

CHAPTER 21

Assistance to Government Servants in Criminal / Civil Cases

Control of Government Litigation in Criminal Courts

The Government of Rajasthan has framed Rules for providing assistance to the Government servants in dealing with criminal and Civil Cases that may be filed by them or against. These Rules are compiled in the Rajasthan Law and Legal Affairs Department Manual, 1999. Some of these rules are which are of direct interest to the Forest Officer are given below verbatim for ready reference. These are self-speaking.

90. **Scope of the Rules:-** These rules provide for assistance to be given to Government Servants in instituting criminal cases for defamation and in defending criminal cases instituted against them in relation to acts done by them in their official capacity.
91. **Assistance in Prosecutions for defamation:-** When Government, on an application by a Government servant, considers that prosecution under Section 500 of the Indian Penal Code, 1860 (XIV of 1860) for a defamation uttered or published against him in his capacity as a public servant is desirable it will assist him and engage the Public Prosecutors to appear. The application should be made through the District Magistrate or the Head of the Department.
92. **Reporting Prosecution-**
 - (1) When a prosecution is instituted against a Government Servant for anything done by him in his official capacity he shall at once inform his superior officer and the Head of the Department and report to them as soon as possible thereafter the facts and circumstances of the case.
 - (2) The Head of the Department shall then make or have such enquiries made as may be necessary and forward the report to Government with his comments and recommendations for orders.

93. **Defence of Government Servants-**

- (1) When a prosecution is instituted against a Government Servant on account of an act done by him in his official capacity, Government may defray the expenses of his defence, provided his act was justified by Law or provided that he believed himself after due care and attention to be justified by Law in doing it. A pre-requisite for Government's assistance is that the Act of the Government Servant must be either-
 - (i) in strict accordance with law, or
 - (ii) else be covered by any of the recognized exceptions enumerated in Sections 76 to 79 of the Indian Penal Code, 1860 (XLV of 1860).
- (2) When Government declines to defend a Government Servant, he may, on his own responsibility and at his own expenses, take such measures as he considers necessary, provided that they will not interfere with the performances of the officials duties. In such a case if the final decision is in favour of the Government Servant, Government will ordinarily reimburse such expenses as it may consider to be reasonable.
- (3) When a prosecution is institution against a Government Servant who is not removable from his office save by or with the sanction of Government or some higher authority as required by Section 197 of the Code of Criminal Procedure, 1973 (II of 1974) and such sanction has not been obtained, the Court should be requested to reject the complaint for want of the sanction.

94. **Engagement of Counsel:-** When the defence of a Government Servant is sanctioned by the Government, the services of the Public Prosecutor may be engaged. Where the services of the Public Prosecutor are not engaged, a Private Legal Practitioner may be engaged. The fee payable to the Private Legal Practitioner for the whole, case shall be such as prescribed for the Private Legal Practitioners (Schedule of fee at Appendix-II). The said fee and any incidental charges, such as Court Fee and diet money of witnesses, shall be borne by Government. In petty cases, the appearances of the Government Servant himself should ordinarily suffice.

95. **Procedure after decision of the case:-**

- (1) If the Case, the defence of which was sanctioned by Government, is decided in favour of the Government Servant and if any compensation, costs or damages are awarded to him, the amount of expenses paid by Government shall be refunded by him up to the limit of such compensation, costs or damages.

- (2) If the case is decided against the Government Servant, the question whether an appeal should be filed at the expenses of Government or whether the damages awarded to the complainant or the fine imposed should be paid by the Government shall be decided by Government on the application of the Government Servant concerned together with the recommendation of his Superior Officer. The application alongwith the recommendations shall be submitted to Government through the Head of the Department. The Recommending Officer and Head of Department both should give their own considered opinion about it.
96. **Duty of counsel when proceedings are likely to prolong:-** Whenever it appears to the Public Prosecutor or the private legal practitioner appearing on behalf of the Government Servant that the proceeding in the Court are likely to be prolonged and may interfere with the discharge of the Government Servant's public duties or are likely to harass him, the Public Prosecutor or the private legal practitioner should request the Court to expedite the proceeding and to dispense with the attendance of the Government Servant concerned.

