

**CHAPTER X—PROSECUTION OF CRIMINAL CASES INSTITUTED AT THE INSTANCE OF COURTS, WHETHER CIVIL, CRIMINAL OR REVENUE**

150. **Scope of the Chapter.**—The rules in this Chapter relates to the prosecution of cases arising out of the complaint filed by courts, (whether civil, criminal or revenue), in respect of offences affecting administration of justice (i.e. perjury, resistance to attachment, resistance to lawful authority, escape from arrest, disobedience of the court's orders, etc).

151. **Intimation to the District Magistrate.**—As soon as the complaint is drawn up, the court making the complaint shall intimate the District Magistrate of the district concerned, giving a brief history of the case, and requesting the District Magistrate that the prosecution should be conducted by a counsel or public prosecutor.

152. **Arrangement for the conduct of cases.**—(1) If the trial of such case is held at district headquarters, the Public Prosecutor or Additional Public Prosecutor may be engaged. In simple cases the District Magistrate shall instruct Panel Lawyer or an Assistant Public Prosecutor to conduct the prosecution.

(2) If the trial is at a place other than district headquarters, ordinarily a local private legal practitioner or Additional Public Prosecutor shall be directed to conduct the prosecution.

**Note.**—For purposes of this rule, cases of resistance or obstruction to legal process and escape from arrest are not simple cases.

153. **Fees of counsel in cases.**—The fees payable to a private legal practitioner engaged under rule 152 shall be the same as laid down in rule 75.

154. **Report of result in cases.**—When the Government is represented by counsel, counsel shall report the result of the case, through the District Magistrate to the complaining court, making such recommendation, as he may consider just and shall also enclose a copy of the judgement. When the Government is not represented by counsel, the Magistrate trying the case shall simply forward a copy of the judgement to the complaining court, through the District Magistrate. The complaining court shall examine the judgement and decide whether further action is necessary or desirable. If the case ends in discharge or acquittal and the complaining court is of the view that it is a fit case for appeal or revision, it may move the District Magistrate for necessary action.

## CHAPTER XI—DEFENCE OF INDIGENT ACCUSED

### Legal Aid to accused at State Expense in certain cases

155. **Defence of Indigent accused persons at State Expense.**—(1) The High Court with the previous approval of the State Government, has framed Madhya Pradesh Legal Aid to accused at State Expense Rules, 1976. The rules which has been framed under Section 304 (2) of the Code of Criminal Procedure, 1973 are reproduced below:—

#### Madhya Pradesh Legal Aid to Accused at State Expense Rules, 1976

In exercise of the powers conferred by sub-section (2) of Section 304 of the Code of Criminal Procedure, 1973 (No. 2 of 1974), the high Court of Madhya Pradesh with the previous approval of the State Government, hereby makes the following Rules, namely:—

1. **Short title.**—These rules may be called the Madhya Pradesh Legal Aid to accused at State Expense Rules, 1976.
2. **Definitions.**—In these rules, unless the context otherwise requires,—
  - (a) “Code” means the Code of Criminal Procedure, 1973 (No. 2 of 1974);
  - (b) “Panel” means the Panel of Pleaders prepared under rule 3;
  - (c) “Unrepresented accused” means an accused who is not represented by a pleader in a trial before a Court of Sessions and who according to the Court has not sufficient means to engage a pleader;
  - (d) The words and expressions used herein but not defined shall have the meaning assigned to them in the Code.
3. **Mode of Selection of Pleader.**—(1) For the purpose of sub-section (1) of Section 304 of the Code, the Sessions Judge shall prepare a Panel of Pleaders every year in the month of December in the following manner :—
  - (i) the Sessions Judge shall by notice invite applications by such date as may be fixed by him in this behalf from the persons eligible under sub-rule (2);
  - (ii) every application under clause (i) shall contain the willingness of the applicant to serve as a pleader in the trial under sub-section (1) of Section 304 of the Code on behalf of the unrepresented accused if required so to do on the scale of fee prescribed under rule 5 and shall also be accompanied by the documents in support of his eligibility under sub-rule (2);
  - (iii) the application received under clause (i) by the date fixed therein shall be scrutinised by the Sessions Judge with a view to ascertain whether the applicants are eligible under sub-rule (2) or not and he shall prepare a final list of applicants eligible under the said sub-rule;
  - (iv) the Sessions Judge shall thereafter in consultation with the President/Presidents of the District Bar Association/Associations in the sessions division, prepare a panel of such number of pleaders out of the final list prepared under clause (iii) as he may think sufficient for the purpose.
- (2) A person shall not be qualified for inclusion of his name in the panel unless he,—
  - (a) is a citizen of India;

