



HARYANA

LAW AND LEGISLATIVE DEPARTMENT MANUAL

Being a Collection and Digest of the Rules and Orders
relating to the Management of Legal Affairs
of the Haryana Government Complied
by the Legal Remembrancer

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INSTRUCTIONS FOR THE
MANAGEMENT OF THE LEGAL AFFAIRS
OF THE

GOVERNMENT OF HARYANA

(LAW AND LEGISLATIVE DEPARTMENT MANUAL)

PART I—GENERAL MANAGEMENT AND OPINION WORK

CHAPTER 1—MANAGEMENT

THE LEGAL REMEMBRANCER.

1.1 The Legal Remembrancer is the head of the Law and Legislative Department of the Haryana Government, and, except in such matters as have been assigned to the control of the Advocate-General, either by statute or by the order of the Governor, will exercise control over the entire business of the department, the expenditure of the business of the Department, including the expenditure of the Law Officers and the establishment allowed for the office of the Department. Subject to the orders of the proper controlling authority he has general charge of all the legal affairs of the Haryana Government and of legal proceedings, of whatever kind, taken by or against, or affecting that Government.

General
Control.

1.2 The Legal Remembrancer may at any time visit any place for the purpose of supervising the conduct by local agency of the criminal or civil business of the State, or of watching the conduct, or of himself conducting any criminal case or any civil suit, appeal or proceeding on behalf of the State.

Legal Remem-
brancer may visit
any place for
purpose of
supervision etc.

1.3 The provisions of this Manual, unless otherwise specifically stated, relate only to the legal business of the Haryana Government. If the services of the Legal Remembrancer are required, either by any department of the Union Government, or by any other State Government or by any Railway Authority, or by any public undertaking or any autonomous body, this will be the subject of special arrangement between the Haryana Government and the Department concerned. It must be clearly stated in each case whether the Legal Remembrancer is only to give advice, or is to arrange for the defence or conduct of cases on behalf of the Department.

Legal Remem-
brancer and
Central
Departments.

THE ADVOCATE GENERAL

1.4. The Advocate General is appointed by the Governor under Article 165 (1) of the Constitution of India.

Advocate
General, whole-
time Government
servant.
Duties of Advocate
General.

1.5. The duties and remuneration of the Advocate General have been prescribed in the rules framed under Article 165 of the Constitution of India. Notification No. G.S.R. 65/Const./Art. 165/65, dated the 30th March, 1965 of the Home Department (Judicial) published in the Punjab Government Gazette dated the 2nd April, 1965, contains the said rules, which reproduced below :—

"1. In these rules:—

"Advocate-General" means the person under clause (1) of Article 165 of the Constitution to be the Advocate General for the State and includes any person appointed to act as the Advocate-General during the absence, on leave or deputation of the Permanent incumbent of the office.

2. The Advocate-General will be a whole-time servant of the State Government provided he may engage in such private practice as does not interfere in the discharge of his duties of Advocate-General; Provided further that he will not accept any case against the State of Haryana.

3. The duties of the Advocate-General will be as follows:—

- (a) He shall advise the State Government upon such legal matters as may be referred to him by the Home Secretary or the Legal Remembrancer to the Government of the State.
- (b) He will represent, or arrange for the representation of the State at all stages before the High Court in criminal case and cases of a quasi-criminal nature, such as those relating to the Press Law, writs under the Constitution, extradition and preventive detention:

Provided that the State Government may, on account of the special importance of the case require that the Advocate-General shall himself represent the State in any particular case.

- (c) He will appear, or arrange for the appearance of counsel, in the following civil cases;
 - (i) cases in the High Court to which the State Government is a party; or
 - (ii) cases in the High Court to which officers serving under the State Government are parties, and which the State Government has decided to conduct on behalf of such officers;
 - (iii) cases in the High Court in which neither the State Government nor such officers are directly interested, but in which Government consider themselves to be sufficiently interested to render it advisable to conduct the cases on behalf of some third person.
- (d) Appeals from the cases referred to in clause (c).
- (e) He will appear personally before the High Court, when so required by Government, in references from subordinate courts to which Government is a party or in cases withdrawn to the High Court from subordinate courts under Article 228 of the Constitution or any other law.
- (f) He will appear himself or arrange for the conduct of civil cases of the nature described above, when so required, in the other civil courts of Chandigarh.
- (g) He will also be expected to appear in any civil or criminal cases outside Chandigarh, whether in courts subordinate to the High Court or in the Supreme Court, or in any other court, when specially desired to do so by the State Government or by the Legal Remembrancer.
- (h) He will take part in the proceedings of the House or houses of the State Legislature or any Committee of Legislature of which he may be named a member.
- (i) He shall also discharge the functions conferred on him by or under the Constitution or under any other law for the time being in force.

4. (1) He will be paid such salary as may be determined by the Governor.

(2) He will be entitled to fees in civil and criminal or quasi-criminal cases, when permissible under these rules, according to the scales prescribed herein; but he will not be entitled to fees for :—

(a) Opinion work,

(b) participation in the work of a House or houses of the Legislature and any Committee of the Legislature of which he may be named a member, and

(c) appearance in the High Court, in criminal cases including cases of contempt of court.

5. (i) In criminal cases in any court other than the High Court, the Advocate-General will be paid fee of Rs. 200/- in respect of every day's attendance.

(ii) In quasi-criminal cases in the High Court, such as cases under the Press Law, or those relating to the conduct of Legal Practitioners, he will receive fees as for civil miscellaneous cases, i.e. Rs.100 for each day of attendance.

6. The Advocate General shall be paid fees at the following rates, namely:—

(a) In civil cases,—

(i) in cases relating to money claims, the fee shall be payable at the rate of seven and half per cent on the first five thousand rupees of the claim, three per cent on the next fifteen thousand rupees of the claim, one per cent of the claim between twenty thousand rupees and fifty thousand rupees, and fifty paise per cent on the claim exceeding fifty thousand rupees, subject to a maximum of one thousand rupees per case.

Provided that for a connected case arising out of the same award or decision of the Motor Accident Claims Tribunal, there shall be paid an additional fee at the rate of half of the fee otherwise payable therefore subject to a maximum of one hundred rupees:

Provided further that the total fee in all the connected cases including the main case shall not exceed two thousand rupees:

Provided further that in any case of great importance making an unusual demand on the time and energy of the Advocate General, the State Government may grant such fee not exceeding the fixed percentage rate up to a maximum of five thousand rupees as it may consider suitable.

Note. The cases under the Land Acquisition Act, 1894, and the Arbitration Act, 1996 and the cases arising out of the decisions of the Motor Accident Claims Tribunals involving claims of money shall fall under this clause;

(ii) in cases other than those relating to money claims, the fee shall be payable at the rate of two hundred rupees per case:

Provided that for a connected case, there shall be paid an additional fee at the rate of one hundred rupees per case:

Provided further that the total fee in all the connected cases including the main case shall not exceed one thousand rupees;

(iii) in civil miscellaneous cases not expressly covered under any other clause, the fee shall be payable at the rate of one hundred rupees per case:

Provided that the total fee in all the connected cases including the main case shall not exceed five hundred rupees;

- (iv) in civil writ cases and in Letters Patent Appeals arising there from which shall not be considered to be civil miscellaneous cases, in Supreme Court Appeals, and in the cases connected therewith, the fee shall be payable at the rate of one hundred rupees per civil writ, Letters Patent Appeal, or Supreme Court Appeal, as the case may be:

Provided that the total fee in all the connected cases including the main case shall not exceed two thousand rupees; and

- (v) in cases in any court subordinate to the High Court conducted throughout by the Advocate General, the fee shall be payable at the rate specified in the sub-clause (i) or sub-clause (ii) as the case may be.

Explanation--Where a single case passes at different stages through more courts than one, that is for original decision, appeal; and further appeal, or revision, it shall, for the purpose of fee, be treated as a separate case at each stage;

- (b) in civil or criminal cases in the Supreme Court, the fee shall be payable in accordance with the rates of fee as laid down, from time to time, in the Second Schedule to the Supreme Court rules, 1966 for senior counsel,
- (c) in cases at a place situated outside the State of Haryana or the Union Territory of Chandigarh, the fee shall be payable at the rate of four hundred rupees for the first day of attendance and two hundred rupees per day for the subsequent hearings and for the days of waiting at that place in addition to travelling allowance; and
- (d) in very exceptional cases for consultation with any authority in the Government of India or any senior counsel at New Delhi, if allowed by the Government, the fee shall be payable at the rate of two hundred rupees per day in addition to travelling allowance.

7. If in any case the Advocate General is required to attend before any Election Commission/Tribunal, he shall be permitted to receive such fees as may be recommended by the Commission in their report.

8. X X X X X X X

9. The leave rules will be as follows :--

- (a) Leave, on pay equivalent to full pay may be sanctioned upto 1/11th of the period spent on duty, as Advocate-General; provided that leave of this kind shall not accumulate beyond four months.
- (b) Leave on medical certificate on leave salary equivalent to half pay may be granted upto 2/11th of the period spent on duty as Advocate General, subject to a maximum of three months at any one time.
- (c) Extraordinary leave may be granted without allowances, subject to a maximum of three months at any one time.
- (d) Leave of the various kinds may be granted in combination upto a maximum of six months only at any one time.
- (e) For the first two years of the appointment, the Advocate General will not be entitled to more than one month's leave, except on medical certificate in any one year.

For purposes of travelling and mileage allowances, the Advocate-General will be treated as grade I Government servant. His travelling allowance will be governed by Punjab Civil Services Rules, Volume III, except that the limit of 10 days for the drawal of halting allowance will not be operative, when he is required to conduct a case before any court or tribunal or any authority within the territory of India in the discharge of his duties.

10. The Advocate-General shall not accept appointment as a Director in any company without the permission of Government."

1.6. The Advocate-General will, in regard to all cases conducted by him or under his order, supply the Legal Remembrancer with all the information which the latter officer may deem necessary to have supplied to him for statistical and other official purposes.

Supply of information to Legal Remembrancer by Advocate General.

1.7. The legal Remembrancer and the Advocate-General will each give notice to the other of his intended absence from headquarters for any period and of temporary incapacity for work.

Notice of absence and incapacity to be given.

LOCAL AGENCY

1.8. (1) In regard to all Government case work not specifically assigned to law Officers by the above rules, local agency will ordinarily be employed, a law officer being employed only in specially important cases or at specially important stages of such cases.

Local agency to be employed in other courts.

(2) The local agency consists of—

- (a) District Attorneys, Deputy District Attorneys, Assistant District Attorneys, Public Prosecutors (see rules in chapter 4).
- (b) Private legal practitioners specially engaged for the case.

THE STATE LISTS

1.9. Lists of counsel considered suitable for being given special work on behalf of the State will be maintained.—

State lists.

- (i) for the Supreme Court of India;
- (ii) for the Delhi High Court;
- (iii) for the courts subordinate to Delhi High Court;
- (iv) for the Punjab & Haryana High Court; and
- (v) for the Court of Financial Commissioner.

The Advocate General will initiate the lists and will submit the same to the Government through the Legal Remembrancer for approval.

CHAPTER—2

REFERENCES AND OPINIONS

Distribution of opinion-work between Legal Remembrancer and Advocate General.

2.1. Opinion work, which includes, among other things, all references regarding cases not actually instituted or pending and enquiries whether appeals should or should not be instituted against order of acquittal in criminal cases, will ordinarily be disposed of by the Legal Remembrancer.

Legal questions arising before Judicial officers, as such, are not to be referred to Legal Remembrancer.

2.2. Legal questions arising before Judicial Officers, as such, are not to be referred to the Legal Remembrancer.

It is no part of the duty of the legal Advisor of the Government to advise Judicial Officers engaged in administering the general, civil and criminal law in regard to points of law or procedure. The law Officers are the advisors of the Government in administrative matters as well as in cases in which the Government is or may be likely to be a party to, or affected by, judicial proceedings, and they conduct legal proceedings by or against, or affecting the Government, on its behalf.

2.3. The Legal Remembrancer will always be found willing to advise executive officers unofficially, provided that it is clearly understood that any opinion expressed on an unofficial reference may be reconsidered when a full and complete official reference, on the whole case, is subsequently made, and that opinions expressed unofficially are not, without previous reference to him, to be used officially.

2.4. When disputes arise between departmental officers and persons with whom they contract, reference should be made to the Legal Remembrancer at as early a stage of the dispute as possible. If all communications with third parties are made through him, or under his advice, complications may be avoided and disputes adjusted without any appeal to the law becoming necessary. All communications made direct and without such advice should be couched in guarded and carefully considered language, anything in the nature of an admission being avoided.

FORM OF REFERENCE

What information is to accompany every reference.

2.5. (1) When a reference is made to the Legal Remembrancer for his opinion or advice, it is incumbent on the department or officer making the reference to give him every possible assistance. Every case submitted to the Legal Remembrancer for opinion or advice should be accompanied by a note either stating the facts of the case, or referring, in proper order, to the documents or parts of documents by reading which the facts and points for opinion can be readily ascertained or partly by doing the former and partly the latter.

Any reference in which this direction is not complied with will be returned to the department or officer from whom it was received with a view to the omission being rectified.

(2) The letter of reference should state the precise points on which opinion or advice is sought. All available documents, or copies thereof, should be sent with the reference.

2.6 (1) Whenever the opinion of the Legal Remembrancer is required as to the legality or suitability, in form and language, or any new draft of revised rules, the letter of reference should state whether (1) mere criticism from a legal point of view is desired, or (2) it is open to the Legal Remembrancer to revise, re-arrange or recast the rules and submit a new draft of them for approval of the proper authority.

(2) Two copies (if possible printed) of all rules on which the legal Remembrancer's opinion is sought should be submitted to that officer

2.7. Whenever the opinion of the Legal Remembrancer is required as to any draft deed, or he is asked to draft any deed, specific instructions should be given as to the intended scope and purpose of the deed and as to the detailed conditions required and the reference should be accompanied by a copy of the correspondence authorising the execution of the deed.

Reference as to conveyancing.

TO WHOM REFERENCE ARE TO BE MADE

2.8. (1) Unless otherwise expressly permitted by any rule, all references to, and communications with, the Law Officers of the Government, are to be addressed to the Legal Remembrancer, Haryana.

Unless otherwise expressly provided all references to be addressed to Legal remembrancer.

(2) References for opinion and advice on legal questions or probable litigation, including cases (whether civil or criminal) not actually pending in a Court of Law, and cases actually so pending which are not specially excepted by these rules, enquiries as to whether appeals should or should not be instituted against orders of acquittal in criminal cases, and communications on all other matters relating to the Law Department, are to be addressed to the Legal Remembrancer.

2.9. (1) Reference to the Law Officers, Government Pleaders, and Public Prosecutors as to both Civil and Criminal cases and proceedings which are actually pending in any court and which they are required to conduct may be addressed to those officers direct.

References to Government Pleaders etc. in pending cases may be made direct to those officers

(2) For references to the Advocate General, see rule 2.12.

2.10. References regarding litigation under the control of the Financial Commissioners will be made by Deputy Commissioners direct to the financial Commissioners, and not through Commissioners, and in other cases direct to the proper controlling authority.