Prosecution of Criminal Cases instituted at the instance of the Courts, whether civil, criminal or revenue.

97. **Scope of the Chapter:-** These rules relate to the prosecution of cases arising out of complaints by Courts, whether Civil, Criminal or revenue, in respect of offences connected with the administration of justice e.g. perjury, resistance to attachment, other resistance to lawful authority, escape from arrest, disobedience or a Court's order etc.
98. **Intimation to the District Magistrate:-** On a complaint made by a Court the Assistant Public Prosecutor or the Government Law Officer concerned shall conduct the case on behalf of the complainant Court. On receiving an intimation from the complainant Court that the Assistant Public Prosecutor or the Government Law Officer is not available, the District Magistrate shall engage a Private Legal Practitioner for that case with the prior approval of the Law and Legal Affairs Department.
99. **Fee of the Counsel in such cases:-** The fee payable to a private legal practitioner engaged under Rule 98 shall be such as prescribed in the Schedule of Fee at Appendix-II of this Manual.
100. **Report of Result in cases:-** The Assistant Public Prosecutor, Government Law Officer or Private Legal Practitioner conducting such case shall report the result of the case to the District Magistrate and the complainant Court, along with a certified copy of the judgement or order. He shall also make such recommendation as he may consider just and proper.

Defence of Impecunious Accused

101. **Defence Counsel in Session Court:-** Where the Accused in a trial before the Court of Session is not represented by a Pleader and where it appears that the accused has not sufficient means to engage one, the Court shall assign a Pleader for his defence at the expenses of the State.
102. **Facilities to Defence Pleader:-** (1) Counsel in such cases should be appointed in time to enable him to study necessary documents which should be supplied free of cost. These documents in the Courts of Session will ordinarily be:-
- (a) Copies of the documents and statements filed with the report under Section 173 of the Code and of the statement recorded at the trial;
 - (b) Copies of other documents which are considered to be material and relevant by the Court.
- (2) The Pleader will be entitled to inspect record of the case free of cost in accordance with the rules relating to Inspection of Records.
103. **Applicability to other Criminal Courts on the issue of notification by the State Government under sub-section (3) of Section 304 of the Code of Criminal Procedure, 1973 (II of 1974).**
104. **Defence Counsel in High Court:-** If the High Court decides that the Accused is unable on account of poverty to engage Counsel for his defence, the High Court shall make arrangements to employ counsel at Government expense:
- Provided that the High Court may employ counsel if it thinks fit, in every case when such accused is unrepresented, irrespective of the consideration relating to the means of the accused to engage Counsel.
105. **Fee of Counsel:-** The fee payable to counsel appointed by the Court under this chapter shall be as prescribed by Government from time to time. (For existing fee structure see Appendix-II)

Control of Government Litigation in Civil Courts Suits and Other Proceedings Against Government Proceedings Prior to Institution of Suits

106. **Procedure after receipt of notice-** These rules relate to the stages subsequent to the receipt of notice mentioned in Rule 107 and onwards of this chapter.
107. **Procedure on receipt of notice by Public Officer-**
- (a) Any Public Officer of the Government who receives notice under Section

80 of the Code of Civil Procedure (V of 1908) shall at once inform his superior officer within ten days of the receipt of notice and shall without any delay prepare a detailed report of the facts which have led to the notice and of the line of defence which he would propose in the event of a suit being filed. Such superior officer if not Head of the Department himself may submit the case to the Head of his Department within next ten days. The Head of Department shall thereafter, refer within ten days, the case to the Secretary to the Government in the Administrative Department concerned.

