders. A copy of the Distribution List sent herewith for information will give an idea of the number of copies distributed, accordingly.

4. The District Judges are requested to make arrangement to distribute copies of the volumes to the Courts subordinate to them and situated at the district headquarters as shown below their names in the Distribution List. The District Government Pleaders are also similarly requested to arrange to distribute copies to the Assistant Government Pleaders working under them at the district headquarters as shown in the Distribution List. If any court specified in the Distribution List is located outside the district headquarters, or abolished and no longer exists, that fact may be brought to the notice of this Department and the volumes retained until further orders of this Department.

5. It is requested that the appended Notice may be put up on the Notice Board of the Courts concerned.

By order and in the name of the Governor of Maharashtra,

S. W. DHURANDHAR

Joint Secretary to Government.

## APPENDIX I

[see rule 143(9)]

*Delegation of Powers:*

To Deputy Secretary to Government,  
Law and Judiciary Department,  
Nagpur of countersigning the Bills  
of fees and law charges of all the  
Law Officers in Vidarbha Region.

## GOVERNMENT OF MAHARASHTRA

## LAW AND JUDICIARY DEPARTMENT

Resolution No. 23088/C

Sachivalaya, Bombay-32, dated the 7th October 1974

*Resolution.*—Government is pleased to delegate to the Deputy Secretary to Government, Law and Judiciary Department, Nagpur, the powers of the Remembrancer of Legal Affairs of countersigning the bills of Fees and Law Charges submitted by the Law Officers in Vidarbha Region, under rules 189(8), 195, 197, 198 and 199 of the Rules for the Conduct of the Legal Affairs of Government, subject to the condition that fees and other charges preferred in the bills are such as are admissible under the rules and orders issued by Government.

2. The Finance Department should take necessary action to amend Footnote on page 109 of the Maharashtra Contingent Expenditure Rules (Appendix 3).

3. This Resolution issues with the concurrence of the Finance Department *vide* its unofficial reference No. 24840/2524/74-F-12, dated the 10th September 1974.

By order and in the name of the Governor of Maharashtra,

A. A. KAZI,

Under Secretary to Government.

## APPENDIX J

[see rule 143(9)]

शक्ति प्रदान करण्याबाबत—

सह सचिव, विधी व न्याय विभाग, औरंगाबाद  
यांना मराठवाडा विभागातील विधी  
अधिकाऱ्यांच्या फीची व कायदेविषयक  
सर्चाची देयके प्रतिस्वाक्षरित करण्याबाबत.

## महाराष्ट्र शासन

## विधी व न्याय विभाग

शासन निर्णय क्रमांक इअेसूटी-१०८४/१९६१-दोन

मंत्रालय, मुंबई ४०० ०३२, दिनांक २८ सप्टेंबर १९८४

**निर्णय.**—सह सचिव, विधी व न्याय विभाग, औरंगाबाद यांना मराठवाडा विभागातील विधी अधिकाऱ्यांनी विधी अधिकारी (सेवाशर्ती) नियम, १९३९ मधील नियम क्रमांक १८९ (८), १९५, १९७, १९७-अ, १९८, १९९ व १९९-अ अन्वये सादर केलेल्या फी व वादव्याच्या देयकांमध्ये आकारलेली फी व इतर खर्च शासनाने निर्गमित केलेल्या नियमानुसार व आदेशानुसार असतील या अटीवर शासन विधी परामर्शाच्या प्रतिस्वाक्षरित करण्याच्या शक्ती प्रदान करित आहे.

२. वित्त विभागाने महाराष्ट्र आकस्मिक खर्चचे नियम, १९६५ च्या पृष्ठ क्रमांक १०१ खालील टिप्पणीमध्ये आवश्यक ती दुरुस्ती करण्याची कार्यवाही करावी (परिशिष्ट तीन).

३. हा शासन निर्णय वित्त विभागाच्या अनौपचारिक संदर्भ क्रमांक २१०८/व्यय-४, दिनांक २४ सप्टेंबर १९८४ अन्वये देण्यात आलेल्या सहमतीनुसार निर्गमित करण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

बा. ल. फडणीस,

शासनाचे अवर सचिव.

By order and in the name of the Governor of Maharashtra,

B. V. CHAVAN,  
Secretary to Government.

RESOLUTION

Law and Judiciary Department,  
Mantralaya, Mumbai-400 032.

Dated the 13<sup>th</sup> September, 2004.

Rules for the  
Conduct  
of the Legal  
Affairs of  
Government,  
1984.