References regarding litigation to be made direct to controlling authority.

OPINIONS BY & REFERENCES TO THE ADVOCATE GENERAL

2.11. (1) Whenever the Legal Remembrancer records an opinion which, if accepted and acted upon by the Government, would involve an appearance by the Advocate General before the High Court, he will, as a matter of course, pass it on unofficially to the Advocate General, in order that the latter may note whether he concurs to such extent as is necessary to enable him to argue the case on the lines indicated. If he does not concur to that extent, the Advocate General, will be expected to record his reasons in full. Otherwise it will be unnecessary for him to do more than indicate general assent.

Differences of opinion between Law Officers.

(2) When the Advocate General records a dissentient opinion under clause (1), the Legal Remembrancer will forward the papers to the Government or the Financial Commissioner, as the case may be, for a decision as to whether, in the circumstances, action should or should not be taken upon the opinion of the Legal Remembrancer and, if so, whether the Legal Remembrancer should be instructed to appear in the case or whether any other and, if so what suitable arrangement should be made for the representation of the Government.

Reference when Advocate General records dissentient opinion.

What references
may be addressed
to Advocate
General.

2.12. References may be addressed to the Advocate General only in the following cases, namely:—

- (a) references relating to the representation of the State in the High Court appeals and applications for revision made by persons under sentence in accordance with the rules.

*Note :—*Proposals for the institution of appeals against orders of acquittal or for filing of applications for revision on behalf of the State, are to be addressed to the Legal Remembrancer as per procedure laid down in rule 9.2 or reference to the Advocate General being made only when it is proposed that the State should defend an application for revision made or an appeal filed in the High Court, by a person under sentence.

- (b) reference relating to Criminal proceeding (Whether original, appellate or revisional) actually pending in the High Court,
- (c) references relating to any other pending Criminal proceeding which the Advocate General may be actually conducting under proper authority, in a Criminal Court,
- (d) references relating to any pending Civil suit, appeal or proceedings which the Advocate General may be actually conducting under proper authority, in a Civil Court.

*Note:—*The Advocate General does not ordinarily conduct civil litigation affecting the Government in any Court other than the High Court or a Civil Court which holds sittings at Chandigarh. The Advocate General does not ordinarily conduct the criminal business of the State in any Court other than the High Court. He may, however, be specially instructed, under the orders of the State Government or the Legal Remembrancer, to appear in particular cases pending in other courts.

ordinarily in other
opinionwork to
be made over to
Advocate
General.

2.13. Except as above provided, and as laid down in the rules and orders regarding criminal cases, the Advocate General will not be expected to record opinions unless the Government specially desires the Legal Remembrancer to pass any particular reference to him for that purpose.

2.14. Advocate General and the Legal Remembrancer will usually correspond, *inter se*, by unofficial reference or office note.

2.15. (1) Unless otherwise expressly permitted by any rule, reference to the Legal Remembrancer for opinion may be made by or through the following officers only:—

- (a) Chief Secretary and Secretaries to the Government, Haryana,
- (b) The Financial Commissioner, Revenue, Haryana; or
- (c) The Head of department of the Government of Haryana, but in regard to matters relating to arbitration, attention is drawn to Chapter 24 of this Manual. Provided that cases of routine nature like vetting of draft orders, notification and sanctions and arranging for defence of Government employees may be referred to the Legal Remembrancer by the Special Secretary to Government, Haryana and where there is no Special Secretary by the Deputy Secretary.

Officers who,
except as otherwise
provided, may
alone make
reference to
Legal
Remembrancer.

(2) Superintending Engineers of Irrigation, Buildings and Roads and Public Health branches are authorised to send security deposit agreements of Irrigation, Building

ily in the following

the High Court in
under sentence, in

acquittal or for the
ressed to the legal
Advocate General
ication for revision

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r authority, in any

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ence to the Legal
pers only:—

out in regard to
4 of this Manual;
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plices may be
to Government,
puty Secretary.

oads and Public
ation, Buildings

and Roads and Public Health Departments employees to the Legal Remembrancer for scrutiny (Paragraph 498 of the Buildings and Roads Manual).

2.16. In the following cases, officers other than the above may refer direct to the Legal Remembrancer:—

Firstly—when matter is urgent and communication through the usual channel would be prejudicial to the interests of the Government;

Secondly—in reply to a reference from the Legal Remembrancer;

Thirdly—when upon receipt of notice of intended suit against the Government there is any doubt on any legal question connected with the action to be taken thereon.

Cases in which
other officers
may make
references.

2.17. When a case by or against or affecting the Government is actually pending in any Court, any officer of the department to which it relates, who is concerned in the conduct thereof, may communicate direct with the Law Officer, Legal practitioner or other person who is engaged in conducting the proceedings on behalf of the Government.

References in
case actually
pending in Court.

2.18. The District Magistrates are authorised to refer direct to the Advocate General in cases relating to the representation of the State in the High Court in Chapter 8 of this Manual.

References in
criminal matters
before the High
Court.

2.19. A District Magistrate may refer, to the Legal Remembrancer (in his capacity of State Public Prosecutor) for advice or assistance in any criminal case pending in any criminal Court, in the district or in the Sessions Court, in which it be deemed advisable so to do.

District
Magistrates may
refer to Legal
Remembrancer in
certain cases.

2.20 In cases not otherwise expressly provided, for references should invariably be submitted through the Financial Commissioners.

References to
be made through
Financial
Commissioners in
all other cases.

2.21. (1) The following departments of the Central Government can obtain the advice of the Legal Remembrancer:—

References by
Central
Departments

(a) The Defence Department on matter of civil law arising within the limits of the Haryana;

(b) the Postal and Telegraph Department, on matters arising within the limits of the Haryana or in cases in which a Post or Telegraph Office in the Haryana is concerned; and

(c) The Northern Railway, on matters arising in the Haryana.

(2) The Legal Remembrancer is primarily the legal advisor of the Haryana Government and he is permitted to act as legal advisor to the Northern Railway and to certain Central Departments only to such an extent as will not interfere with his work for the Haryana Government. In the event of a case occurring in which the Haryana Government and the Northern Railway or one of the Central Departments, for which he acts as legal advisor, had rival interests, the Haryana Government, would expect the Legal Remembrancer to act for them, and in any case in which such a conflict of interest seemed likely to arise it would be the duty of the Legal Remembrancer to inform the Northern Railway or the Central Department concerned that he was unable to advise them (Home Secretary's letter No. 615-J 40/4808, dated 31st January, 1940).

(3) Fees for such opinion or advice are payable by the Department detailed in sub-clause (1) according to the terms of the Haryana Law Department Manual.

PART II—CRIMINAL BUSINESS

CRIMINAL PROCEEDINGS

BY OR ON BEHALF OF OR AFFECTING THE STATE

CHAPTER—3

AGENCY (GENERAL)

Advocate General
responsible for
State Criminal
business in the
High Court

3.1. The Advocate-General will be directly responsible for the conduct of the criminal business of the State in the High Court and is ex-officio the Public Prosecutor and Standing Counsel for the State in that court.

(*Punjab Government Notification Home/Judl. No 1224-J-37/13344, dated 3rd April, 1937).

Procedure when
Advocate General
is unable to
appear

3.2. It will rest with the Advocate General to determine whether the State should or should not be represented in any such case, and, if it is to be so represented, to arrange accordingly:

Provided, that he shall so arrange—

- (a) if the State Government in any case, so directs; or
- (b) if in any case, the High Court intimates that the State should, in its opinion, be represented:

Provided, also, that if in any case, the Advocate General decides that it should not be represented, that officer shall, as soon as possible forward the papers to the Legal Remembrancer, stating the reasons for his decision.

Quasi-Criminal
Proceedings.

3.3 (a) The Advocate General will, in any case in which the State Government may so direct, conduct the prosecution in proceedings held under the provisions of the Public Servants (Inquiries) Act, 1850, or the Advocates Acts, 1961 or Commission of Inquiries Act, 1952.

(b) He will also appear in proceedings under the Advocate Act, 1961 or in cases of contempt, when directed to do so by the High Court, unless he considers it necessary to refer to the State Government for orders.

Sanction of the
State Government
required for the
Advocate General
to appear in any
Criminal Court
other than the
High Court.
Procedure in
obtaining services
of the Law Officer
in cases in such
Courts.

3.4. The Advocate General will not ordinarily be employed to conduct any criminal business of the State in any court other than the High Court, without the special order of the State Government. The Legal Remembrancer has power so to appear when he deems it necessary to do so, or instruct one of the Law Officers to appear.

3.5 (a) If, in any case, it is considered necessary that the services of one of the Law Officers working in the office of the Legal Remembrancer or in the office of the Advocate General should be obtained to conduct the proceedings on behalf of the State in any Court other than the High Court, a report will be made to the Legal Remembrancer, explaining the facts of the case, and the reasons which render it desirable to employ one of the Law Officers, instead of the ordinary local agency, to conduct the case. It is essential that this report should be submitted as promptly as possible, and if it is not submitted in good time, the reason for delay should be explained.

(b) If the Legal Remembrancer thinks (1) that the appearance of a Law Officer is unnecessary, or

(2) That the Advocate General or one of the other, Law Officers should be instructed to appear, or

(3) that a private legal practitioner should be specially retained in any case reported under the preceding clause, he will submit the report, with an expression of his own opinion thereon, to the State Government, for orders. If the Legal Remembrancer decides to himself appear, he will inform the officer making the report of his intention to appear and will act accordingly.

(c) The sanction of Government is to be obtained before a Law Officer working in the office of the Legal Remembrancer or in the office of the Advocate General is instructed to defend any public officer against whom criminal proceedings may have been instituted in respect of his official acts, or to institute proceedings to vindicate his official character.

(d) The Law Officers for the purposes of this rule means the Law Officers working in the offices of the Legal Remembrancer and the Advocate General.

3.6 (1) The Legal Remembrancer and the Deputy Legal Remembrancer are each *ex officio* Provincial Public Prosecutors generally in regard to all Courts other than the High Court and, in regard to that Court also, when it is necessary for either of them to appear therein under these rules or the orders of the Government (Punjab Government notifications No. 698, dated the 18th May, 1899, and No. 893-J-40/7367, dated the 14th February, 1940).

Provincial Public Prosecutors.

(2) The two Assistant Legal Remembrancers and the Assistant to the Advocate General; are Public Prosecutors generally for the Haryana (Punjab Government notifications (1) No. 3727-J-39/21757, dated the 23rd June, 1939, (2) No. 3727-J-39/21798, dated 23rd June, 1939 and (3) No. 5148-J-37/28885, dated the 7th August, 1937).

3.7. District Magistrates will ordinarily employ and instruct the local Public Prosecutors direct to appear for the State in criminal cases and proceedings in Courts other than the High Court, but may refer to the Legal Remembrancer, for advice in any case in which it may be desirable so to do.

Local Public Prosecutors will ordinarily be employed direct by District Magistrates.

3.8. (1) When services of the Public Prosecutors are not available for the conduct of the prosecution in any case and the District Magistrate is of opinion that it is necessary that the Prosecution should be conducted by a legal practitioner he may, with the previous sanction of the Legal Remembrancer, engage any private practitioner for the purpose, subject to the condition that such private practitioner consents to accept the remuneration which may be permissible under the rules in Chapter II.

Employment of private legal practitioners.

(2) The engagement of private practitioners to do work for the which Public Prosecutor is responsible should be resorted to very sparingly and only under the most exceptional circumstances when it is quite impossible for the Public Prosecutor to act.

(3) Cases have occurred from time to time in which Deputy Commissioners have, when engaging the services of a special practitioner to conduct cases for the State, promised to pay them a certain fixed amount as remuneration. No fees should be promised to a practitioner before the commencement of the case, but he should be informed that the fee will be settled on the conclusion of case in accordance with the Rules regulating the conduct of business in the Law Department.

3.9. The Legal Remembrancer may himself conduct the prosecutions in any criminal case or proceedings in any Court other than the High Court and in that Court also, when the Advocate General is not prepared to support fully the brief for the State, or the Government may, in any case, so direct.

Legal Remembrancer may himself conduct proceeding in certain cases.

CHAPTER--4

PUBLIC PROSECUTORS

Classes of Public Prosecutors

4.1. (i) The prosecutions are conducted by the following categories of prosecutors:—

- (a) Public Prosecutors appointed for the High Court in terms of section 24 (1) of the Code of Criminal Procedure, 1973;
- (b) Public Prosecutors and Additional Public Prosecutors appointed for the District in terms of section 24 (2) of the Code of Criminal Procedure, 1973;
- (c) Special Public Prosecutors appointed in terms of section 24 (6) of the Code of Criminal Procedure for the purposes of any particular case or class of cases;
- (d) Assistant Public Prosecutors for conducting prosecutions in the Court of Magistrates in terms of section 25 (1) of the Code of Criminal Procedure.

(2) In addition to such Public Prosecutors the District Magistrate may appoint any other person to be Assistant Public Prosecutor for a particular case, in terms of section 25 (3) of the Code of Criminal Procedure when no A.P.P. is available for the purpose. While doing so, the District Magistrate shall not appoint a police officer, who has taken part in the investigation of that case or who is below the rank of Inspector.

Appearance by Public Prosecutors.

4.2. (1) The Prosecutor detailed in para 4.1 may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(2) If in any such case any private person instructs a pleader to prosecute any person, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the direction of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

Permission to Prosecutors.

4.3. Further under section 302 of the Code of Criminal Procedure any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector, but no person, other than the Advocate general or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission.

Appointment.

4.4. The appointments of District Attorneys/Deputy District Attorneys are made by the Government and of the Assistant District Attorneys by the Director of Prosecution.

4.5. District Attorneys/Deputy District Attorneys as Public Prosecutors will be required to appear on behalf of the Government in all the following cases:—

- (a) All Sessions cases.
- (b) All criminal appeals or revision petitions where on or after the admission of the same, the Sessions Judge issues notice to the Public Prosecutor of the State or to District Magistrate and in all criminal appeals and revision petitions which the District Magistrate considers of sufficient importance to require representation on behalf of the Government.

- (c) All original criminal cases before the Magistrates which are normally attended to by the Assistant District Attorneys as Assistant Public Prosecutors which the District Magistrate considers of sufficient importance. They will also be required to furnish opinion in all civil, revenue and criminal cases when required by the District Magistrate and by a Sub Divisional Officer through the District Magistrate.

It shall be the duty of District Attorney and Deputy District Attorneys as Public Prosecutors, when asked by the Legal Remembrancer so to do, to appear on behalf of Government servants who wish libellous or scandalous remarks appearing against them expunged from the records of courts. (Punjab Government U.O. No.4900/2350 S.j. 41 dated the 8th October, 1941) — (It continues to apply to Haryana State also).

46. (1) District Attorneys and Deputy/Assistant District Attorneys will discharge their duties under the direct orders and supervision of Deputy Commissioners and under the overall control of the Director of Prosecution. General Supervision and Control.

(2) All references relating to the appointment, removal, remuneration, permission of absence, duties, conduct and the like of District Attorneys and Deputy District Attorneys will be made to the State Government through the Director of Prosecution.