- (b) When the notice is received by the Collector, he shall transmit it to the Secretary to the Government in the concerned Department within ten days from the date of receipt of notice.
- (c) When the notice is received by the Secretary to the Government in the concerned Administrative Department, he shall endorse it to the officer concerned (The officer entrusted with the examination of the case) within ten days of the receipt of notice, and such officer entrusted with the examination of the case shall prepare within ten days, a detailed report of the facts of the case which led to the notice and the line of defence in the event of a suit being filed and submit the same to the concerned authorities in the Department in accordance with the procedure laid down by standing orders issued by the Minister Incharge in pursuance to the rules of Business and after obtaining administrative approval at appropriate level send the case to the High Power Standing Committee, appointed under Rule 113, within next ten days.

Explanation- For the purposes of this rule and other rules in this chapter, the officer entrusted with the examination of the case means the executive officer who is primarily concerned with the case and is well conversant with the facts of the case:

Provided that the State Government may, having regard to the character of the suit as disclosed by the notice, appoint the Head or any other officer of the Department concerned as an officer entrusted with the examination of the case.

108. **Procedure when notice relates to suit against Central Government-**

- (1) When a notice is addressed to a Collector or Secretary to the Government making a claim against any Department or Officer of the Central Government, the Officer receiving it shall inform the party concern that the notice is not in accordance with the provisions of Section 80 of the Code of Civil Procedure, 1908 (V of 1908) and shall intimate the action taken to the Law and Legal Affairs Department.

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

109. Notice to be endorsed-

- (1) Some responsible officer in the concerned office should be deputed by the Secretaries to the Government, Collectors or Head of the Departments to receive notices under Section 80 CPC.
- (2) Immediately on receipt of a notice of a claim in which Government is primarily concerned, the Head of the Department, Collector or the Secretary to the Government in the concerned Administrative Department, as the case may be, on whom it is served should endorse there on the date and manner of its delivery, and shall take further steps as mentioned in Rules 107 & 108.

110. Duties of the Officer entrusted with the examination of notice.-

- (1) On receiving the notice, the Officer entrusted with the examination of the notice under Rule 107 shall forthwith make a careful enquiry into the case and within ten days of the receipt thereof, submit to the Head of the Department or Secretary to the Government, as the case may be, in accordance with departmental procedure, a detailed report containing-
- (a) a clear chronological statement of facts and circumstances of the case, in narrative form, with reference to the documentary evidence on both sides and indications of the oral evidence on either side;
 - (b) a separate statement answering serially all points raised in the notice;
 - (c) copies of all documents relevant to the case.
- (2) In a case in which the facts are complicated and of a technical character, the officer entrusted with the examination of the case should ascertain from the claimant whether if Government agrees, he himself will agree to have the dispute referred to arbitration in accordance with the Arbitration & Conciliation Act, 1996 (26 of 1996). The provisions of that Act should be explained and the advantage of its cheapness and speedy decision of

arbitration proceedings should be pointed out to the claimant. If he agrees, the proposal in detail should be submitted to the, Head of the Department or the Secretary to the Government, as the case may be.

- (3) The Head of the Department shall submit that proposal of arbitration as contemplated under sub-rule (2) to the Secretary to the Government in the Administrative Department.
- (4) A proposal of arbitration received under sub-rule (3) shall be examined in the Administrative Department and the Secretary to the Government in the concerned department shall ensure that such proposals are placed before the High Power Committee within ten days from the date of receipt of proposal of arbitration in that department.
- (5) The High Power Committee shall consider the proposal within ten days from the date of receipt of proposal of arbitration and convey its recommendation.
- (6) The Secretary to the Government in the Administrative Department shall ensure that necessary action on the recommendation of the High Power Committee is taken in the department at appropriate level within 10 days from the date of receipt of minutes of the High Power Committee.