- (b) (i) has, for atleast five years held a judicial office in the territory of India; or  
(ii) has, for atleast five years, been a pleader; or  
(iii) has, an experience of at least five years as a pleader and judicial officer taken together.
- (3) The Panel prepared under sub-rule (1) shall be in force for a period of one year commencing from the 1st day of January following and a copy thereof shall be furnished to the pleader included therein.
4. **Engagement of Pleader.**—(1) The Sessions Judge shall engage a pleader out of the Panel to defend the unrepresented accused by rotation in such a manner that, as far as possible, every pleader included in the panel shall get a chance:

Provided that looking to the nature of the case, under exceptional circumstances, if the Sessions Judge is of the opinion that it is desirable to assign a pleader of better calibre and experience and such pleader is not in the panel, he may engage such other pleader as he may think fit to defend the unrepresented accused.

- (2) In case any unrepresented accused taken an objection about a particular pleader being appointed from the panel and his objection, in the opinion of the Sessions judge, is a reasonable one, then the Sessions Judge may nominate any one else from the Panel for defending that unrepresented accused.
- (3) If in any trial before the Sessions Judge there are more than one accused and all of them have common interest, only one pleader shall be engaged for their defence.
- (4) If in any trial before the Sessions Judge there are more than one accused having conflicting interest, one pleader shall be engaged for each group of such persons having common interest.
5. **Fees.**—The Pleader engaged under rule 4 shall be entitled to receive fee at the rate of Rs. 30 per day on which he appears in the trial and the rules governing the manner of payment of fees of public prosecutors shall be applicable for payment of fees under this rule:

Provided that the pleader engaged under the proviso to sub-rule(1) of rule 4 shall be entitled to receive fee at the rate of Rs. 40 per day on which he appears in the trial.

6. **Facilities of pleaders.**—The pleader engaged under rule 4 shall:—
- (i) be entitled to have free of cost a copy of the record that is supplied to the unrepresented accused whom he defends; and
- (ii) have a right to inspect the records of the Court free of cost pertaining to the trial for which he is engaged.  

[published in Madhya Pradesh Rajpatra Part IV (3a) dated 1st February 1980 pages 23-24].
- (2) As regards the warrant cases in magisterial courts, the State Government in exercise of the powers under Section 304(3) of the Code of Criminal Procedure, 1973 has extended the above rules to such cases also [vide Notification 17 (e)-118-81-XXI-B, dated 12-11-81].
- (3) If any indigent accused person tried in a summons case, is desirous of the services of a lawyer for his defence, he may be directed to approach the Legal Aid Officer of the District for Legal Aid and advice.

## PART IV—CONTROL OF GOVERNMENT LITIGATION

### CHAPTER XII—WRIT PETITIONS

#### PETITIONS UNDER ARTICLE 32

156. **Procedure in cases filed under Article 32 of the Constitution.**—(1) Whenever a notice of a petition in the Supreme Court under Article 32 of the Constitution is received by any department of Government, that department shall forthwith endorse a copy thereof along with those of enclosures, to the Law Department for information. At the same time appoint an officer-in-charge of the case and take necessary steps for collecting all such information and documents as may be material to the case.

(2) When a notice of a petition under Article 32 of the Constitution is received in the Law Department, it shall intimate the fact to the Standing Government Counsel at Delhi with the instruction to appear before the Supreme Court on behalf of the Government. If the notice is received directly in the Law Department, it shall forward the same together with its enclosures to the department concerned which shall then take necessary steps for collecting all such information and documents as may be material to the case.