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CHAPTER—5

ORIGINAL CRIMINAL TRIALS

Procedure in original trials conducted by Law Officers in courts other than the High Court.

5.1. In all original criminal cases which are conducted by the Advocate General or other Law Officer in any Court, other than the High Court, the Superintendent of Police should invariably consider himself in immediate charge of the case under the Law Officer's directions, and should endeavour to supply all information asked for, and to carry out the directions of the Law Officer during the preparation and progress of the prosecution as thoroughly as possible. The same rule will apply to Departmental Officers when the prosecution is one arising in a department.

No officer to interfere in cases taken over by the Advocate General or other Law Officer.
Supply of copies to officers conducting cases for the State.

5.2. When once a Law Officer of Government has received orders to undertake a case in any Court what ever, no District or Departmental Officer should make any application in the case to the Court without the previous concurrence of the Law Officer concerned.

5.3. Copies of record including deposition of witnesses required by local Public Prosecutors or the Legal Remembrancer should be supplied and their cost, if any, met by District Magistrates or the Courts concerned.

5.4. Where Government sanction is required before criminal proceedings are instituted against any Judge public servant in regard to whom such sanction is required by section 197 of the Code of Criminal Procedure, 1973, Government is to be consulted and the powers to sanction are not delegated to the Legal Remembrancer.

CHAPTER—6

Procedure to be followed in references for sanction to prosecute an approver for
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CHAPTER—7

Appeals (General)—Omitted and necessary provision has been made in Chapter 8 which has been re-drafted.

CHAPTER—8

REPRESENTATION OF THE STATE IN THE HIGH COURT/SESSIONS
COURTS IN APPEALS AGAINST CONVICTION

8.1 Section 385 of the Code of Criminal Procedure, 1973 provides that where the Appellate Court does not dismiss the appeal summarily, it shall cause notice of the time and place at which such appeal will be heard to be given:—

- (i) to the appellant or his pleader;
- (ii) to such officer as the State Government may appoint in this behalf;
- (iii) if the appeal is from a judgement of conviction in a case instituted upon complaint, to the complainant;
- (iv) if the appeal is under section 377 or section 378, to the accused and shall also furnish such officer, complainant and accused with a copy of the grounds of appeal.

8.2 The notification issued under section 422 of the Code of Criminal Procedure, 1898 (corresponding to section 385 of the Code of Criminal Procedure, 1973), Prescribing the officer or authority to whom notice is to be given of an appeal which is not summarily rejected, is reproduced below:—

1 PUNJAB GOVERNMENT, HOME/JUDICIAL NOTIFICATION NO. 4717-J (C)/56/52148, DATED THE 25TH JUNE, 1956:—

In supersession of all notifications issued in this behalf and in pursuance of the provisions of section 422 of the Code of Criminal Procedure, 1898, the Governor of Punjab is pleased to appoint the following persons or authorities to whom notice of appeal shall be given if the appellate court does not dismiss the appeal summarily:—

- (a) in an appeal preferred by a railway employee in a case in which he has been convicted of an offence in his capacity as a railway employee, to the administrative head of the railway administration concerned as well to the District Magistrate concerned;
- (b) in an appeal preferred by a postal employee in a case in which he has been convicted of an offence committed in his capacity as a postal employee to the Post Master General concerned as well as to the District Magistrate concerned;
- (c) in an appeal which lies to the High Court, to the Advocate General, Punjab, in all cases which the sentence is one of death, imprisonment for life or imprisonment for a term exceeding four years as well as to the District Magistrate concerned; and
- (d) in all other cases to the District Magistrate concerned

8.3 On receipt of every such notice by the Advocate General, he will communicate with the District Magistrate concerned and will, if necessary, inspect the record. He will then arrange to appear himself or will arrange for appearance by Additional Advocate General, Deputy Advocate General or Assistant Advocate General or other private counsel before the High Court, for the State at the hearing.

8.4 When any such notice is received by the District Magistrate from the High Court, he would consult the Public Prosecutor who had conducted the case and thereafter

forward all necessary papers of the case to the Advocate General for representation of the State in that case

8.5. The matter for defending appeal in the Sessions Court against the orders of Subordinate Criminal Courts shall be decided by the District Magistrate. On receipt of notice from the Court of Sessions, the District Magistrate shall instruct the public Prosecutor to defend the State before the Court of Session.

8.6. The proposals for filing revision petitions in the Court of Session against the orders of the Subordinate Criminal Court in the District shall be examined and disposed of by the District Magistrate. If he decides to move a petition for revision in the Court of Session, he will instruct the Public Prosecutor concerned to take necessary steps and the latter would act accordingly.

8.7. The provision contained in this chapter shall mutatis mutandis apply to application for exercise of revisional powers by the High Court of other proceeding before any court when notice thereof is received from the Court.

Copies required by
Public Officers.

8.8. Copies of records required for public purpose by public officers as defined in section 2 (17) of the code of Civil procedure of the Central or State Government in India, shall be supplied free of charge, provided the application for copy is endorsed by the Head of the Department concerned.

Note:—For the purpose of this rule, the District Magistrate will be deemed to be the Head of Department when copies of orders passed by civil, criminal and revenue courts are required by the Prosecuting Agency for the purpose of appeals and revision etc. and submission to the Legal Remembrancer to Government, Haryana under Law Department Manual.

Provided that for purposes of copies of orders, judgments, and decrees of civil and criminal courts, other than copies of orders and judgments of Executive Magistrates the District Attorney, will be deemed to be the Head of the Department.

(See rule 11 of Chapter 5-B of the High Court Rules and Orders Volume V and rule 1.7 (ix) (2) of the Punjab Copying Agencies Manual).

8.9. If the District Magistrate considers that an appeal for enhancement of sentence should be made to the High Court, a note explaining the reasons for such an appeal shall be sent along with the judgment of the court to the Advocate General, Haryana who will transmit them to the Legal Remembrancer after recording his own opinion. The Legal Remembrancer will then transmit them to Government with an expression of his own opinion thereon.

CHAPTER—9

APPEALS AGAINST ACQUITTAL OR APPLICATIONS FOR REVISION
ON BEHALF OF THE STATE

9.1 The Government will not ordinarily recommend the filing of an appeal against an order of acquittal (under Section 378 of the Code of Criminal Procedure) in the following cases, namely:—

Cases in which an appeal may be filed.

- (a) where the case is, in itself, not one of special importance and does not involve an erroneous view of any important legal principle, the correction of which is of public importance;
- (b) where the record does not disclose that there has been a clear miscarriage of justice, or mistake on important point of law;
- (c) merely on account of the discovery of fresh evidence after the acquittal;
- (d) where the probability of success is not clear and distinct.

The principle which governs the exercise of its powers under Section 378 of the Code of Criminal Procedure may be deduced from the above statement of cases in which an appeal will not ordinarily be sanctioned. It must be shown that the record discloses good grounds for believing that there has been miscarriage of justice or an important misconception of this statement of the law, and that an appeal is desirable in the interest of the proper administration of justice and is likely to succeed.

The Government will not consider itself necessarily precluded from preferring an appeal solely on the ground that the case does not come within the terms of the conditions above stated, these conditions are intended merely as a general guide to officers making references.

Where, however, serious or important the case, the guilt of the accused is, from a legal point of view, fairly questionable, or the evidence admits of any reasonable doubt, and the Court has considered it with impartiality, intelligence and care, an appeal would not ordinarily be permitted by the Government.

9.2 When it is decided to recommend an appeal against acquittal or an application for revision on behalf of the State, such proposals will be submitted by the District Magistrate. They should always be accompanied by the judicial files and an attested copy of the order which it is sought to set aside or modify, together with a copy of the first court's order in cases where the order assailed is the order of an Appellate court, and also by a full statement of the reasons for the application. The District Magistrate will forward them with a memorandum of the case prepared by the Public Prosecutor to the Advocate General, who will transmit them to the Legal Remembrancer after recording his own opinion. The Legal Remembrancer will then transmit them to Government with an expression of his own opinion thereon. (Punjab Government Memorandum No. 214-J-53/77760, dated the 28th September, 1933)

Submission of Proposals.

9.3 The proposals referred to in rule 9.2 must be submitted so as to reach the Advocate General within six weeks of the date of the pronouncement of the order of acquittal at latest.

Early submission.

9.4 The Government will not ordinarily recommend the filing of an appeal from an order of acquittal after 2 months subsequent to the date of such order. The intention is to

perclude any tendency to leisurely procedure apt to be created by the satatutory period of 3 months. There are good grounds for ensuring the speedy disposal of a case while the facts are fresh in mind, and it is only fair to the accused that the charge should not be kept hanging over him for longer than is necessary. If all concerned are aware that anything to be done by way of appeal must be completed within 2 month, it should be quite possible to expdite the examination of the papers without endangering the thoroughness of the scrutiny of them. It is merely a matter of ensuring that the case is not delayed in transit between different authorities and that it is regarded as urgent. (Punjab Government Endorsement No 8228-J-(c)-56/1385 dated the 12th January, 1956).

Private applications.

9.5. When applications for the institution of appeals against orders of acquittal are submitted by private persons direct to Government, as not infrequently happens they will be returned to the senders with instructions that the Haryana Government do not act in such cases on petitions received direct from private persons and that if they think that there are grounds for a State appeal their proper course is to make a representation to the District Magistrate of the district.

9.6 The Advocate General invariably shali forward a copy of the judgement of the State cases decided by the High Court together with his opinion whether further appeal/ revision is to be filed or not to the Legal Remembrancer, who will transmit the same to the Government with the expression of his own comments.

CHAPTER—10

DEFENCE OF ACCUSED PERSONS

10.1 Where, in a trial before the court of Session, the accused is not represented by a pleader, and where it appears to the court that the accused has not sufficient means to engage a pleader, the court shall assign a pleader for his defence at the expense of the State.

Legal aid to the accused at State expenses in certain cases.

10.2 The fee payable to the pleader engaged for defence of the accused, would be regulated by the rules framed by the High Court on the subject and in its absence, the legal practitioner shall receive the same fee as is given to a private practitioner engaged under the rule in Chapter 11.

Fees.

10.3 The counsel should be engaged in such case on the understanding that he will be paid only for the days on which he works and not for a specific period: provided that if a counsel has already been engaged for a poor accused and he is required to retire before the commencement of the trial owing to the engagement of counsel by the accused himself, he will be entitled to get one days' fee by way of compensation.

Fees how calculated.

10.4 For Rules regarding defence of accused in High Court see High Court Rules and Orders, Volume V, Chapter 4-E.

High Court Rules.

CHAPTER—11

Fees in Criminal Cases.—A proposal for increase in the fees has already been sent which is under consideration of the Government. The proposal as approved by the Government will be incorporated in this Chapter.

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CHAPTER—12

DEFENCE OF GOVERNMENT SERVANTS

12.1 The Haryana Government have laid down the following principles as to the conditions in which they will pay the cost of defending servants of Government in criminal proceedings, and regarding the procedure to be followed by such servants as may desire to secure the assistance of Government in their defence:—

I Government will ordinarily meet the reasonable cost of the defence of a Government servant in criminal cases brought against him for acts arising out of the performance of his public duty, provided that they are satisfied that he acted in good faith.

II Government will also meet the reasonable cost of defence in cases where, although the complaint does not arise directly out the performance of his public duty, they are satisfied that the Government servant has acted in good faith, and that the complaint has been brought against him with the object of deterring him from, or harassing him in, the performance of his public duty.

III When Government come to a preliminary decision to meet the reasonable cost of defence of a Government servant, such decision will be subject to revision if, as a result of the criminal proceedings, Government are satisfied that he did not act in good faith.

IV In cases covered by paragraph I above, even when Government decline in the initial stages to meet the cost of defence, they will nevertheless ordinarily meet it if the Government servant is honourably acquitted by the Courts.

V when it comes to the notice of a Government servant that a criminal case has been filed against him in the conditions stated in paragraphs I and II above, he shall report the fact through the usual channel, to the district executive head of the Department in which he is serving, or, if he is himself the executive head, to his superior officer. He shall similarly report the result of the case.

VI If a Government servant applies to be defended at public cost, or if his superior officer considers that he should be so defended, the case shall be reported forthwith, through the normal channel, to the Head of the Department with a suitable recommendation. The Head of the Department, after consulting the Legal Remembrancer, if he considers after this to be necessary, will submit the case to Government for their orders with his recommendation.

VII When it is not possible to obtain the order of Government before the commencement of proceedings in court, the district executive Head of the department concerned may ask the Deputy Commissioner to make arrangements for the defence of the Government servant. The Deputy Commissioner shall ordinarily do so if the departmental officer has made a recommendation to that effect, but any arrangements made shall be subject to the condition stated in paragraph III above. Such action does not absolve the departmental officer from sending a full report to Government as early as possible in the manner stated in paragraph VI above:

Provided that in the case of criminal proceeding against a Police Officer, the District Magistrate on the request of the Superintendent of Police of the concerned District may make arrangements for his defence at public expense in anticipation of the sanction of the Government. The District Magistrate shall in due course submit the case to the Government for obtaining formal sanction for the defence of the Police Officers at public expense.

VIII. A Government servant will defray from his own pocket any amount expended in excess of what is held to be the reasonable cost of his defence.

IX. If compensation is awarded to a Government servant in any case which has been defended at public expense, he will be liable to refund the expenditure incurred by Government in his defence up to the limit of the compensation awarded.

X. If in any case a Government servant is convicted and seeks the help of Government in prosecuting an appeal against the decision, the procedure to be followed will be similar to that laid down above in connection with original prosecution.

Note (1) :- The maximum amount for which Government will ordinarily accept liability as pleaders fee will be the rates prescribed in Chapter 11.

Note (2) :- Nothing in these instructions is intended to mean that Government will themselves appoint counsel or conduct the defence. Every accused person is entitled to be defended by a pleader of his own choice. If the official who is to be defended so desires, the Legal Remembrancer will be ready on a reference from the Head of Department to suggest the names of suitable counsel and to give advice as to the line of defence; but it should be clearly understood that any suggestion which he may make are in the nature of advice and that the ultimate decision as to particular counsel to be engaged must rest with official himself.

The principle mentioned in the preceding paragraph must always be borne in mind by the head of any local office who may decide to ask the Deputy Commissioner under instruction VII to make arrangements for the defence of a Government servant. Before making such a reference he should satisfy himself that the official to be defended is prepared to entrust the choice of counsel to the Deputy Commissioner. The reference should make it clear that this is so, and that the official concerned is ready to pay any fees which the Deputy Commissioner may settle with the Legal practitioner, chosen by him.

When a Deputy Commissioner receives such a reference, he should normally select a suitable lawyer from the district. It is not desirable that the Public Prosecutor should be briefed for the defence of a criminal case in which an official is accused (Punjab Government Circular No. 2368-J-39/19390 (H. Ju), dated 30th May, 1939).

Note (3) :- Whenever sanction is accorded to the defence of an officer or official of the State at public expense, it shall be subject to the condition that in the event of such officer or official being found to have acted otherwise than in good faith, he shall be liable to refund to the Government, the amount spent by the State on his defence. (Punjab Government Circular No. 66 (58)-6J-65/16067, dated the 15th May, 1965).