111. Papers to be filed in certain circumstances- If, on a perusal of the report of the officer entrusted with the examination of the case, or the Head of the Department considers that the notices is frivolous or that the claim made by the notice-giver is on the face of its untenable, he may take no further action on it and send the papers to the Secretary to the Government in the concerned Administrative Department along with aforesaid comments. The Secretary to the Government in the Administrative Department shall place the case before the High Power Committee and if the High Power Committee endorses the views of the Administrative Department that the notice may be ignored and filed, it may do so and give an intimation accordingly to the notice-giver.

112. Procedure for compromising claims below rupees twenty five thousand- Notwithstanding anything to the contrary contained in this chapter, where the value of them claim is below rupees twenty five thousand, action will be taken as follows:-

- (a) If on the perusal of the report of the Officer entrusted with the examination of the case, the Head of the Department or Secretary to the Government considers the claim to be genuine in whole or in part, he shall forward all the connected papers to the Government Pleaders for his opinion on the merits of the claim and also as to whether the claim should be compromised.

- (b) If, on considering the opinion of the Government Pleader, the Head of the Department or the Secretary to the Government in the concerned Department is satisfied that the claim should be compromised, he shall either himself or through the officer sub-ordinate to him open negotiations with the notice giver. But it should be borne in mind that negotiations should as far as possible, be carried on verbally and without prejudice to the pleadings of Government in the event of suit being filed and on the distinct understanding that any arrangement agreed upon will be subject to the sanction of the appropriate authority.
- (c) If the notice-giver is willing to settle his claim amicably on the terms which appear to the Head of the Department to be reasonable, the Head of the Department shall forthwith send all the connected papers to the Secretary to the Government in the Administrative Department:

NOTE:- All action under this rule shall be completed by the Head of the Department or the Secretary to the Government within one month from the date of the receipt of notice.

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

113. Constitution of High Power Committee-

- (1) The State Government shall constitute a High Power Standing Committee, consisting of one representative each of the Finance Department and Law Department and a representative of concerned department to be nominated for the purpose, which shall examine the matters, pertaining to notice under Section 80 Civil Procedure Code, referred to it, within ten days, and in cases where the aforesaid committee reach at a conclusion to settle the case amicably with the party or if necessary after due deliberations within next fifteen days with the claimant it is considered fit by the aforesaid Committee that in case the concerned claimant agrees to refer the dispute to arbitration, the dispute shall be referred to arbitration in accordance with the provision of the Arbitration and Conciliation Act, 1996 (26 of 1996) and the Secretary to the Government in the Administrative Department concerned shall refer the matter for arbitration after seeking administrative approval at appropriate level.
- (2) In case the committee is of the opinion that matter may be settled

amicably outside the Court, the Secretary to the Government concerned shall settle the matter with the claimant and if the financial limits involved are outside his financial powers he shall do so after seeking approval of the appropriate authorities as per financial rules in force and the rules of business.

- (3) Whenever the matter is settled under sub-rule (2) of this rule, the Department concerned shall conclude the terms of settlement and reduce the same into writing and act accordingly.
- (4) In case the matter is to be contested, a suitable reply be sent to the notice given by the Secretary to the Government or any other Officer competent to do so under the rules of business, well before expiry of the notice period.
- (5) Whenever the High Power Committee constituted by the State Government under sub-rule (1) of this rule is of the opinion that part of this amount claimed by the claimant is genuine, efforts be made to settle the matter out of the Court upto that extent.
- (6) Even when the matter is before the Court, and opportunity arises that the matter can be settled by compromise, the opportunity may be availed after processing the matter in the High Power Committee appointed under Rule 113 and if the Committee is of the view that the matter may be settled accordingly with due authorization from the State Government in the Administrative Department concerned.

114. Action in the Administrative Department-

- (1) The case received from Collector or Head of the Department alongwith a detailed report and all connected papers shall be examined and scrutinized by the Administrative Department within ten days and the Secretary to the Government in the concerned department shall ensure that within one month from the date of receipt of notice the case is placed before the High Power Committee.
- (2) The Secretary to the Government in the concerned Department shall, on the receipt of the recommendation of the High Power Committee to the effect that the case should be defended or where the question of compromise has not been considered whether the claim should be compromised, or where there is a proposal for arbitration, whether the proposal should be accepted, shall proceed further as per recommendation of the High Power Committee.