(3) The department concerned shall without delay direct the Officer-in-charge to prepare a return and the affidavit in consultation with the Standing Counsel and forward a duly signed copy of return and affidavit to the Law Department. In complicated cases, the department concerned shall also furnish a separate note of instructions for the use of the standing Government counsel at Delhi.

#### PETITIONS UNDER ARTICLE 226

157. **Procedure in cases filed under Article 226 of the Constitution.**—(1) Whenever a notice of petition under Article 226 of the Constitution is received by any officer, he shall immediately forward the same to the department of the Government concerned with all information about the subject matter of the petition.

(2) On receipt of the notice, the department concerned shall immediately acknowledge the receipt of the notice to the High Court and appoint an Officer-in-charge of the case.

**Explanation.**—The expression "Officer-in-charge" referred to in Rules 156(1) and 157 (2) shall have the same meaning as assigned to it in rule 166.

158. **Preparation of report.**—(1) The Officer-in-charge shall immediately make such enquiry into the facts of the case, as may be necessary and prepare a report answering para wise all the points raised in the petition and giving such additional information as is likely to be of help to the Advocate-General in the conduct of the case. If the Law Department had been consulted at any stage, the opinion of that department shall also be specifically referred to in the report.

(2) If more than one departments are involved in the subject matter of writ petition, the department which is directly and mainly concerned with its subject-matter will collect all necessary material from other departments and the officer-in-charge appointed by such department will, after making such enquiry into the facts, as may be necessary, prepare a consolidated report referred to in sub-rule (1)

159. **Preparation and filing of returns and affidavits.**—The report along with seven true copies of all documents relevant for the case shall be forwarded to the Advocate General who shall, in consultation with the officer-in-charge, prepare the return for being filed in the High Court. Any counter-affidavit which the Advocate General considers necessary, shall be prepared by him on the instructions of the officer-in-charge and officer-in-charge shall arrange for its being sworn to by the appropriate officer. The officer-in-charge shall also instruct the Advocate-General whenever necessary.

**160. Procedure when Government Servant made a party.**—(1) Where in any petition under Article 226 of the Constitution, any officer has been made a party in a Judicial or quasi-judicial capacity or administrative capacity, such officer shall prepare a return answering parawise all the points raised in the petition and send the same to the administrative department concerned with his opinion whether representation on his behalf by the Advocate General is necessary. Normally representation by the Advocate-General should not be considered necessary in all cases.

(2) If the Administrative Department considers that the case should be contested, it shall send the papers to the Law Department for onward transmission to the Advocate-General. Where representation is not considered necessary by the department, the Advocate-General should be informed accordingly through the Law Department and in such a case, no return shall be filed in the High Court.

**161. Duty of the Advocate-General to intimate result.**—As soon as the case is decided, the Advocate General shall intimate the result to the Officer-in-charge and if the decision is adverse to Government, he shall also forward to the officer-in-charge a copy of the order along with his opinion whether an appeal should be filed. The Officer-in-Charge shall immediately transmit, to the department concerned, all information and papers, if any received from the Advocate General. If an appeal is considered necessary the department concerned shall take an urgent decision in the matter in consultation with the Law department. It should be realised that it shall be the responsibility of the administrative department to see that all requirements are complied with, well in time.

## CHAPTER XIII—SUITS AND OTHER PROCEEDING AGAINST GOVERNMENT

### (A) PROCEEDING PRIOR TO INSTITUTION OF SUITS

162. **Legal Advice before receipt of notice.**—This chapter relates only to the stages subsequent to the receipt of notice referred to in rule 166. If a dispute of a civil nature is proceeding but the claimant has not yet sent such a notice, a departmental officer may obtain legal advice by following the procedure laid down in Chapter IV.

163. **Previous notice of suit against Government.**—(1) Section 80 of the Code of Civil Procedure, 1908 (V of 1908) provides that no suit shall be instituted against Government, or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of -

- (a) in the case of a suit against Central Government of a Secretary to that Government.
- (b) in the case of a suit against State Government of a

Secretary to that Government or Collector of the District and in the case of a suit against a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.