CHAPTER—12A

APPOINTMENT OF COUNSEL IN DEPARTMENTAL INQUIRIES

12.A.(1) When the departmental proceedings are taken against the officer/official or when an appeal in departmental proceedings is being heard, and it is contemplated to engage a counsel to represent the department, the procedure herein after mentioned be followed.

(2) In such cases the State case will ordinarily be conducted by the Public Prosecutor for the district, or by a private legal practitioner specially chosen for the purpose under the orders of the Legal Remembrancer.

(3) The scale of fee payable to the private practitioners is laid down in Chapter 11.

(4) These instructions will be applicable to ordinary departmental proceedings only and not to inquiries under the Public Servant (Inquiries) Act, 1850. In the case of inquiries under the latter Act, the orders of Governments regarding the presentation of the State case should invariably be taken.

(5) These instructions should not be taken as implying that counsel should be engaged for the State in departmental cases with freedom in the future than in the past. Except in cases of unusual complexity, there should be no need for State representation in departmental proceeding, and counsel, should not be engaged unless the need is clear.

(vide Punjab Government letter No. 3422-J. 40/22947, dated the 17th May, 1940).

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SUIT RULES

PART III—CIVIL BUSINESS

CHAPTER—13

AGENCY (GENERAL)

Legal Remembrancer responsible for conduct of civil litigation

13.1. The Legal Remembrancer is primarily responsible for the proper conduct of all civil suits, appeals and proceedings affecting the Haryana Government, including the execution of decrees passed in favour of Government and the recovery of all sums due to Government, whether as costs in pauper suits or otherwise, under the decrees or order of Civil Courts except in so far as the conduct of the proceedings has, under these rules or the special orders of the Governor, passed into the hands of the Advocate General.

Advocate General will ordinarily appear in the High Court.
Government Pleaders for the State.

13.2. The Advocate General will ordinarily appear or arrange for appearance for the Haryana Government in civil suits, appeals and proceedings affecting it, in the High Court.

13.3. The Legal Remembrancer, the Deputy Legal Remembrancer, the Assistant Legal Remembrancers, the Advocate General, the Additional Advocate General, the Senior Deputy Advocate General, the Deputy Advocate General, the Assistant Advocate Generals, the District Attorneys, Assistant District Attorneys, Grade I & Grade II and the Legal Assistants appointed till 31-3-1974 have been appointed 'Government Pleaders' for purposes other than those specified in Order XXVII, Rule 4, and XXXIII, Rules 6, of the Code of Civil Procedure:—

(Punjab Government Notifications No. I-C, dated the 1st January, 1909 No. 5248-J-37/2884, dated the 7th August, 1937, No. 893-J-40/7368, dated the 14th February, 1940, No. 880-J (C)-57/7490, dated the 26th April, 1957, No. 6080-J-59/13942, dated the 25th June, 1959, No. 5061-J-60/18794, dated 26th May, 1960, 5128-4J-60/20803, dated the 11th June, 1960. No. 5125-4J-60/20211, dated the 11th June, 1960. No. 5124-4J-60/18771, dated the 25th May, 1960, No. 5134-4J-60/18778, dated the 25 May, 1960, Haryana Government Notification No. 2589-4JJ-74/9476, dated 31-3-1974 and No. 2423 3-JJ-74/8985, dated 27-3-1974).

Conduct of Civil Proceedings in District and in Subordinate Courts.

13.4. In regard to civil suits, appeals and proceeding other than those falling under Rule 13.2 above the Legal Remembrancer will proceed in the following manner :—

- (a) in cases which he deems to be of sufficient importance (Whether in respect of the amount at stake or of the legal principles or public interests involved, or of the intricacy of the proceedings) for the adoption of that course, he will, with the sanction of the Governor, previously obtained, make over the conduct of the case to the Advocate General.
- (b) in other cases, he will ordinarily employ the Government Pleader, to conduct the proceeding on behalf of the State under his general supervision.

Legal Remembrancer may himself conduct proceedings to certain cases.

13.5. The Legal Remembrancer may, if he thinks fit, himself conduct the State cases in any civil suit, appeal or proceedings for the conduct of which he is responsible.

Legal Remembrancer may visit any place for purposes of supervision.

13.6. The Legal Remembrancer may, at any time, visit any place for the purpose of supervising the conduct by local agency of the civil business of the State, or of watching the conduct of, or of himself conducting, any civil suit, appeal or proceeding on behalf of the State.

117 The Legal Remembrancer is required to supervise the entire conduct of every civil case for which he is responsible. He will furnish to the legal practitioner or other person appointed to conduct or defend a civil suit on behalf of the State, his instructions, which will include

Duty of Legal Remembrancer in connection with Civil Court business.

- (1) The Departmental statement of the case;
- (2) The opinion of the Legal Remembrancer;
- (3) The order of the appropriate authority, to sue or defend.

118 The local agency in civil and Revenue matters comprises--

Local agency.

- (a) The Deputy Commissioner, as a "Government Pleader", for the purposes of Order XXVII, Rule 4, and Order XXXIII, Rule 6, of the Code of Civil Procedure, for his district;
- (b) The Deputy Commissioner, or any Assistant or Extra Assistant Commissioner empowered by him in that behalf, or in the absence of Deputy Commissioner, the Senior Assistant or Extra Assistant Commissioner, at headquarters as the "recognised agents" of Government;
- (c) The Government Pleader or any local legal practitioner specially instructed and authorised by the Legal Remembrancer;
- (d) District Nazirs, Assistant District Nazirs, Legal Assistants attached to the offices of Deputy Commissioners and Assistants attached to offices of Sub-Divisional Officers.

Note 1 The Deputy Commissioner of each district is appointed to be the Government Pleader, for the purposes of Order XXVII, Rule 4, and Order XXXIII, Rule 6, of the Code of Civil Procedure; for the district. (Punjab Government Notification No. I-C, date 1st January 1909).

Note 2 (1) In accordance with the provisions of Order XXVII, Rule 2 of the First Schedule of the Code of Civil Procedure, 1908, the Governor of the Punjab has been pleased to authorise all Deputy Commissioners in the Punjab, by virtue of their office to act for the State in respect of all judicial proceedings in which the Punjab Government is concerned and in which they may receive instructions from the Financial Commissioners or the Legal Remembrancer to Government.

(2) In the absence of the Deputy Commissioner from his headquarters, the Senior Assistant Commissioner or Extra Assistant Commissioner there present is hereby authorised to exercise the power hereby conferred on the Deputy Commissioner (Punjab Government Notification No. 1073 J-37/13015, dated 1st April, 1937).

Note 3 Attention is drawn to the provisions of Order XXVII of the Code of Civil Procedure relating to suits by or against the Government. Every notice of suit under section 100 of the Code of Civil Procedure must be left with the Deputy Commissioner or a Secretary to Government. Summons, notices and other processes under the Code must, to have effect in law, be served on the Deputy Commissioner as the Government Pleader for that purpose.

Note 4 Under Order XXVII, rule 1 of the Code of Civil procedure, 1908, it has been ordered that in all suits by or against the Punjab Government, plaints or written statements on behalf of the Punjab Government shall be signed and verified by the Deputy Commissioner for the time being of the district in which the cause of action in whole or in part arises or by any other gazetted officer of the department, who is acquainted with the facts. (Punjab

Government Notification No. 1073-J-37/13017, dated 1st April 1937).

Note 5—All District Nazirs and Assistant District Nazirs have been appointed to be Government Pleaders for the purpose of filing and prosecuting execution petitions in the civil districts to which they are attached. (Punjab Government Notification No. 1940-I-37/18103, dated 27th April, 1937 and 3864/501-S.g. 41/33300, dated the 17th June, 1941.

Note 5. A.—The posts of Legal Assistant in each District (where there is heavy work) has been created and the Legal Assistant has been declared as Government Pleader for execution work and has relieved the District Nazir of such duties.

(Law Department circular No. 22130-60/M.C. 390/72/Gurgaon, dated 24-12-1973).

Note 6.—In pursuance of clause (a) of rule 8B of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908, the Central Government has appointed all Government Pleaders in Punjab to be Government Pleaders for all Courts in the State for the purposes of the said Order in relation to any suit by or against the Central Government other than a suit relating to:—

- (1) the Northern Railway,
- (2) the North Eastern Railway,
- (3) the Eastern Railway,
- (4) the Western Railway,
- (5) the Central Railway,
- (6) the Southern Railway or,
- (7) the Chittaranjan Locomotive Works (Chittaranjan) or against a public officer in the service of the Central Government.

(Vide Government of India, Ministry of Law, Notification No. S.R.O. 1035, dated the 2nd June, 1953).

The Central Government has pointed out that in view of the definition of "Government Pleader" given in Order XXVII, Rule 8-B (a), Only Pleaders as defined in section 2 (15) of the Code of Civil Procedure, 1908, can be Government Pleaders in relation to Central Government suits and that the Deputy Commissioners cannot perform the functions of the Government Pleader under Order XXVII, Rule 4, in relation to such suits. (Vide Government of India, Home Department, letter No. 204/37-Ju, dated the 25th May, 1939).

Note 7.—In pursuance of rules 2 and 8 read with clause (a) of rule 8-B of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908, the Central Government has authorised the officers appointed as Government Pleader under clause (a) of rule 8-B of the said Order to act in any Court in Punjab for which they have been so appointed—

- (a) for Central Government in respect of any judicial proceeding by or against the Central Government not relating to the Railways and Locomotive Works mentioned in Note 6 above, and
- (b) where the Central Government undertakes the defence of a suit against a public officer in the service of the Central Government for such officer.

(Vide Government of India, Ministry of Law, Notification No. S.R.O. 1036, dated the 2nd June, 1953).

Note 8. Assistants attached to the offices of the Sub-Divisional Officers have been appointed to be Government Pleaders for the purpose of filing and prosecuting execution petitions in the civil courts at the Headquarters of the Sub-Division (Punjab Government Notification No. 10301-J-55/13876, dated 20th May, 1955).

Government
Pleaders may act
without Power of
Attorney

13.9 Under Rule 2 of Order XXVII all Government Pleaders are authorised to act for Government without Power of Attorney—(Notification No. 22963- Judl., dated 10th December, 1917).

13.10 The Legal Remembrancer has been authorised to conduct civil proceedings on behalf of the Central Departments mentioned in Rule 2.21, and may act on behalf of other Central Departments when so authorised by the Central Government.

Central
Departments.

13.11. Under section 17-A of the Indian Divorce Act (IV of 1869) the Legal Remembrancer has been appointed to exercise within the jurisdiction of the Punjab High Court the like right of showing cause why a decree for dissolution of marriage should not be made absolute or should not be confirmed, as is exercisable in England by the King's Proctor—(Government of India Notification No. F. 928/27-Judl., dated the 28th July, 1928).

Duties of King's
Proctor.

13.12. The Director of Industries, Punjab, has authorised Government Pleaders in the Punjab to produce the declaration issued by him under the Punjab State Aid to Industries Act in the principal civil courts of original jurisdiction within the local limits of whose jurisdiction any of the property liable for the debt due, is situate, in the same manner as a decree of which execution is sought. (Industries Department Notification No. 1/1/16/15300, dated the 27th October, 1937).

Declarations issued
by the Director of
Industries Punjab

public officer

1035, dated

definition of

s defined in

s in relation

he functions

suits. (Vide

May, 1939).

-B of Order

Government

rule 8-B of

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1036, dated

CHAPTER—14

GOVERNMENT PLEADERS FOR DISTRICTS

- Area. 14.1. Government Pleaders will be appointed for such districts or groups of districts as the Haryana Government may determine.
- Appointment of District Attorneys etc. as Government Pleaders. 14.2. The District Attorneys and Deputy/Assistant District Attorneys for a district may be appointed to be the Government Pleader for the same district/local area comprising the whole of State of Haryana.
- Work to be done. 14.3. (a) District Attorneys and Deputy/Assistant District Attorneys as Government Pleaders are required to conduct all civil suits and civil proceedings by or against or on behalf of or affecting the Haryana State.
- (b) They may also be required by the Legal Remembrancer to undertake other civil work for other States, or corporate bodies or Union of India.
- (c) Whenever a Government pleader receives instructions to institute or defend a suit, it is always his duty to take a thorough examination of the administrative report and the documents sent therewith, in order to see that all the facts have been correctly represented and that all the necessary evidence has been received before the plaint or written statement is put into court. If any facts have been wrongly stated, or if any evidence is missing, this should at once be reported to the Legal Remembrancer.
- Consultations 14.4. Government pleaders may be consulted by local officers after securing the necessary authority from their departments. They will appear in court on behalf of the Haryana State, however, only under the instructions of the Legal Remembrancer.
- Appearances against the Union of India, and Haryana Government. 14.5. The District Attorneys and Deputy/Assistant District Attorneys as Government Pleaders shall not, without the previous permission of the Haryana Government appear or advice in any civil proceedings against the Union of India, the Railway Administration or the Court of Wards of the Haryana Government.

CAPTER—15

SUIT RULES—DEFINITIONS

15.1 Throughout the Suit Rules (Chapters 15 to 20) the expression—

Definitions.

- (a) "Controlling authority" means an officer empowered to authorize, (i) the institution of a suit on behalf of the State, (ii) the defence of any threatened suit to which the State has been made a party, (iii) intervention by the State in any suit in which the State is interested, or (iv) the institution or defence of a suit by or against a public officer in his public capacity. In those classes of cases for which no officer is specifically empowered to act as controlling authority. These functions will be discharged by Government which will itself be regarded as the controlling authority.
- (b) "Officer in charge of the case" means the law officer, legal practitioner, or Government officer appointed to conduct the proceedings on behalf of the Government or of a public officer in any suit.
- (c) "Head of Department" shall be deemed to mean the authority specified in Appendix D of the Punjab Budget Manual, in all cases to which the Haryana Government is a party.
- (d) "Suit" means a suit by or against, or affecting the Government or a public officer in his official capacity or which is brought or defended by a public officer at the public expenses, and includes and appeal, and application for revision or review or execution of decree, and any civil judicial proceeding including writs etc. in which the Government or a public officer in his official capacity is a party or has any interest.

Note 1. References to courts made under the Land Acquisition Act, 1894, fall in the definition.

Note 2. Petitions under sections 5 (1) and 10 (1) of the Sikh Gurdwaras Act, 1925, ~~also come within the definition of "suit" and the rules regarding the conduct of suits should be complied with as far as is practicable.~~

Note 3. The provisions of these rules apply to all suits, by or against municipal committees in respect of nazul land and other Government property of which the management and control has been entrusted to such boards or committees.

15.2 In respect of suits in the civil courts and revenue courts—

- (i) by or against the Haryana Government.
- (ii) by or against a public officer serving under the Haryana Government not being suits by or against a public officer, in which tortious conduct is imputed to a public officer in the execution of his official duties, the following officers have been appointed to be controlling authorities:—
- (a) Chief Engineers of the Public Works Department Haryana Buildings and Roads, Irrigation and Public Health Branches, in respect, of all cases affecting their departments; in respect of cases affecting his Department not exceeding Rs. 10,000 in value or amount; and Superintending Engineers, Buildings and Roads, Irrigation and Public Health Branches, in respect of cases not exceeding Rs. 2,500 in value or amount and subject to such limitation as to class of suit as their respective Chief Engineers may fix.