No.LOR-1002/2705/(16)/XIV - In modification of the Rules for the Conduct of the Legal Affairs of Government, 1984, the Government of Maharashtra is hereby pleased to make the following Rules further to amend the Rules for the Conduct of the Legal Affairs of Government, 1984, namely :-

1. These rules may be called the Rules for the Conduct of the Legal Affairs of Government (Amendment) Rules, 2004.
2. For rule 22 of the Rules for the Conduct of Legal Affairs of Government, 1984, the following rule shall be substituted, namely :-

"22. *Engagement of Special Public Prosecutor.*- (1) The Government in the Law and Judiciary Department, either *suo-motu*, or on the request of any aggrieved party or the concerned Department in the Government, may, engage an advocate who has been in practice as an advocate for not less than ten years, and having regard to his general repute, legal acumen and suitability, by appointing him, as a Special Public Prosecutor in any criminal case or class of cases, as the case may be :

Provided that, no order under this sub-rule regarding appointment of a Special Public Prosecutor shall be made unless, for the reasons to be recorded in writing, the Remembrancer of Legal Affairs is satisfied, having regard to the nature of the case, gravity of the matter and public interest involved in the matter, that such appointment is necessary.

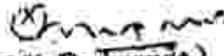
(2) On the request of a private complainant not being the aggrieved party, the Government in the Law and Judiciary Department may, appoint any of the Public Prosecutor or Additional Public Prosecutor as a Special Public Prosecutor in accordance with the provisions of sub-rule (1), for conducting any such case.

(3) Fees for such Special Public Prosecutor, appointed under sub-rule (1) or (2), may be borne by the Government or the aggrieved party or the private complainant, as may be directed by the Remembrancer of Legal Affairs:

Provided that, in cases where the aggrieved party is, a Bank or an Institution or Trust or the like, the fees shall be borne by such aggrieved party:

Provided further that, the amount of the fees to be paid to such Special Public Prosecutor, shall be deposited with the Government in the Law and Judiciary Department first, and the same shall be paid by it to such Special Public Prosecutor on completion of the trial, unless directed otherwise by the Remembrancer of Legal Affairs."

By order and in the name of the  
Governor of Maharashtra,

  
( V.K. Deshpande )  
Principal Secretary and Remembrancer of  
Legal Affairs to Government.

Copy forwarded to -

1. Private Secretary to Chief Minister.
2. Private Secretary to Deputy Chief Minister.
3. All Private Secretaries to Ministers/Ministers of State.
4. Personal Assistant to Chief Secretary.
5. Personal Assistant to Additional Chief Secretary.
6. Principal Secretaries/Secretaries of all administrative departments of Mantralaya.
7. All Desk Officers and Branches of Law and Judiciary Department.
8. Select file.

## RESOLUTION

Law and Judiciary Department,  
Madam Cama Marg,  
Hutatma Rajguru Chowk,  
Mantralaya, Mumbai 400 032.  
Dated the 11<sup>th</sup> February 2020.

Rules for the  
Conduct of the  
Legal Affairs of  
Government,  
1984

No.LOR-2020/C.R.05/XIV- In exercise of the powers conferred by proviso to article 309 read with article 165 of the Constitution of India, the Governor of Maharashtra hereby makes the following rules further to amend the Rules for the Conduct of the Legal Affairs of Government, 1984, as follows, namely:-

1. These rules may be called the Rules for the Conduct of the Legal Affairs of Government (Amendment) Rules, 2020.

2. In Chapter III of the Rules for the Conduct of the Legal Affairs of Government, 1984,-

(a) for the Heading, "**Part C. Advocate-on-Record in the Supreme Court**" the Heading "**Part C. Government Advocate and Advocate-on-Record in the Supreme Court**" shall be substituted;

(b) in rule 30,-

(i) for the marginal note thereto and sub-rule (1), the following shall be substituted, namely :-

*"(1) Appointment of Government Advocate and Advocate-on-Record.-* The Government in the Law and Judiciary Department shall appoint a Government Advocate and adequate number of Additional Government Advocates in the Supreme Court for the conduct of the litigation, civil and criminal, in the Supreme Court as well as High Court and other courts and tribunals at New Delhi, on behalf of the State:

Provided that, at least one of the Additional Government Advocates shall be an Advocate-on-Record.";

(ii) in sub-rule (2), for paragraph (a), the following shall be substituted, namely :-

(a) The Government in the Law and Judiciary Department shall also form a panel of Advocates in the Supreme Court consisting of Groups A, B, C and D for the proper conduct of its cases in the Supreme Court. The Panel Advocate shall conduct those cases in the Supreme Court on behalf of the State as may be entrusted to them by the Government Advocate."

**By order and in the name of the  
Governor of Maharashtra,**

  
11.02.2020  
**Principal Secretary and Remembrancer  
of Legal Affairs to Government.**

**Copy forwarded to-**

1. Principal Secretary to Hon'ble Chief Minister.
2. Private Secretary to Hon'ble Deputy Chief Minister.
3. All Private Secretaries to Hon'ble Ministers/Ministers of State.
4. Deputy Secretary to Hon'ble Chief Secretary.
5. Additional Chief Secretaries/Principal Secretaries/Secretaries of all administrative departments in Mantralaya.
6. Joint Secretary, Law and Judiciary Department, Nagpur/Aurangabad.
7. The Law and Judiciary Department, Desk-18/'A' Branch/'E' Branch/'M' Branch.
8. Select file.