(2) However, a suit to obtain an urgent and immediate relief against the Government or any public officer, may be instituted with the leave of the Court without serving a notice under section 80(1) of the Code of Civil Procedure, 1908.

(3) The attention of the officers is invited to sub-section (4) of Section 80 of Code of Civil Procedure, 1908 (inserted by the M.P. Act No. 29 of 1984) which is as below:—

"(4) Where a suit or proceeding referred to in rule 3-B of Order I, the State is joined as a defendant or non-applicant or where the court orders joinder of the State as defendant or non-applicant in exercise of powers under sub-rule (2) of rule 10 of order I such suit or proceeding shall not be dismissed by reason of omission of the plaintiff or applicant to issue notice under sub-section (1)"

(4) If a suit is filed under sub-section (2) of Section 80 of Code of Civil procedure, 1908, without serving a notice on the State Government, for grant of urgent relief, no temporary injunction can be granted by the court, as per proviso below sub-rule (2) of rule 2 order XXXIX of the Code of Civil Procedure, 1908 (As inserted by M.P. Act No. 29 of 1984) which reads as under :—

"Provided that no such injunction shall be granted—

- (a) Where no perpetual injunction could be granted in view of the provisions of Section 38 or Section 41 of the Specific Relief Act, 1963 (No. 47 of 1963) ; or
- (b) to stay the operation of an order for transfer, suspension, reduction in rank, compulsory retirement, dismissal, removal, or otherwise termination of service of, or taking charge from, any person appointed to public service and post in connection with the affairs to the State including any employee of any company or corporation owned or controlled by the State Government; or—

- (c) to stay, any disciplinary proceeding pending or intended or, the effect of any adverse entry against any person appointed to public service and post in connection with the affairs of the state including any employee of the Company owned or controlled by the State Government; or
- (d) to restrain any election; or
- (e) to restrain any auction intended to be made, or, to restrain the effect of any auction made by the Government; or to stay the proceeding for the recovery of any dues recoverable as land revenue unless adequate security is furnished; and any order for injunction granted in contravention of these provisions shall be void".

(5) By M.P. Act No. 29 of 1984, rule 4 of order XXXIX has also been amended, which is reproduced below:—

"Any order for an injunction may be discharged, or varied or set aside by the court either on its own motion or on an application made there to by any party dissatisfied with such order :—

Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement, in relating to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interest of justice:

" Provided further that where an order for injunction has been passed after giving to party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party:"

"Provided also that if at any stage of the suit it appears to the Court that the party in whose favour the order of injunction exists is delaying the proceedings or is otherwise abusing the process of court, it shall set aside the order for injunction".

(6) It is to be borne in mind that a notice under Section 80 is necessary even when an act of a public officer is alleged to be in bad faith. The observations of the Supreme Court in case of State of Maharashtra Vs. Chandrakant AIR 1977 S. C. 148 is below :—

"The language of Section 80 is that a notice is to be given against not only the Government but also against the Public Officer in respect of any act purporting to be done in his official capacity. The word "act" extends to illegal omission and no distinction can be made between acts done illegally and in bad faith and acts done bonafide in official capacity. AIR 1831 Cal 61 and AIR 1972 PC Re. on (Paras 13 and 14)".

**164. Procedure when suit filed without due notice.**— (1) When a suit is brought against Government or a public officer without the notice required by section 80 of the Code of Civil Procedure, 1908 having been duly served or before the expiry of the period of two months from the date of service of the notice, the Collector should move the court to dismiss the suit on the ground that it has been instituted in contravention of the provisions of that section. [Subject to exception laid down in sub-section (1) And (3) Section 80 Code of Civil procedure, 1908].

(2) If a suit contemplated in sub-sections (2) and (3) of Section 80 of the Code of Civil procedure, 1908 comes to be filed and a notice is received by the Collector or the officer concerned, such officer shall forthwith oppose the interim application through the Government Pleader and shall intimate the department concerned without delay.

**165. Procedure when notice relates to suit against Central Government.**—(1) When a notice is addressed to a Collector or Secretary to Government making a claim against any department or officer of the Central Government the officer receiving it shall inform the party concerned that the notice is not in accordance with the provisions of Section 80 of the Code of Civil Procedure, 1908, and the Collector shall also intimate the action taken to the Law Department.