Controlling
authorities in
Suits affecting
the Haryana
Government.

- (c) The Superintendent of a Jail, with the consent, to be previously obtained, of the Inspector-General of Prisons, for the recovery of debts due to Jail manufacturies, not exceeding Rs. 50 in amount in any one case.
- (d) The Chief Conservator of Forests, Haryana, in respect of cases affecting his Department, not exceeding Rs. 2,500 in value or amount.
- (e) The Excise and Taxation Commissioner in respect of suits not exceeding ten thousand rupees in value affecting the administration of his department.
- (f) The Financial Commissioners, in respect of cases arising in the department under their control.

(Note-Nazul cases are not now dealt with by the Financial Commissioner)

- (g) All disputes to which Government is a party and which are referred to arbitration, including suits which are stayed under section 34 of the Arbitration Act, 1940, shall be submitted by the Controlling authority or Head of the Department concerned to the Legal Remembrancer to Government.
- (h) The Director of Industries, Haryana, in respect of cases relating to the eviction and recovery of rent under the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972.

(Vide Industries Department Memorandum No. 8153-3IBII-71/1054 dated 28-1-1972).

CHAPTER—16

SUIT RULES—GENERAL

16.1. (a) No person with whom any suit is pending or there is any likelihood of any suit arising, and person acting for, or concerned with, any such person shall, without the express sanction of the controlling authority, be allowed access to, or be supplied with, copies of any document in the possession of the Government in any way connected with, or relating to, matters out of which such suit may arise or has arisen.

Restrictions as to supply of copies and production of confidential papers, and necessary sanction before access is allowed to documents in the possession of the Government.

(b) When notice to produce documents in charge of a head of a department or public officer is received by him, he shall consider whether they include communications made in official confidence, the production of which would be injurious to the public interest. To the production of such documents he shall make definite objection direct to the court or through the officer in charge of the case, appointed by an affidavit from the Head of Department containing the grounds on which privilege is claimed.

Note: The privilege shall be claimed generally by the Minister-incharge who is the political head of the department concerned, if not, the Secretary of the Department who is the departmental head should make the claim (A.I.R. 1961 Supreme Court 493).

All correspondence with, and resolutions and orders of the Government are strictly confidential. No officers shall grant copies of any such documents, during the pendency of any dispute or suit to which they in any way relate, to any person other than to a proper officer of the Government or to the officer incharge of the case; and no such copies shall be granted at any time after the final decision of the suit without the previous sanction of the head of the department concerned.

16.2. When in complying with the requirements of any of these, rules, it is thought necessary to transmit any document, in original, to any officer of the Government or to the officer in charge of the case, a certified copy thereof is to be retained in the office of issue, and the original document is to be sent by registered post.

Original document, when sent, to be so sent by registered post, and a certified copy retained.

16.3. All communications made to the opposite party, on the subject of matters in respect of which it is possible that a suit may ensue, shall be headed "without prejudice" and if made orally, shall be stated to be made "without prejudice".

Communications to the opposite party to be made "without prejudice".

16.4. (1) When the subject of the suit to be brought or defended is connected with district administration and belongs to no particular department, the report shall be prepared by the Deputy Commissioner and shall be submitted by him to the Financial Commissioner through the Commissioner or the Division. When the suit is connected with any particular department, the report shall be prepared by the proper officer of such department, and shall be submitted, through the head of that department, to the proper controlling authority.

By whom report to be submitted to controlling authority and opinion of reporting officer.

(2) In each case the officer submitting the report to the controlling authority shall (1) satisfy himself, before forwarding it, that these rules have been fully complied with, and (2) state his own opinion on the matter, with his reasons for that opinion.

16.5. (1) All copies or translations submitted should be absolutely accurate and complete, reproducing every particular contained in the originals, whether of a formal nature or not.

Documents to be supplied with reports, and precautions in regard thereto.

(2) When a map or plan would be calculated to elucidate any point reported on, it should be supplied.

Note—In cases where the controlling authority or Head of Department (referred to in Rule 15.2 above) may be called upon to act as arbitrator, strict attention should be paid to Chapter 24 of this Manual.

Orders of
controlling
authorities and
instructions to
Legal
Remembrancer.

16.6. (1) Upon the reports so received, controlling authorities will after consulting the Legal Remembrancer when that course appears to be desirable decide whether the particular suit is to be instituted or defended, and will instruct the Legal Remembrancer accordingly in all cases in which it is proposed to place the conduct of proceedings in Court in the hands of the Law Department of the Government.

(2) In civil cases and proceedings affecting Government, the Legal Remembrancer is the only authority competent to select and instruct counsel on behalf of Government in each case.

(3) In cases of grave urgency, when there is no sufficient time to get instructions issued from the Law Department, the Deputy Commissioners shall be competent to instruct the District Attorneys to put in appearance on behalf of the State in the Courts and thereafter reference shall be made to the Legal Remembrancer for obtaining *ex post facto* sanction.

(4) The procedure provided above for obtaining the Legal Remembrancer's advice regarding the institution of suits by Government will apply *mutatis mutandis* to proposals to refer disputes (between Government and its grantees, contractors, etc.) to arbitration *vide* Chapter 24 of this Manual.

Land acquisition
cases.

16.7. Cases which are referred by Land Acquisition Officers to the District Court under Part III of the Land Acquisition Act, 1894, fall within the definition of "suit" and are subject to the provisions laid down in the Suit Rules. The Collector should proceed in such cases in the manner provided for the defence of civil suits and shall submit his report in accordance with the provisions of Rule 16.4 to the proper controlling authority. Rule 20.1 and 20.2 apply to such cases.

Deputy
Commissioners to
provide necessary
funds for suits
instituted on behalf
of the Government.
Expenditure in
excess of Rs. 500 to
be referred to
controlling
authority for
sanction.

16.8. (a) When sanction has been given to institute or defend a suit at the public expense, the Deputy Commissioner will provide the necessary funds for stamps and other expenses in the same way as he provides for his ordinary contingencies.

(b) Further items that may arise will be dealt with in the same way. All expenditure in excess of Rs. 500 in one suit will be referred to the controlling authority for sanction.

(c) In civil suits relating to the Government of India, the Government Pleader shall recover the expenses required for such litigation from the concerned department of the Government of India.

(d) All such items, whether sanctioned separately or included in contingent bills, will be deemed as on account of "Law charges" of the department concerned.

All recoveries to be
credited to the
department
concerned.

16.9. All recoveries made, whether on account of the principal sum sued for or costs, will be credited to the department concerned.

Earliest opportunity
is to be taken to
adjust advances.

16.10 In urgent cases, where money may have been advanced from other sources, the earliest opportunity should be taken for adjusting such advances in accordance with these rules.

Note :—All references relating to court cases including those made by the District Attorneys/Advocate General should be dealt with urgently by the concerned department of the Government. the concerned Department should invariably depute a representative well conversant with the facts of the case to watch the progress of the litigation and to keep contact with the District Attorney/Advocate General and also to provide him all assistance as and when required.

CHAPTER—17

SUIT RULES—INSTITUTION OF SUITS

17.1. (a) No suit is to be brought on behalf of the Government except in the last resort, when all other means of obtaining satisfaction have failed.

Suits by the Government only to be brought the last resort.

(b) The institution of a suit on behalf of the Government is not to be recommended or authorised until the proposed defendant has had ample opportunity given him of stating his view of the case and coming to some agreement for the settlement of the Government claim out of court. While it is the duty of officers of the Government to enforce the just rights of the Government and to protect its interest, the law should not be appealed to until all efforts have been made to effect an amicable adjustment, and the case for the Government has been inquired into departmentally and evidence secured on all points which are likely to be contested.

17.2 No suit on behalf of the Government or a public officer as such shall be instituted without the previous sanction of the proper controlling authority.

Sanction to bring a suit on behalf of the Government or public officer.

17.3. Any officer, who considers that a suit should be instituted on behalf of the Government shall submit a clear and detailed report, as provided in Rule 16.4 showing:—

Report to be submitted by officer who considers that suit should be instituted on behalf of the Government.

- (a) The circumstances which, in his opinion, render the institution of the suit necessary and precisely when and where they each occurred.
- (b) The subject of the claim and the relief sought.
- (c) The steps which have been taken to obtain satisfaction of the claim without bringing a suit.
- (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 is believed to be obtainable and which it is proposed to adduce in support of the claim.
- (f) Whether the documents (if any) referred to in sub-clause (c), are registered or not.
- (g) Whether or not the circumstances of the person against whom it is proposed to institute the suit are such as to render it likely that execution will be obtained of any decree that may be given against him.
- (h) The evidence, both oral and documentary, which, so far as is known, the proposed defendant will be able and is likely to adduce in his defence.
- (i) Whether the documents (if any) referred to in sub-clause (h) are registered or not.
- (j) Any other facts which the officer considers material, e.g. whether there are any special reasons for the institution of the suit apart from the amount actually claimed; whether other similar claims will hinge upon its decision or the like.
- (k) Whether the amount required for stamp or other expenses is likely to be above Rs. 500.

Copies.

17.4. Copies of all documents referred to in clauses (e) and (h) of the proceeding, and of all correspondence and written proceedings, whether in English or in the Vernacular (together in the latter case, with translations), connected with the proposed suit, should accompany the report, with an exact list of the same wherever this is reasonably possible. If these copies cannot be supplied for any reason the originals should be submitted. The controlling authority will, thereupon, consult the Legal Remembrancer and decide upon the course to be adopted. If legal action is decided on, the controlling authority will, ordinarily, instruct the Legal Remembrancer to proceed accordingly, and shall communicate his decision to the Deputy Commissioner or head of the department concerned.

17.5. Further action will be in accordance with the procedure laid down in Rule 16.4 to 16.6.

INTERVENTION

Procedure when
intervention is
deemed necessary.

17.6. (a) If it appears advisable to a Deputy Commissioner or to the head of any department, on the representation of any subordinate officer or otherwise, to intervene in any suit to which the Government has not been made a party, an application for a postponement of the case shall, if necessary, be made to the Court, by or through the Deputy Commissioner of the district in which the Court has jurisdiction. The Deputy Commissioner or other officer concerned shall then submit a full report to the controlling authority, showing clearly his reasons for considering such intervention necessary, and, in particular, stating how the decision of the suit is likely in his opinion to affect the interests of Government.

(b) The controlling authority will decide, whether the Government shall intervene or not, and, if so, will arrange as to the person by whom the necessary action shall be taken.

(c) If the controlling authority decides that it is necessary to intervene and the Government be made a party to the suit, all the rules for the conduct of Government suits shall, so far as may be, deemed applicable to the case.

CHAPETR—18

SUIT RULES-DEFENCE OF SUITS

18.1. (a) No person having a just claim against the Government should be compelled to resort to litigation to enforce it.

No person having a just claim against Government to be compelled to sue.

(b) When any person threatens to bring a suit against the Government it is incumbent on the proper departmental officers and controlling authorities to satisfy themselves without delay of the justice or otherwise of the whole and every part of the claim made, all reasonable efforts being made to bring about an amicable adjustment, without an appeal to the law, so far as this can be done without sacrificing the just rights of the Government.

(c) The object of the notice prescribed by section 80 of the Code of Civil Procedure is to allow ample time to the Government to enquire into the justice or otherwise of all claims and to effect settlement of all just claims before a suit is brought, and the best use should be made of the opportunity thus given by the law towards equitably and amicably adjusting claims.

18.2. The sanction of the authority empowered to sanction the institution of a suit of any kind shall be obtained for the defence of a suit of such kind

Sanction

PROCEDURE ON RECEIPT OF NOTICE

18.3. (1) When notice of an intended suit is given, under the provisions of section 80 of the code of Civil Procedure, the officer to whom it is delivered or the head of the office at which it is left shall forthwith endorse, or cause to be endorsed, on the notice—

Endorsement to be made on "notice" and action there upon.

- (a) the date of receipt,
- (b) the manner of delivery,
- (c) the date of endorsement, and
- (d) the signature of the officer making the endorsement, and shall thereupon proceed as hereinafter provided.

(2) If the notice is served upon an officer other than an officer specified in section 80 of the Civil Procedure, Code, that officer shall forth with transmit it, in original, to the Deputy Commissioner or head of the department concerned.

(3) If the notice is served on a Secretary to the Haryana Government, that officer shall forward it, to the Deputy Commissioner or head of the department concerned.

(4) If the notice is served on or forwarded to the Deputy Commissioner under the provisions of sub-rule (2) of this rule that officer shall—

- (a) if the subject matter of the thereatend suit is connected with district administration and within his control, or is unconnected with any particular department—proceed, in the manner hereinafter in these rules provided.
- (b) if the subject matter of the threatened suit is connected with a department not within his control—forward the notice in original, to the head of the department concerned, in order that he may so proceed.

(5) In every case in which the officer on whom a notice is served, transmits it, in original to any other officer, he shall retain a certified copy of the notice and of the endorsement made thereon, and place the same on record.

Departmental officer to consider whether the claim is, in whole or in part, to be admitted and adjusted or contested.

18.4. (a) The district or departmental officer concerned shall, immediately on receiving any notice of an intended suit, proceed to enquire into the matter and to consider the claim put forward and to decide, or move the proper authority to decide, whether any and, if so, what steps should be taken to adjust the claim (whether in whole or in part) or whether the claimant should be left to take such legal action as he may deem proper.

(b) When the claim is in respect of property forfeited to Government the officer should note whether it is made within one year from the date of the attachment or seizure (*vide* proviso to section 20 of the Forfeiture Act, 1859 (Act IX of 1859)).

(c) If any officer is in doubt, at this stage, as to any legal point, he should submit the case, in due course, to the Legal Remembrancer, for opinion.

(d) The procedure provided above for obtaining the Legal Remembrancer's advice regarding the defence of suits shall apply *mutatis mutandis* to any application for stay of suit under section 34 of the Arbitration Act 1940, and to proposals to defend references to arbitration of disputes between Government and its grantees, contractors, etc., (*vide* Chapter 24 of this Manual).

Communication to be made only under legal advice.

18.5. When notice of the intention of any person to sue the Government or public officer has been given, under section 80 of the Code of Civil Procedure, no communication should ordinarily be made to such person otherwise than under the advice of the Legal Remembrancer or other Law Officer of the Government.

Action when claim should be adjusted.

18.6. (1) When, after receiving any such notice and enquiring into the matter, the controlling authority proposes etc.—

- (a) tender any amount admitted to be due to the claimant;
- (b) offer terms of adjustment or suggest reference to arbitration;

the Legal Remembrancer should ordinarily be consulted as to the form or terms of the proposed tender, adjustment or reference, as the case may be, before they are communicated to the opposite party, and when once a suit has been instituted, no sum should be tendered, terms of adjustment offered or reference to arbitration suggested, otherwise than through the Officer in charge of the case.

(2) When the departmental authority, having power to deal with the case, is clearly of opinion that the whole or any part of the claim put forward is justly due he should (if the controlling authority has accorded sanction thereto) proceed to endeavour to effect a settlement thereof accordingly.