- (3) The Secretary to the Government in the concerned department shall before acting on any course suggested by the High Power Committee obtain the administrative approval at appropriate level and then take action accordingly.
- (4) The claim, the valuation of which is below rupees twenty five thousand need not be referred to the High Power Standing Committee.

115. Procedure where the recommendation is for a compromise- Where the recommendation of High Power Committee under Rule 114 suggest the Collector, Head of the Department or the Secretary to the Government to compromise the claim of a notice-giver, the Collector, Head of the Department or the Secretary to the Government shall either himself or through an officer subordinate to him open negotiations for compromise with the notice-giver. But it should be borne in mind that negotiations should, as far as possible, be carried on verbally and without prejudice to the pleadings of Government in the event of a suit being filed and on the distinct understanding that any arrangement agreed upon will be subject to the sanction of Government.

Proceedings subsequent to the Institution of Suits

116. Previous notice of suit against Government-

- (1) Section 80(1) of the Code of Civil Procedure, 1908 (V of 1908) provides that no suit shall be instituted against Government, or against a Public Officer in respect of any act purporting to be done by such Public Officer in his Official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of:-
 - (a) In the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government;
 - (b) In the case of suit against the Central Government, where it relates to a railway, the General Manager of that Railway;
 - (c) In the case of a suit against any other State Government, a Secretary to that Government or the Collector of the District and in the case of a suit against a Public Officer, delivered to him or left at his office stating the cause of action the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.
- (2) However, sub-section (2) of Section 80 of the Code of Civil Procedure provides that a suit to obtain an 'Urgent' or 'Immediate' relief against the Government or any Public Officer in respect of any act purporting to be

done by such Public Officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice, but the Court shall not grant relief in the suit whether interim or otherwise, without giving to the Government or public Officer, as the case may be a reasonable opportunity of showing cause in respect of the relief prayed for in the suit.

117. Action when suit is filed under Section 80(2) of Code of Civil Procedure-

When a suit is brought against Government and a Public Officer under Section 80(2) of the Code of Civil Procedure, 1908(V of 1908) to obtain an 'Urgent' and 'Immediate' relief, the concerned Head of the Department, Administrative Department/ Collector or Public Officer on whom a show cause notice has been served by the Civil Court pertaining the suit, shall direct a Department Officer or immediately appoint an officer-in-charge and direct him, to attend the Court on the date so fixed. The Officer-in-charge shall seek short adjournment. If, sufficient time is available the Officer-in-charge should move the Law and Legal Affairs Department or Collector to engage the Government Pleader and shall take his assistance in the preparation of the reply to the show cause notice, which has been issued by the Court, so that ex-parte stay/ ad-interim orders adverse to the Government, may not be passed by the Court. Government Pleader appointed by Law & Legal Affairs Department can be contacted by the Officer-in-charge even though formal orders to conduct the case have not been issued. The Government Pleader shall assist and appear in such case:

Provided that the Government Pleader shall assist and appear in a case only when the State of Rajasthan has been made a Party or Government interest is involved and the date of hearing fixed is very near.

118. Procedure when suit filed without due notice-

When a suit is brought against Government or a Public Officer without having been duly served with the notice required by Section 80(1) of the Code of Civil Procedure, 1908 (V of 1908) or before the expiry of the period of two months from the date of the service of notice and where case is not covered by sub-section (2) of Section 80 CPC, Court should be moved to dismiss the suit on the ground that it has been instituted in contravention of the provisions of that section.