(2) In all cases where a Secretary to Government receives notice of a suit under clause (a) of sub-section (1) of Section 80 of the Code of Civil Procedure, 1908 against the Central Government, the Secretary shall communicate to the Central Government as soon as possible after the receipt of the notice, the views of the State Government as to whether the subject matter of the suit falls within the executive authority of the Central Government, or the State Government, and as to the arrangements that should be made for defending the suit is brought.

**166. Notice to be endorsed and copy send to Law Department.**— Immediately on receipt of notice of a claim in which Government is primarily concerned, the officer on whom it is served, should endorse thereon the date and manner of its delivery and forward a certified copy of the notice so endorsed to the officer-in-charge or the District Head of the office to which the case relates for necessary action and a copy thereof should be endorsed to Law Department.

**Explanations** :—For the purposes of this rule and other rules in this chapter, the officer-in-charge means the executive officer who is primarily concerned with the case and is cognizant with the facts of the case, e.g., in the Public Works Department, it is ordinarily the Executive Engineer, in the Forest Department, the Divisional Forest Officer. If the matter does not relate to any specific department the Collector shall deal with it:

Provided that Government, may, having regard to the character of the suit as disclosed in the notice, appoint the head or any other officer of the department concerned to be officer-in-charge for the purpose of that suit.

**167. Duty of the Officer-in-charge.**—(1) On receipt of a notice, the Officer-in-charge shall forthwith make a careful enquiry into the case and within fifteen days of the receipt thereof, submit to the Collector a detailed report containing :—

- (a) a clear chronological statement of facts and circumstances of the case, in narrative form, with references to the documentary evidence on both sides and indications of the oral evidence in either side;
- (b) separate statement answering, serially, all points raised in the notice;
- (c) copies of all documents relevant to the case.

(2) If the Officer-in-charge is of the view that facts are complicated and of technical character, the Officer-in-Charge should ascertain from the claimant whether he is agree to have the dispute referred to arbitration, in accordance with Chapter II of the Arbitration Act, 1940 (x of 1940) if State Government gives consent. The provisions of that chapter and the first Schedule of the Act should be explained and the advantages of its being economical and speedy should be pointed to the claimant. If he agrees, the proposal in detail should be submitted to the Collector.

**168. Procedure for compromising claims below rupees five thousand.**—Where the value of the claims is below rupees five thousand, action shall be taken as follows :—

- (a) If on the perusal of the report of the Officer-in-charge, the Collector considers the claim to be genuine in whole or in part, he shall forward all the connected papers to the Government Pleader for his opinion on the merits of the claim and also as to whether the claim should be compromised;
- (b) If, after considering the opinion of the Government Pleader, the Collector is satisfied that the claim should be compromised, he shall either himself or through the Officer-in-charge open negotiations for compromise with person who has given notice. But it should be borne in mind that negotiations should as far as possible, be carried on verbally and "without prejudice" to the pleadings of Government in the event of a suit being filed and on the distinct understanding that any arrangement agreed upon will be subject to the sanction of the appropriate authority;



- (c) If the person who has given notice is willing to settle his claim amicably on terms which appear to the Collector to be reasonable, the Collector shall forthwith send all the connected papers, along with the opinion of the Government Pleader and his recommendation, to the head of the department concerned (which expression shall, in the case of a department having no separate head of the department shall be construed as referring to the Secretary to Government in that department.)

**Notes :—**All action under this rule shall be completed by the Collector within one month from the date of the receipt of notice.

- (d) If the head of the department is satisfied that the claim is genuine and should be compromised on the terms recommended by the Collector, he shall issue orders forthwith to have the claim settled and the Collector shall then take steps to effect a compromise accordingly.

**169. Procedure in other cases.**—The Collector shall, in the following cases, forward a detailed report with all connected papers to the Secretary to Government in the appropriate department within one month from the date of receipt of notice :—

- (i) where the value of the claim exceeds rupees five thousand.
- (ii) where the value of the claim is below rupees five thousand and the claim has not been disposed of under rule 168.
- (iii) where a proposal for arbitration has been received under sub-rule (2) of rule 167.