(3) Any amount held to be justly due to the claimant should, before the suit is brought, be formally and unconditionally tendered to him, without prejudice and without requiring him to give an acquittance in full adjustments of his claim and upon a receipt for the sum tendered. No tender of payment or payments should be made, after the suit has been brought, otherwise than through the officer in charge of the case on behalf of the Government. In making any tender, the person to whom it is made should be informed that if the tender be declined the fact of its having been made will be stated and, if necessary, established in Court.

(4) A controlling officer shall not take any action such as tendering money or agreeing to compromise the case or to admit it to arbitration which will involve financial liability unless he has funds appropriated for the purpose, provided that if the case is urgent and it appears that a loss would be involved by delay he may take such action but must report it immediately to Government in order that funds may be appropriated for the purpose.

18.7. When the controlling authority decides that the claim is, in whole, to be contested, no communication should be made to the person by whom the notice of the intended suit was given. When the same authority decides that any part of the claim made should be admitted and the rest contested, action should (after consulting the Legal Remembrancer, when that course appears to be desirable) be taken accordingly.

Action when claim should be adjusted.

PROCEDURE AFTER RECEIPT OF SUMMONS

18.8. When a suit against the Government has been instituted and summons is issued to or served on any officer of the Government other than the Deputy Commissioner of the district in which the suit is filed, such officer, whether he be the head of the department concerned or not, shall—

Action when the summons is served on officer other than the Deputy Commissioner.

- (a) endorse thereon the date of receipt, and sign and date of the endorsement;
- (b) return the summons to the Court from which it has been received with a letter intimating that such officer is not empowered, under Rule 4 of Order XXVII (First Schedule) of the Code of Civil Procedure, to receive service on behalf of the Government. He should in no way recognise the service as effectual, nor should he attend the Court on the date specified in the summons.

Note.—In this state the Deputy commissioner is the only officer empowered by the Government to receive service of process in suits against the Government (Notification No. I-C, dated 1st January, 1909).

18.9. (a) When the summons has been duly served on the Deputy Commissioner, and a date has been fixed for the first hearing of the suit, such date is less than two months distant, he shall at once apply to the Court, under Rule 5 of Order XXVII (First Schedule) of the Civil Procedure, for an extension of the time to, not less than two months, and in support of his application shall quote the Instructions contained in Volume I, High Court Rules and Orders, Chapter 8, 1965 edition.

Action when the summons is served on the Deputy Commissioner.

(b) If the Court declines to grant an extension of time applied for, the Deputy Commissioner shall forward, as soon as possible, a special report to the controlling authority or, in emergent cases, to the Legal Remembrancer direct, in order that further steps may be taken to protect the interests of the Government.

(c) The Deputy Commissioner shall in every case forthwith apply for certified copies (a) of the plaint (where only a concise statement of it has been received with the summons) (b) of all documents filed with the plaint, as well as of the list of the same prescribed by the High Court, (c) of any list of further documents relied on or referred to in Rule 14 of Order VII (First Schedule) of the Code of Civil Procedure, filed with the plaint.

18.10. (a) If the suit is one connected with any department not within his control, the Deputy Commissioner, shall, as soon as the necessary copies have been obtained, forward—

Procedure of Deputy Commissioner when summons relates to a suit affecting a department not connected with district administration or within his control.

- (i) the summons, duly endorsed with the date of receipt thereof; and
- (ii) copies of the plaint, documents (if any) filed with the plaint, and list (if any) of further documents relied on,

to the head of the department concerned.

(b) The head of the department concerned shall thereupon proceed in the manner prescribed in rule next following.

(c) In complying with the provisions of the preceding clause the Deputy Commissioner shall, if he has received no notice of the suit as required by section 80 of the Code of Civil Procedure, mention this fact.

Report for defence of a suit on the ground that no valid notice has been given.

18.11. If no such notice of action as is required by section 80 of the Code of Civil Procedure has been received the Deputy Commissioner or the head of the department (not being a controlling authority) concerned (as the case may be) shall, immediately on the receipt of the summons, copies, etc. as aforesaid, forward the same, with a brief report to that effect, to the controlling authority, by whom arrangements will be made for the defence of the suit upon the ground for want of notice.

Collection or information as to the case to be begun on receipt of notice of intended suit.

18.12. If notice of suit (whether it appears to be an adequate notice or not) has been received, the Deputy Commissioner or the head of the department concerned shall proceed to collect, with the least practicable delay, all the information regarding the facts of the case which are immediately available and shall as soon as possible send a precise thereof to the Legal Remembrancer.

Report recommending the defence of suit.

18.13. (1) He shall then, as soon as possible, submit to the controlling authority the following documents together with an exact list of the same:—

- (a) the notice of suit, the summons and a copy of the plaint;
- (b) a second copy of translation of the plaint written in English, on half margin, each statement therein being marked with a letter (A, B, and C), and notes being added in the margin, stating whether each statement of fact made therein is correct or not, and, if not, in what respect it is not so;

Note :—when the requisite explanation cannot thus compressed reference should be made to a paragraph of an accompanying statement in which the matter should be fully discussed.

- (c) copies of documents and lists of documents, if any, filed with the plaint;
- (d) copies of all other documents procurable, which are believed to bear on the case, either for the plaintiff or the defendant, together with as accurate a description as may be of other documents (if any) which are believed to be relevant, but of which the contents cannot be precisely ascertained except through the Court;
- (e) all the correspondence and written proceeding, whether in English or in the Vernacular, connected with the subject of the suit.

These documents shall be accompanied by a clear and detailed report, stating—

- (f) the circumstances which led to the suit, mentioning precisely when and where they each occurred; the course which it is proposed to adopt, namely, whether to admit, compromise or defend the suit, all the reasons for the same, and the steps (if any) which have already been taken to adjust the matter out of Court;

(g) if it is proposed to defend the suit, the proposed defence, written on half margin, showing clearly and fully how each of the allegations in the plaint is to be met, and the evidence which it is proposed to adduce for that purpose;

(h) whether the documents referred to in (c) and (d) are registered or not;

(i) the date fixed by the Court for the first hearing.

(2) An English translation of every document, which is not in that language, shall be supplied with the report, wherever this is reasonably possible.

18.14. Further action will be in accordance with the procedure laid down in Rules 16.4 to 16.6.

18.15. A number of notices are received under section 80 of the Code of Civil Procedure on the ground that some officer of Government has wrongfully seized private property, or has wrongfully confined some person. The reports accompanying such notices, complete as they may be in other respects, seldom mention one of the points which Government have to take into consideration in deciding how the suit should be met, which is whether the officer in question was supposed to be acting under any statutory authority or not. When a report is supplied in future under rule 18.12 in respect of any action which is alleged to constitute a wrongful interference with private property or private liberty, it should invariably be stated whether the officer concerned believed himself to have any statutory or other authority for his action. The controlling authority should also state whether in his opinion the action was covered by such authority or not. For purposes of such report it is not sufficient merely to explain the motive of the action, or to say that the action was taken under the orders of a superior officer, unless the superior officer himself had the necessary authority.

Special
instructions
in cases of
tort.

CHAPTER—19

SUIT BY OR AGAINST PUBLIC OFFICERS

SUIT BY PUBLIC OFFICERS

No suit to be constituted by public officer without the sanction of the Government
Procedure in obtaining sanction.

Report.

Transmission of report.

Instructions.

Procedure to be observed in regard to the defence of suits brought against public Officers.

Transmission of report.

19.1. The sanction of the Haryana Government shall be obtained before any public officer has recourse to the Courts for the vindication of his public acts or of his character as a public functionary.

19.2. When a public officer considers that a suit should be instituted for the vindication of his public acts or of his character as a public functionary, he shall submit a report conformably to directions contained in Rule 17.3.

19.3. The Head of the department, after recording his opinion, will forward the report, together with his opinion thereupon, to the Haryana Government for orders as to whether the suit (1) is or is not to be brought, and (2) if brought is to be conducted at the public expense or at that of the officer concerned.

19.4. If sanction be given by the Haryana Government to the conduct of the suit at the public expense, the controlling authority will instruct the Legal Remembrancer to arrange therefor. If such sanction be not given, the Officer concerned shall be informed accordingly, when, if the institution of the suit has been sanctioned by the Haryana Government, he shall be at liberty to make his own arrangements in connection therewith.

SUIT AGAINST PUBLIC OFFICERS

19.5. (a) When any suit is threatened to be brought or is brought against a public officer, as such, or in regard to his acts as such, and such officer considers that the suit should be defended at the public expense, he shall submit a report conformably to the directions contained in Rules 16.4 and ~~18-13~~.

(b) In the case of a suit intended to be brought against a public officer notice is required by section 80 of the Code of Civil Procedure and the procedure on receipt of such notice, or of a summons, will be similar to that prescribed for suits against the Government, except that the officer concerned will himself receive the notice, take action on the summons (Rule 7, Order XXVII, First Schedule, of the Code of Civil Procedure) and submit the necessary report.

(c) All officers are reminded that as they must, *prima facie*, be prepared personally to defend themselves in respect of their acts, when such acts are alleged to be illegal, it rests with them to satisfy the Haryana Government that they have used every effort to prevent litigation; also that the acts complained of were done (if done at all) with due care and attention and under circumstances justifying the defence of the suit at the public expense. In their own interest therefore, it is incumbent on them to observe the provisions of these rules, where applicable to their case, as accurately and promptly as possible.

19.6. The head of the department will forward the report, together with his opinion thereupon, to the Haryana Government for orders as to whether the suit is to be defended at the public expense or whether the officer concerned is to be left to take such measures in the

case at his own expense as he thinks fit

19.7 If the defence of the suit at the public expense is sanctioned by the Haryana Government, the controlling authority will instruct the Legal Remembrancer to arrange therefor. If such sanction is not given, the officer concerned shall be informed accordingly, and will be at liberty to make his own arrangements in connection therewith.

Instructions

19.7A The provisions of Rules 19.5 (a) and (c), 19.6 and 19.7 will apply, mutatis mutandis, to a suit against a retired Public Officer, in regard to an official act performed by him during the period of his service. The benefit of section 80 and Order XXVII, Code of Civil procedure, 1908 is not available to officers who have retired from the service of the State

Defence of suits brought against retired public Officers.

Note.—Whenever sanction is accorded to the defence of an officer or official of the State at public expense, it shall be subject to the condition that in the event of such officer or official being found to have acted otherwise than in good faith, he shall be liable to refund to the Government, the amount spent by the State on his defence.

(Punjab Government circular No. 66-(58)-6J-65/16057, Dated 15th May, 1965).

GENERAL

19.8 If a public officer, who is concerned in a case, not falling under the rules, which affects, either directly, or indirectly, his official character, wishes to retain the services of a legal practitioner, he should, in the first instance, apply to the Government for permission to do so, making a full report of the facts of the case. The Government will then determine whether the case is one in which permission should be given, and if so on what (if any) conditions. If permission to employ a legal practitioner at the public expense is refused, it is open to the officer concerned to obtain professional assistance at his own expense; but no application to the Government for contribution towards meeting such expenditure will be entertained unless previous sanction has been obtained.

Other cases

CHAPTER—20

SUIT RULES—ACTION ON THE TERMINATION OF A SUIT

Copies to be
obtained.

20.1. Immediately on the termination of any suit, a copy of the Judgement and decree or other final order of the Court shall be procured, without delay by the Officer in charge of the case.

Results of suits,
act. by and to
whom report to be
submitted.

20.2. Immediately on receipt of the copies specified in the last preceeding rule, the officer in charge of the case shall submit a report (in duplicate) of the result of the suit for the information of the controlling authority. The report shall be submitted through the legal Remembrancer.

arrangements for
payment for
decretal amounts.

20.3. When the result is adverse to the Government and will involve a disbursement of public money, the report should always state when the money will be required for payment. Immediately on receipt of the report from the legal Remembrancer, the controlling officer of the Department to which the case relates should make arrangements, in consultation with the Deputy Commissioner of the district to deposit the decretal amount in court within three months, at the most, of the order of the court. While making the deposit the controlling officer should request the Deputy Commissioner to apply to the court that the amount be not paid to the decree-holder pending the result of the appeal, where an appeal is filed or proposed to be filed or only on such security as the Court may deem reasonable.

(2) When an appeal has been filed before the money has been deposited in court, the order of the appellate court should be obtained to the effect that money may be paid into court, but should not be allowed to be taken by the decree holder without furnishing adequate security to the satisfaction of the court for refund in the event of the success of the appeal.

Report as to
whether appeal
should be made.

20.4. (a) When any suit instituted or defended through the Legal Remembrancer has been decided wholly or partially against the government or the officer concerned, and such officer or the officer in charge of the case is of opinion, on a perusal of the copies of the judgement and decree or other final order of the Court supplied to him as hereinbefore provided, that an appeal (or in unappealable cases, an application for revision) should be preferred or that a review of judgement should be applied for, he shall, as soon as possible, prepare a Report to that effect, stating the grounds of his opinion, and shall submit it to the Legal Remembrancer, together with the said copies and (if he deems it necessary for a proper decision of the matter) with copies of the evidence and of all exhibits not previously submitted at an earlier stage, and also with a draft, on half margin, of the grounds on which he considers that the appeal or application should be based. If the copies of the evidence and exhibits cannot be procured without considerable delay, the report should be submitted without them and they should be forwarded as soon as possible afterwards; if the proper officer considers that no appeal or application should be made, he shall submit a report, accompanied as aforesaid to that effect. The last date of limitation for filing an appeal and the forum thereof should invariably be intimated.

(b) As the period within which appeals and applications may be made is limited by law, there should be no delay in submitting reports and recommendations under this rule.

(c) The Legal Remembrancer shall on receipt of these documents from the Government Pleader consider the desirability of filing an appeal or application for revision or review of judgement or otherwise and convey his views to the controlling authority. If it is decided to file an appeal or application for revision or review of judgement, the Legal Remembrancer may on his own authority issue instructions to the officer in charge (Law Officer) for doing the needful and inform the controlling authority about the action taken. The controlling authority, if agrees with the views of the Legal Remembrancer, shall accord sanction of the action taken. If the controlling authority decides otherwise, the Legal Remembrancer shall withdraw the instructions already issued in this behalf. In cases, where the Legal Remembrancer does not favour for filling of an appeal or application for revision or review of the judgement and the controlling authority still insists for obtaining the verdict of appellate/revisional court as the case may be, the former will invariably act accordingly. Ordinarily, the officer in charge of the case shall not prefer an appeal or application for revision or review of judgement except under express instructions from the Legal Remembrancer or the controlling authority. In a case of urgency, the officer in charge of the case may file an appeal or application for revision or review of the judgement as the case may be and thereafter reference shall be made to the Legal Remembrancer for getting the action approved.

20.5. If the original suit was not instituted or defended through the Legal Remembrancer the report required by the preceeding rule should be submitted to the controlling authority.

Report as to whether appeal should be made.