**170. Orders of Government.**—(1) The Secretary to the Government in the appropriate department shall, after examining the case and recording his opinion on the merits thereof, send the papers to the Law Department for advice.

(2) The Law Department shall examine the case and give necessary advice in the case.

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

**171. Procedure where orders direct compromise.**—Where the order under rule 170, directs the Collector to compromise the claim, the Collector shall either himself or through the Officer-in-charge open negotiations for compromise with the claimant. The negotiations will be subject to the caution given in sub-rule (2) of rule 168 supra.

#### (B) PROCEEDINGS SUBSEQUENT TO INSTITUTION OF SUITS

**172. Collector appointed as Government Pleader for service for processes.**—With reference to rule 4 and clause (c) of rule 8-B of order XXVII and rules 6 and 9 of order XXXIII of the Code of Civil Procedure, the State Government have appointed the Collector of every district in Madhya Pradesh to be the Government Pleader of that district for the purpose of those rules.

**173. Transfer of summons to Officer-in-charge.**—When a summons is served upon the Collector to appear and answer a claim against Government he shall immediately transmit it to the Officer-in-charge.

**174. Officer-in-charge to be recognised agent of Government.**—Unless otherwise order, the Officer-in-charge of a suit shall sign and verify the written statements in that suit, as require by Rule 1 of the Order XXVII of the First Schedule of the Code of Civil Procedure, 1908 (V of 1908). Under rule 2 of the said order, the Officer-in-charge is also authorised ex-officio to act for the State Government in the suit and shall be deemed to be the recognised agent by whom appearance, acts and applications under the said Code may be made or done on behalf of the State Government.

**175. Engagement of Government Pleader.**—The Officer-in-charge should move the Collector to engage the Government Pleader for defending the suit.

**176. Report after receipt of summons.**—(1) The Officer-in-charge shall submit a report on the case, without delay to Government. The report need not repeat anything contained in the report submitted under rule 167 but it should meet all points, if any, not covered therein. It should further mention the date of hearing of the suit.

(2) Along with the report there shall be sent :—

- (a) a copy of the plaint;
- (b) a draft of the proposed written statement;
- (c) a list of all documents which are proposed to be filed in evidence, or production in Court is required;
- (d) copies of any papers needed for the elucidation of the case.

(3) The Officer-in-charge shall render all possible assistance to Government Pleader in preparing the case and it shall be his responsibility to see that no important fact or document remains undisclosed.

**177. Orders of Government on report.**—On receipt of the report from Officer-in-charge, the department shall forward it to the Law Department. The Law Department shall scrutinise the case, approve the draft written statement and sent it to concerned Head of the Department. The orders will be communicated to the Officer-in-charge by the head of the department together with necessary instructions. The notes recorded by the Law Department in the case should be treated as confidential

**178. Responsibility of Officer-in-charge for production of evidence.**—(1) During the trial of the case, the Officer-in-charge shall be responsible for the production of all evidence and shall assist the Government Pleader to the best of his ability. In particular he shall ascertain if requisite oral evidence is available and shall keep the Government Pleader fully informed of the existence of such evidence.

(2) The Officer-in-charge shall be responsible for having full knowledge of the whereabouts of the parties to the suit or appeal and if the suit or appeal has been filed by the State Government and if any of the respondent dies, he should take prompt action for substitution of his legal representatives within 90 days from the date of death of the party.

**179. Further instructions from Law Department.**—(1) Once orders are issued under rule 177 it shall not be necessary to make further reference to Government unless :—

- (a) Special instructions are required on some important point;
- (b) proposals are made for reference to arbitration;
- (c) proposals are made to compromise the suit.

(2) Although a Government department may request the legal Remembrancer to advise a Government Pleader but it should be borne in mind that Government Pleader shall be primarily responsible for the conduct of cases assigned to them and reference should not be made under this rule as a matter of course.

**180. Responsibility of Officer-in-charge and Government Pleader for timely action in suits.**—The Officer-in-charge and the Government Pleader, shall be responsible for seeking that timely action is taken where a petition for revision against any interlocutory order is required to be filed. He should, therefore, forward through the head of the Department, a copy of such order as soon as it is passed, to Government with his recommendations.

**181. Report of result of suits.**—As soon as the suit is decided, the Officer-in-charge or the Government Pleader, shall report the result to Government through the head of the Department. A copy of the judgement should be obtained and sent with the report.

**182. Application of rules to proceedings before Motor Accidents claims Tribunals, Arbitration Tribunals and Administrative Tribunals.**—The provisions of rule 175 to 181 shall mutatis mutandis apply to proceedings before Motor Accidents Claims Tribunals, Arbitration Tribunals and Administrative Tribunals.

**183. Personal responsibility of the Officer-in-charge of the case.**—(1) It shall be the personal responsibility of the Officer-in-charge to see that the case is properly conducted and the witnesses required in the case, punctually attend the Court on the date fixed for evidence. If the Government officials required to attend the Court do not turn up, the attention of the head of the department should be invited under intimation of Law Department.

(2) Any lapse on the part of the Officer-in-charge shall be deemed to be a misconduct and the Officer-in-charge shall be personally responsible to make good the loss sustained by the Government on account of his omissions or commissions.

**184. Periodical review of pending cases.**—(1) The Collector of each district shall hold a quarterly meeting of all the District heads of the departments and Officer-in-charge of each case and shall periodically review the progress made in each case and decide the future course of action.

(2) The minutes of the meeting shall be submitted to the Law Department and the head of the department concerned by the Collector, within fifteen days of the meeting.

(3) Each head of the department shall also hold a quarterly meeting to review, the progress of the cases pertaining to that department and submit the minutes to the Law Department and Secretary to the respective department within fifteen days of the meeting.

(4) Nothing contained in this rule shall apply to criminal cases.

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## CHAPTER-XIV—SUITS INSTITUTED BY GOVERNMENT

185. **Sanction to institution of suit by Government.**—No suit on behalf of Government shall be instituted without the sanction of Government.

186. **Desirability of amicable settlement.**—(1) The institution of a suit on behalf of Government should not be recommended until the proposed defendant has been given ample opportunity to state his views and come to an amicable settlement.

(2) While it is the duty of Officers of Government to enforce the rights and protect the interests of Government, they should not have recourse to the Law Courts until all efforts to arrive at an amicable settlement have failed.

187. **Preliminary departmental enquiry.**—Before the institution of a suit is recommended, the case for Government should first be enquired into departmentally and evidence secured on all points which are likely to be contested.

188. **Report when suit recommended.**—Whenever it appears to any Officer of Government that a suit should be instituted on behalf of Government, he shall submit a complete report, through the head of the department for the orders of Government.

189. **Contents of report.**—The report should contain the following particulars.—

- (a) a clear chronological statement of the facts and circumstance which, in his opinion, render the institution of the suit necessary and precisely when and where they each occurred;
- (b) a clear statement of all evidence both oral and documentary, by which the claim can be supported;
- (c) copies of the written documents, if any, upon which the claim is based and any other papers, the inspection of which is considered necessary for the elucidation of the case;
- (d) the pleas or objections, if any, which have been urged by the proposed defendant against the claim;
- (e) the evidence, both oral and documentary, which the proposed defendant will be able to procure and is likely to adduce, in his defence; and
- (f) any other material facts, e.g., the circumstances of the proposed defendant, any special reasons for the institution of the suit, apart from the amount claimed, whether its decision will affect other claims and the like.

190. **Orders of Government on the report.**—Orders of Government on the report will be obtained from the Law Department, through the Secretary to Department concerned. The orders will be communicated by the Law Department to the head of the department together with any instructions which may be considered necessary and the head of the department will transmit them to the Officer-in-charge of the suit to be specified in those orders. The notes recorded by the Law Department in the case should be treated as confidential.

191. **Engagement of Government Pleader.**—(1) If Government decides to institute the suit, the Officer-in-charge should move the Collector to engage the Government Pleader to appear on behalf of Government.