20.6. If an appeal or an application for revision or for review of judgement be preferred by the opposite party in any suit, the officer receiving notice thereof shall, if the original suit was instituted or defended through the Legal Remembrancer, at once forwards a copy of the notice to the controlling authority as well as to the Legal Remembrancer. The latter shall thereupon take such measures as may be necessary for defending the case in the appellate or other court. It shall not be necessary for the Legal Remembrancer to apply for fresh instruction, except in cases of doubt or difficulty, or unless it appears that for any reason the appeal or application ought not to be opposed, in which case he shall refer to the controlling authority for further instructions. If the original suit was not instituted or defended through the Legal Remembrancer, the notice shall be forwarded to the proper controlling authority, who will decide whether the appeal or application shall be opposed or not, and if it is to be opposed, the person by whom it shall be undertaken.

Appeal by opposite party.

20.7. The provisions of rules 20.1 to 20.5 shall be applicable to appeals, second appeals, applications for revision or review of judgement and the officer in charge of the case will be required to submit his report to the Legal Remembrancer or the controlling authority, as the case may be, at the conclusion of each stage of the suit, appeal, application for revision or review of judgement.

As applicable appeals, etc.

20.8. The procedure laid down in rules 20.1 to 20.6 shall apply mutatis mutandis to all miscellaneous proceedings including arbitration proceedings to which Government is partly.

Miscellaneous Proceedings.

CHAPTER—21

SUIT FOR RECOVERY OF PETTY SUMS DUE TO GOVERNMENT—

Omitted.

CHAPTER—21A
SUIT RELATING TO PUBLIC MATTERS—*Omitted.*

CHAPTER—22

APPEAL TO THE PRIVY COUNCIL—OMITTED BY PUNJAB GOVERNMENT
MEMORANDUM NO. 72-2J-61/1446, DATED THE 18TH JANUARY, 1961 ;
SEE PUNJAB LAW DEPARTMENT MANUAL CORRECTION SLIP No. 113.

CHAPTER—23

EXECUTION OF DECREES

23.1. Whenever it has been determined not to contest further a decision which is either wholly or partly adverse to the Government, the officer concerned shall at once arrange with the Deputy Commissioner for the payment into the Court, whose duty it is to execute the decree, all moneys payable under the decree, care being taken that the decree is fully satisfied within a period of three months computed from the date of decree in term of section 82 of the Civil Procedure Code.

23.2. Where the decree is against a public officer, in respect of an act purporting to have been done by him in his official capacity, it will rest with him to satisfy the same within the time fixed.

Decree against a public officer.

23.3. Immediately on a decree being given in favour of the Government or a public officer, when the suit has been brought or defended at the public expense, the Legal Remembrancer or other officer concerned shall proceed to move the Deputy Commissioner to take steps for the recovery of costs and of the amount, if any, decreed, unless for special reasons (which shall be reported for the orders of the controlling authority) it is deemed undesirable that any such steps should be taken or that they should be taken immediately.

Procedure when decree is in favour of Government

23.4. (a) Deputy Commissioners and other officers concerned are required to take all possible measures to ascertain what property of the judgment debtor exists and available for attachment and sale in execution of decree, and that, where security is taken from the judgment debtor on stay of execution, under Rule 5, Order XLI, First Schedule of the Code of Civil Procedure, the security taken by the Court is substantial and sufficient, and that proper action for immediate execution is taken if the required security is not furnished.

Measures to be taken to trace out property of judgment debtor action as to security.

(b) If an appeal is instituted, and the execution of the decree is stayed by order of the Court, the interval before the decision of the appeal should be made use of in making inquiries as to the property of the judgment debtor.

(c) When the officer concerned is not the Deputy Commissioner or a subordinate of the Deputy Commissioner, he may apply to the Deputy Commissioner, to assist him in prosecuting the necessary inquiries as to the property of the judgment debtor.

Prevention of fraudulent alienations.

23.5. (a) The provisions of Rule 5, Order XLI of the Code of Civil Procedure, are ordinarily sufficient to prevent any fraudulent disposal of property by the judgment debtor during the time gained by an appeal, but the Deputy Commissioner or other officer concerned, in consultation with the Deputy Commissioner should satisfy himself that the security taken by the Court is sufficient, petitioning the Court to be allowed to execute the decree at once if he considers that the security offered is not good or sufficient.

(b) If such application be refused, the Deputy Commissioner, or other officer in consultation as aforesaid, shall endeavour to keep a watch on the property of the debtor, so as to prevent any fraudulent alienation or concealment of it.

23.6. All District Nazirs, Assistant District Nazirs, Legal Assistants attached to D.C.'s office and the Assistants attached to the offices of the Sub Divisional Officers have been appointed "Government Pleaders" for the purpose of filing and prosecuting execution petitions (Notification No. 1940—J—37/18103, 27th April, 1937, Notification No. 3864/

District Nazirs to act as Government pleaders.

501-S-J-41/33300, dated 17th June, 1941 and No. 1301-J55/13876, dated the 20 May, 1955). But should any legal or other difficulties arise, the Legal Remembrancer should be asked to instruct the District Attorney to conduct the execution proceedings.

Cost in suits by
indigent persons.

23.7. (a) The amount of stamp duty and other costs due to the Government in suits by indigent persons is to be recovered by proceedings in execution of decree. Such suits are instituted without payment of court fees and Ruls 10 & 11, order XXXIII, of the Code of Civil Procedure, Provided for the recovery of the amount of the fees which should have been paid if the plaintiff had not been allowed to sue as an indigent person.

(b) Order XXXIII, Rule 14, directs that where an order is made under Rule 10, 11 or 11-A, the Court shall forthwith forward a copy of the decree to the Collector. On receipt of this copy, it is for the Collector to take the necessary action for the recovery of any amount which may be due. Full instructions regarding the method of recovery will be found in the Haryana Stamp Manual, 1970 Part 11-C, Chapter 4.

Responsibility of
Legal Remembrancer
to recover moneys
due to Government.

23.8. The Legal Remembrancer shall be responsible that proper action is taken to recover all moneys due to the Government under decrees and orders of Civil Court in all cases that have been conducted through him and he shall bring to the notice of the controlling authority, for orders, any case in which he considers that the progress made in the recovery of the moneys due to the Government is unsatisfactory.

[23.8A. Power of Legal Remembrancer to write off petty sum not exceeding Rs. 100.—The Legal Remembrancer shall be competent to write off petty sum of cost not exceeding Rs. 100/- per case, in cases where the expenses of effecting recovery thereof including the expenses of correspondence and other file work involved therein, are likely to exceed the amount of cost.]

Recoveries made
outside court to be
certified.

23.9. Any sum due to the Government under a decree may, if the course is feasible, be recovered otherwise than through the agency of the Court; but the Deputy Commissioner is required, under Rule 2, Order XXI, First Schedule of the Code of Civil Procedure, to certify every such recovery to the Court.

Government servants
forbidden to bid at
auctions.

23.10. The practice of deputing Government servants to bid on behalf of the Government at Court auctions, with a view to purchasing the property of judgement debtors by whom money is due to the Government, is, generally speaking, objectionable, as it is likely to involve the Government in much litigation of a doubtful character, and it should never be resorted to except with the special sanction of the controlling authority to be obtained through the Legal Remembrancer.

CHAPTER—24

ARBITRATION

24.1. Cases are not infrequently forwarded to the Controlling authorities etc. in which notices of suit for breach of contract have been given, such contracts containing a clause that in the event of dispute, the matters in dispute shall be submitted for arbitration. Most Government contracts contain this stipulation, and there appears to be general impression prevailing that the mere existence of such a clause in a contract is a bar to a suit in court, and there is some danger that departments concerned, relying on this impression may leave disputes outstanding too long after receipt of notice of suit to allow to resort to arbitration.

24.2. Such a clause is no bar to a suit. Only a valid award, i.e., one granted as the result of proceedings legally conducted and completed prior to the institution of suit before an arbitrator with jurisdiction over the subject matter of the suit, can be pleaded as a bar to such suit; and then only if such award is duly stamped (under Article 12 of the Indian Stamp Act, 1899) and where section 17 (1) (b) of the Indian Registration Act, 1908, applies, provided such award has been registered; and the provisions of a Arbitration Act, 1940, have been complied with.

The existence, however, of such a clause as is mentioned in Rule 24.1 above does ordinarily enable the defendant in the suit lodged in connection with such contract, to supply to the court (under section 34 of the Arbitration Act, 1940) to exercise its discretion to stay the suit and to refer the parties to arbitration, in accordance with the agreement (or "submission");

Provided as follows:—

- (i) that such defendant makes that application before filing written statement or taking any other step in the court proceedings;
- (ii) that such defendant is able to show that he was/is ready and willing to submit to arbitration; and
- (iii) that the person referred to in such agreement as arbitrator has not incapacitated himself.

24.3. It is, therefore, of primary importance that as soon as notice of suit is received, if Government desires to avail itself of the arbitration clause reference should be made, or the other side should be called on to refer, to arbitration. In such cases when proper steps have been taken, if the other side refuses, Government can proceed to an ex- parte arbitration and the award given ex parte will be upheld.

24.4. (a) Hence whenever a dispute arises or suit is threatened, in respect of any grant or contract by Government, the Deputy Commissioner, Executive Engineer, or other officer immediately concerned, should promptly examine the grant or contract in order to ascertain whether it contains any clause whereby the parties have agreed to submit to arbitration. If so, prompt steps should be taken to obtain orders for the preparation of a letter of reference which should ordinarily be laid before the District Attorney concerned before being addressed to the officer referred to in such clause as arbitrator. The latter has to avoid expressing any opinion on the dispute save as arbitrator after the receipt by him of formal letter of reference to arbitration, and after hearing the opposite party and then only in the form of an award. The ordinary controlling authority will be the authority provided in

Chapter 15, unless such authority is mentioned either personally or ex officio as an arbitrator in the contract or grant concerning which the dispute has arisen in which case the controlling authority will be government in the department concerned. The report and statement or reasons referred to in Rule 16.4 (2) and the data necessary in order to draft the letter of reference to arbitration should be submitted promptly to the controlling authority so ascertained.

(b) In those cases where a Financial Commissioner or Chief Engineer is referred to as arbitrator, the Commissioner or Superintending Engineer, as the case may be, will, if he considers it necessary to refer to Government, take steps to see that the file with the Deputy Commissioner's or Executive Engineer's with noting or recommendation, if approved, is sent either to Government, with special reference to the fact that the Head of the Department is mentioned as arbitrator, and is thus incapacitated from dealing with the file save in that capacity and after complying with Rule 24.9.

(c) On receipt of the report from the local officers, it will be for the controlling authority ascertained as above, to decide whether an attempt should be made to settle the case or whether arbitration should be invoked or accepted. In the latter case the controlling authority will decide and state whether Government will be represented before the arbitrator by the local officer (Deputy Commissioner, Executive Engineer, etc.) or whether in his opinion the case is of sufficient importance or complexity to warrant the appointment of counsel for the drafting of the letter of reference and representation of Government before the arbitrator. As the letter of reference corresponds to the plaint in a suit it is not desirable for one person to draft the letter of reference and another to be brief for the proceedings.

(d) When the appropriate controlling authority has decided that settlement of the dispute otherwise than by arbitration is impracticable, and that it is of sufficient importance or complexity, he will submit the case to the Legal Remembrancer with sufficient data to enable that officer to appoint counsel for the drafting of Government's letter or reference to the arbitrator and to appear before the arbitrator on Government's behalf.

24.5 If the opposit party has already issued such letter of reference consideration should be given to the question whether that letter of reference sufficiently in corporates all points in disput. If not, steps may be taken for an additional letter of reference completing or amplifying, the opponent's letter of reference to be drafted, and issued to the arbitrator.

24.6 There is no form prescribed for letters of reference to arbitration. It may be stated broadly (and merely for general guidance) that the contents should be arranged as far as practicable in chronological order and that they will normally be as follows:—

- (a) date and general effect of the grant or contract out of which the dispute has arisen;
- (b) a verbatim copy or extract of the clause which Government alleges the opposit party has breached or failed to fulfil or on which the dispute has more particularly arisen;
- (c) statement of facts and dates arranged chronologically on the strength of which Government alleges breach of non fulfilment;
- (d) copy or verbatim extract of any clause, or an indication of the law or legal principle, under which Government may have exercised, or may claim any, specific remedy;

- (e) copy or summary of the clause of the grant or contract constituting the "submission", i. e. the agreement between the parties to refer disputes to the officer (to whom this letter of reference is addressed) as sole arbitrator; and above all

- (f) a statement of the points or issues to be decided by the arbitrator.

24.7. (a) If, notwithstanding the agreement to submit to arbitration, suit is actually lodged against Government, then the officer submitting the report and opinion, etc., in compliance with rule 16.4 (2) and Chapter 16 et seq should bring to the immediate notice of the Legal Remembrancer the agreement to refer to arbitration with a view to an application for stay of suit under section 34 of the Arbitration Act, 1940 being made.

(b) If that event, unless and until the Court stays the suit, the reference to arbitration cannot be issued. If it has already issued, the arbitrator must postpone all further proceedings relating to the subject matter of that suit until the application for stay of suit has been accepted by the Court.

24.8. It should be remembered that reference to arbitration is intended to be an expeditious, inexpensive and decisive method of settling a dispute relating to a contract or grant without resort to the dilatoriness, intricacies and complications of civil litigation. The officer concerned when moved as arbitrator should, keeping these principles in view, do justice to the claims of both sides within the limitations imposed by the clause which empowers him to act, and section 14, and clause 8 of the First Schedule, of the Arbitration Act, 1940.

24.9. The points which the officer referred to as arbitrator should bear in mind in that capacity, are as follows :—

- (a) on receipt of notice to arbitrate, he should see that the letter or letters of reference clearly state the points on which he is to arbitrate, and where Government is the party moving for arbitration that such letter of reference is signed by an officer competent to bind Government. He cannot, of course, refer the point for arbitration to himself. If satisfied that the points are clear and within his jurisdiction as arbitrator, he should then issue to both parties concerned notice of the date, place and time, fixed for the appearance of the parties, or their representatives, and for the production of witnesses and documentary evidence and restating precisely the points referred for arbitration, and that those matters will be finally determined by him as arbitrator, and that if either party fails to attend, the matter may be decided ex- parte.

In such notice it should be explained that if either party requires the other to produce any documents in the possession or power of the other he must inform the arbitrator in good time (not less than seven days) before the date fixed as above.

- (b) he should, therefore, before arriving at or, in any case, before recording, any decision, give each side reasonable opportunity to adduce evidence, oral or documentary, which they may wish to bring (in the presence of the other) and he should listen (within reason) to any arguments which they may wish to present at the conclusion of the evidence. These proceedings should be conducted in the presence of both parties to the dispute, or their legal representatives. If, however, either of the parties is absent and not represented, at hearing, of which he has had due notice the arbitrator may proceed ex- parte after recording a formal order to that effect. The arbitrator should keep a note

of the proceedings, recording, the presence of the parties before him and the fact of his having conformed to the procedure herein suggested. He should also make a brief memorandum of the main points in the statement of each witness. Subject to these observations, the proceedings may be conducted without any special formalities; but the arbitrator must confine to himself matters referred to him for arbitration, and the taxing or settlement of costs and fees and charges payable in respect of the arbitration and award.