(2) In difficult cases, the Government Pleader may be engaged to help in the enquiry contemplated in rule 187 or in the preparation of the report under rules 188 and 189.

192. **Submission of draft plaint.**—Before the suit is instituted a draft of the plaint together with the papers referred to in rule 197 should be submitted, through the head of the department to Government.

193. **Officer-in-charge to sign and verify plaint.**—After the plaint duly approved by Law Department is received by Officer-in-charge, the Officer-in-charge shall sign and verify the plaint and also discharge to other functions described in rule 174.

194. **Further procedure.**—After the suit is instituted, the provisions of rules 178 to 181 of Chapter XIII should be followed, as far as they are applicable.

**CHAPTER-XV—GENERAL INSTRUCTION FOR THE GUIDANCE OF THE OFFICER-IN-CHARGE AND GOVERNMENT COUNSEL, FOR THE PREPARATION OF PLEADINGS, BRIEFS AND CONDUCT OF CASES IN THE COURTS**

**(A) CENTRAL RULES FOR PREPARING PLEADERS**

**195. Definition of Government Pleader.**—Notwithstanding anything contained in clause (iii) of rule 2 of these rules, for the purposes of this Chapter, "Government Pleader" means and includes in relation to a suit in which a counsel has been engaged on behalf of the Government, such a counsel.

**196. Pleadings and memoranda of appeals.**—(1) While preparing the draft pleading and memorandum of appeal, the points enumerated in rules 10, 11, 12, 14 and 15 of the rules and order (Civil) framed by the High Court of Madhya Pradesh should be borne in mind.

(2) The copies of documents on which the plaintiff relies on the proof of his claim should be filed along with the plaint or the written statement, as the case may be. [vide order VII rule 14 (1) of the Code of Civil Procedure].

(3) Where the party relies on any documents, whether in his possession or power or not, as evidence in support of his claim, the document shall be enumerated in the list to be added or annexed to the plaint or the written statement.

**197. Materials to accompany draft pleading.**—Every draft plaint or draft written statement, submitted to the Law Department, should as far as possible, be accompanied by copies of all documents on which it is intended to rely and in every case the value of the stamp on each original document and the fact whether they are registered or not should be clearly stated. It should also be accompanied by copies of any proposed interrogatories and by a list, with a clear description of any documents which the opposite party should be called upon to produce.

**(B) THE BRIEF**

**198. contents.**—When orders have been passed for the institution or defends of a suit, a draft plaint or written statement as corrected and approved by the Law Department and all the papers attached thereto, together with the narrative and other concerned papers, numbered and fastened together, along with a list thereof, shall, under intimation to the Officer-in-charge, be transmitted through the Collector to the Government Pleader and shall constitute the brief of the Government Pleader conducting the case. Copies of subsequent pleadings and of instructions issued by the Law Department from time to time, regarding the conduct of the case, shall be kept in the brief and shall form part thereof.

**199. No amendment of pleading without permission of the Law Department.**—No alterations or additions should ordinarily be made in the pleadings, after they have approved by the Law Department. If any alterations or additions are considered necessary, either by the Collector or by the Government Pleader, the brief should be re-submitted to the Law Department for orders. If there is no time for the re-submission of the brief, any such alterations or additions made in the pleadings must be immediately reported to the Law Department.

**200. Duties of Government and Officer-in-charge.**—(1) The Officer-in-charge and the Government Pleader shall have no power to compromise the case on behalf of the Government, without obtaining the prior approval of the State Government, in this behalf.

(2) The Vakalatnama given to a Government Pleader for filing in the court shall be in the form appended in the manual.

(3) No Vakalatnama given to a Government Pleader shall authorise him to compromise a case on behalf of the Government or to withdraw a decretal amount deposited in the court. If the standard form of Vakalatnama is not used, it should be the duty of the Officer-in-charge to score out the portions authorising the counsel to compromise the case or to withdraw the decretal amount from the court.

**201. Emergency Cases.**—In case in which immediate action is necessary, the Collector shall be competent to direct the immediate institution of a suit or the filing of a written statement by the Government Pleader and forward necessary papers to the Law Department without any delay explaining the circumstances necessitating the aforesaid action.