- (c) the award should be decisive and vagueness or indefiniteness which might render the award incapable of execution should be avoided.
- (d) the law does not expressly require reasons in support of the award to be stated; but it should be based on principles of justice, equity and good conscience. The arbitrator should, as far as possible, abstain from deciding matters outside the scope of the reference.
- (e) if at any time prior to signing the award the arbitrator receives notice that a suit has been lodged relating to matters referred to arbitration, the arbitrator should postpone all further proceeding unless or until the suit is stayed and notify both parties that he has done so.
- (f) if under Article 12 of the Stamp Act the decision of the arbitrator when recorded will require stamp, he should inform the parties of the amount (referring the question if in doubt to the local Collector) and leave the award unsigned until one or other party provides the amount payable. It is for the party claiming under the award to ascertain whether it requires registration (*vide* Section 17 (1) (b) of the Indian Registration Act, 1908.)
- (g) It is necessary for the award to be announced to the parties or their representatives. The most convenient course is for notice to be issued to each party of the date, time and place fixed for its completion and announcement.

24.10. In all cases of arbitration in which the amount of the award exceed Rs. 2,000 a copy of the award should be forwarded to the Haryana Government for information. Intimation regarding awards should in all cases be sent to the Accountant General, Haryana for audit purposes.

CHAPTER—25

FEES IN CIVIL CASES

A proposal for increase in the fees about certain types of cases has already been sent which is under consideration of the Government. The proposal as approved by the Government will be incorporated in this Chapter.

PART IV—CONVEYANCING DEPARTMENT

CHAPTER—25A

SCRUTINY OF TITLE DEEDS

Instructions to officers forwarding title deeds for scrutiny to the Legal Remembrancer or Law Officer in connection with applications for loans.

25.A.1. All references involving scrutiny of title deeds should be drawn up in accordance with the following instructions and sent to the Law Officer of the district in which the property offered by the applicant as security is situated. References not so drawn up are liable to be returned for compliance with these instructions:

Provided that the Government may refer any case of importance to the Legal Remembrancer for advice or the Legal Remembrancer may call for and examine any case referred to a Law Officer and give his advice therein.

Explanation.— In this Chapter the expression Law Officer means:—

- (i) the District Attorney of the District and where more than one District Attorney is posted in a district, the Senior District Attorney,
- (ii) in the absence of the District Attorney, the Deputy District Attorney of the District and where more than one Deputy District Attorney is posted in a district, the senior Deputy District Attorney,
- (iii) in the absence of the District Attorney and the Deputy District Attorney, the Assistant District Attorney of the District and where more than one Assistant District Attorney is posted in a District, the senior Assistant District Attorney.

25.A.2. Requests for scrutiny of title deeds are generally made in connection with an application for some form of loan. Information with regard to the applicant, the amount of the loan and the sureties should be given in Form attached, particular attention being paid to the information required when the applicant is some kind of association.

25.A.3. When such applications are made, different properties are sometimes offered as security by the applicant himself or by his sureties. For each item of property, a separate Statement should be drawn up in Form B, with an index of title deeds attached.

25.A.4. The index should be in strict chronological order, starting with the earliest deed and ending with the latest.

25.A.5. The title deeds relating to such item of property should be arranged in the order shown in the index, and should be placed in a separate envelop, the statement in Form B being attached to the copy.

25.A.6. For each title deed, there should again be a separate abstract in Form C attached. It may be observed that this requirement is made in order to avoid the necessity of having vernacular documents translated into English and is made in the interest of the referring department.

25.A.7. All title deeds should be placed flat in large envelopes of foolscap size. The Legal Remembrancer or the Law Officer as the case may be, is unable to accept responsibility for the custody of title deeds which are forwarded loose or screwed up in small envelopes, and documents so received are liable to be returned without scrutiny.

25.A.8. The responsibility for all entries made in the prescribed statement rests with the referring department, and the Legal Remembrancer or the Law Officer, as the case may be, cannot be responsible for mistakes which arise from incorrect entries therein.

25.A.9. The details to be entered in Form C etc. (referred to above) are those taken from the old title deeds handed in by the applicant or his surety. The details to be entered, on the other hand, in the draft mortgage deed and schedule and plan thereto are the actual (present) description and boundaries of the properties as now offered to Government as security. Hence, it is for the referring department before referring the case to the Legal Remembrancer or the Law Officer, as the case may be, either itself or through a reliable draftsman engaged for the preparation of the plan, to ascertain the actual area and the present description (including the present Revenue (Khasra) or Municipal number—if any) of each property offered as security; and also the names of the present holders of property adjoining and bounding each of the properties offered as security; and to insert those details in the schedule to the draft mortgage deed or in the plan to be annexed thereto, respectively, and thereupon to check the identity of property as entered in Form C, etc. with that described in the schedule and plan. For convenience in checking the details, boundaries should invariably be stated clockwise in order, i.e. North, East, South and West.

25.A.10. The intention in short, is that Government should before granting the loan, know and have on record the present description and details of the property at the date of granting the loan and be in a position to prove its identity with property proved by old title deeds, etc., to be owned absolutely by the applicant or his surety. The ascertainment of such details should not be left till default occurs necessitating the institution of proceedings. Hence also, the necessity for obtaining, checking and retaining previous title deeds, if any, and all other documentary evidence of the absolute and unencumbered title of the applicant or his surety.

25.A.11. As regards ascertainment that there are no prior mortgages or charges, it should be noted that the Sub-Registrar's Register of mortgages and charges contains no record of mortgages created by deposit of title deeds. Hence, if the applicant or his surety does not produce original title deeds, or fails to give a satisfactory explanation for his omission to do so, his application for loan on such security should be refused.

25.A.12. As regards the mortgage deed proposed for cases under the State Aid to Industries Act, forms of mortgage are prescribed (with or without surety as the case may be). The Director of Industries, and other departments referring similar transactions for scrutiny, should use the prescribed printed form for the purposes of such reference indicating thereon any modifications arising in the particular case, or, by attaching typewritten slips, any applications proposed.

(Punjab Govt. u.o. No. 1758-J-39, dated 11th March, 1939).

FORM A

Statement to accompany any reference for scrutiny of title deeds in connection with a loan.

1. Name, address and parentage or description of :—
 - (a) the applicant;
 - (b) sureties, if any.
2. If the applicant or surety is a firm, state—
 - (a) the names of all the partners of the firm as furnished by the applicant; and
 - (b) Whether all those persons are shown as partners in the latest returns with the Registrar of Firms at Chandigarh.
3. If the applicant or surety is a company or registered society, state under what Act such applicant or surety is registered and where and on what date.
4. If the applicant or surety is a firm, society or company, state whether the partnership deed or bye-laws or articles of association provide by whom mortgage deeds may be signed; if so, attach extract.
5. Name of person or persons by whom it is proposed that the deed should be signed;—
 - (a) for applicant;
 - (b) for surety;and state whether the executant falls within the category last above referred to.
6. If not, or if the deed is to be signed by an agent, or otherwise than by all the partners in the case of a firm, state what powers of attorney have been obtained and are added hereto and to what effect.
7. If the applicant or surety is a company or registered society, state further whether there is any resolution of the Board or governing body approving the mortgage. If so, this should be attached.
8. What is the amount of the loan proposed and what steps have been taken to ascertain that it does not exceed the prescribed proportion of the value of the security.

FORM B

Statement to be filled in with respect to each separate item of property which it is proposed to mortgage.

1. State from inspection thereof or enquiries on the spot:—

- (a) the place where the property is situate; viz, District, Town or Tehsil
- (b) by what name, description, or other municipal or other number, etc. the property is known; what is its nature; and
- (c) by what landmarks or streets or other properties the property or size is at the present date bounded; viz, on the—

North :

East :

South :

West :

2. Have all the details referred to above been checked and reconciled with applicant's or surety's title deed

Have those title deeds been produced in original; and

Whether certified copies of relevant entries in Revenue or Municipal Records have been produced. If so, enumerate and attach those documents.

3. State whether comparison of the title deeds and/or copies with enquiries made on the spot disclose discrepancies in the boundaries or other details above referred to.

4. If there is any such discrepancy, state whether the referring department is nevertheless satisfied that the property now offered is the same as that referred to in the title deeds or Revenue or Municipal Records ~~as~~ owned absolutely by the applicant or surety.

5. State who has been in possession for the last twelve years (if the property has been let out to tenants during the last twelve years, any lease deed or receipts for rent should be attached.)

6. If the applicant does not claim the property by virtue of any title deed in his favour, state exactly on what ground he claims ownership and what evidence there is to support his claim.

7. State whether local enquiry has been made with regard to the existence of any encumbrance or dispute over title and if so, with what result.

8. Attach certificate of non-encumbrance as the result of search in the local Sub Registrar's Register of mortgages and charges, and state what encumbrances, if any, are thereby disclosed.

9. State the alleged value of the property above referred to and what steps have been taken to ascertain that it is of the value alleged.

10. State whether buildings are insured against fire, give details of the policy and amount thereof and state whether owner is prepared to endorse the same over to Government, and to continue to pay premiums and comply with its terms during the subsistence of the mortgage (if accepted).

FORM C

Schedule No. _____ Property of _____ Mortgagor/Surety _____

The following form is to be completed and filled in respect of each of the title deeds lodged by the mortgagor or by the Surety as evidence of ownership :—

1	2	3	4	5
Nature of Deed and amount shown as Price, Rent or Debt in respect of which the deed was executed	(a) Date of Execution (b) Date of Registration (c) Stamped at Rs.—	Names of (a) Transferor Exccutant (b) Transferee or person in whose favour	Boundaries of Property as stated in the Deed. North East South West	Remarks

Punjab Govt. U. O. No. 8184-J-40, dated 9th November, 1940

CHAPTER—26

QUARTERLY REPORT ON LEGAL AFFAIRS

Deleted by Punjab Law Department Manual Correction slip No. 102.

CHAPTER—27

DISTRICT ANNUAL STATEMENTS

ALL DISTRICT ANNUAL STATEMENTS Omitted.

CHAPTER—28

ANNUAL REPORT ON LEGAL AFFAIRS

28.1. The Legal Remembrancer will submit an annual report reviewing the entire conduct of the legal affairs of the Government for the year ending on the 31st December, to the Secretary to the Government of Haryana.

The Advocate General is required to submit for incorporation in the annual report on the 15th February each year an annual report with appropriate headings with regard to the extent and progress of work connected with "Suits relating to Public Matter" falling under sections 91, 92 and 93 of the Civil Procedure Code. He will himself decide the most convenient form for this report, which should contain *inter alia* figures showing the number of applications made to him during the year and the number of pending cases, together with details regarding the more important case, decided and pending.

28.2. The portion of the report dealing with civil litigation will be submitted, in the first instance, for such remarks as he may think fit to make, to the Financial Commissioner on or before the first day of March in each year.

28.3. The entire report will be submitted to the Government on or before the first day of April in each year, together with the remarks (if any) made by the Financial Commissioner on the portion thereof relating to civil litigation.

28.4. The report, together with annual statements reviewed in it, will be printed and circulated to—

- (1) The Financial Commissioner;
- (2) Commissioner and Deputy Commissioners;
- (3) Heads of Departments;
- (4) Other local Governments;

and other persons mentioned in the list for the time being prescribed in that behalf.

28.5. The report will contain a brief review of the work arranged under the following heads, namely:—

- I. Staff of Law Officers and changes therein.
- II. References for opinion and other references.
- III. Civil business.
- IV. Criminal business.

28.6. The Report on Civil Litigation should review all suits and proceedings brought against or affecting the Government or a public officer, as well as such as are conducted by Law Officers, themselves, excluding Revenue Court's suits and decrees.

28.7. The report on Criminal Business should review the whole of the work done by the Law Officers as well as such as is disposed of by Government Pleaders (Public Prosecutors) and special counsel (if any) under the supervision of the Legal Remembrancer.

28.8. The following annual statements will accompany the annual report of the Legal Remembrancer, namely:—

CIVIL

I. Statement showing the nature of litigation to which Government was a party in original suits during the year.

II. Statement showing the nature of litigation to which Government was a party in appeals during the year.

CRIMINAL

III. Statement showing the number of persons dealt with in the High Court in its criminal appellate and revisional jurisdiction during the year.

IV. Abstract statement showing criminal cases conducted under the control of the Law Department in Courts subordinate to the High Court (including original cases, appeals, applications for revision and miscellaneous applications) during the year.

CHAPTER—29

RETURNS

Omitted.

STATEMENT NO. 1

Statement showing the nature of litigation to which government was or party during the year
(Prescribed by the Government of India resolution No. 258-69 dated 27th February, 1901)

PART I—ORIGINAL SUITS

GOVERNMENT (APPELLANT)										GOVERNMENT (RESPONDENT)										
CLASSES OF COURTS																				
	PENDING FROM PREVIOUS YEAR																			
	Received during the year																			
	Total for disposal																			
	Decided in favour of Government																			
	Decided against Government																			
	Total decided																			
	Pending																			
	Percentage of appeals decided in favour of Government																			
	Percentage of appeals decided against Government																			
	Pending from previous year																			
	Received during the year																			
	Total for disposal																			
	Decided in favour of Government																			
	Decided against Government																			
	Total decided																			
	Pending																			
	Percentage of appeals decided in favour of Government																			
	percentage of appeals decided against Government																			
	REMARKS																			
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	

STATEMENT NO. II

Statement showing the nature of litigation to which Government was a party during the year

(Prescribed by the Government of India resolution No. 258—69, Dated 27th February, 1901)

PART II—APPEALS

GOVERNMENT (APPELLANT)										GOVERNMENT (RESPONDENT)									
PENDING FROM PREVIOUS YEAR																			
Received during the year																			
Total for disposal																			
Decided in favour of Government																			
Decided against Government																			
Total decided																			
Pending																			
Percentage of appeals decided in favour of Government																			
Percentage of appeals decided against Government																			
Pending from previous year																			
Received during the year																			
Total for disposal																			
Decided in favour of Government																			
Decided against Government																			
Total decided																			
Pending																			
Percentage of appeals decided in favour of Government																			
percentage of appeals decided against Government																			
REMARKS																			
2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	

STATEMENT NO. III

STATEMENT NO. III
Statement showing the number of persons dealt with in cases conducted by Law Officers in the High Court in its Criminal Appellate and Revisional Jurisdiction during the calendar year.

[illegible]

STATEMENT NO. IV

Abstract statement showing Criminal cases conducted under the control of the Law Department courts subordinate to the High Court (including Original Case, appeals Applications for Revision and miscellaneous applications) during the year.

CLASSES OF CASES	Name of Courts		DISPOSED OF				BY WHOM CONDUCTED			REMARKS
			In favour of State	Against State	Total	Pending at the close of the year	District Attorneys	Deputy District Attorneys	Assistant District Attorneys	
CRIMINAL CASES	Sessions Courts & Additional Sessions Courts									
	Chief Judicial Magistrates and Judicial Magistrate's Courts									
	Other Courts									
APPEALS	Sessions Courts or Additional Sessions Courts									
	Chief Judicial Magistrate or Judicial Magistrates Courts									
MISCELLANEOUS APPLICATIONS	Sessions Courts									
	District Courts									
	Total									