119. Collector to take needful action with respect to processes brought to his notice-

- (1) For the purposes of Rule 4 of Order XXVII of the First Schedule of the Code of Civil Procedure, 1908 (V of 1908) when the Government Pleader receives the processes against Government issued by any Civil Court in urgent and immediate cases he shall bring it to the notice of the Collector

and Thereupon the Collector shall take appropriate steps for further needful action in the matter.

- (2) Where suits have been filed against Government Officer in their official capacity, the Government Officer concerned should accept the summons.

120. Transfer of summons to officer-in-charge- When a summon is served upon the Collector/ Head of the Department/ Administrative Department to appear and answer a claim against Government he shall immediately name and appoint a competent Officer-in-charge subject to the provisions contained in Rule 232 of this Manual, and transfer the summons to the Officer-in-charge.

121. Officer-in-charge to be recognized agent of the Government-

- (1) Unless otherwise ordered the Officer-in-charge of a suit shall sign and verify the written statements in that suit as required by Rule 1 of Order XXVII of the First Schedule of the Code of Civil Procedure, 1908 (V of 1908). Under Rule 2 of the said Order the Officer-in-charge is also authorized to act for the State Government in the suit and shall be deemed to be the recognized agent by whom appearance, acts and application under the said Code may be made or done on behalf of the State Government.
- (2) Whenever any officer or employee who is connected with the examination of a notice under Section 80 CPC or is dealing with such notice or is Officer-in-charge in a suit, is found negligent or to have been acting in dereliction of duty, he shall be liable for disciplinary action.

122. Procedure when two or more Departments are jointly concerned in a suit- If, two or more different Departments are sued jointly, and two different Officer-in-charge have been appointed, they should with the least possible delay, communicate with each other and if there is a common line of defence, arrange for the preparation of joint report. When a common report can not be prepared or when the stand of the Department is conflicting, each Officer-in-charge shall prepare a separate report in consultation with the Government Pleader concerned and forward the same to their respective Departments. The Departments shall examine the case and forward the papers to the Law and Legal Affairs Department for advise. The Law and Legal Affairs Department shall decide as to which stand is just and legal and thereafter issue instructions to the Government Pleader concerned for the defence of the case on those lines.

123. Report after receipt of Summons-

- (1) The Officer-in-charge shall submit a report on the Case, as soon as may be, to the Head of the Department for the cases instituted in the Court of

Civil Judge, Junior Division and Civil Judge, Senior Division. For the Cases instituted in the Court of District Judge the report shall be sent to the Administrative Department concerned through the Head of the Department. The report need not repeat any thing contained in the report submitted under Rule 110 but it should meet all points, if any, not covered therein. It should further mention the date of hearing of the suit.

- (2) Along with the report there shall be sent-
 - (a) a copy of any report submitted to Collector;
 - (b) a copy of the plaint;
 - (c) a draft of the proposed written statement;
 - (d) a list of all documents which it is proposed to file in evidence, or, or which production in Court is required;
 - (e) Copies of any paper needed for the elucidation of the Case.

124. Engagement of Government Pleader etc.-

- (1) When the Government decides to contest the suits, the Officer-in-charge should move the Administrative Department to engage Government Pleader/ Panel Lawyer/ Standing Counsel or private legal practitioner as may be deemed proper for the conduct of the case on behalf of the Government, if the suit is instituted in the Court of District Judge.
- (2) If the suit is instituted in the Court of Civil Judge (Junior Division) or Civil Judge (Senior Division), the Officer-in-charge shall move the Head of the Department or the Collector to engage Government Pleader/ Panel Lawyer/ Standing Counsel or private legal practitioner.
- (3) When the Government Pleader/ Panel Lawyer/ Standing Counsel or private legal practitioner is engaged, the Officer-in-charge shall render him all possible assistance in preparing the case and shall be responsible that no important fact or document remain undisclosed.

125. Orders on report-

- (1) Orders of Government in the Law & Legal Affairs Department on the report for the cases instituted in the Court of District Judge shall be obtained by the Administrative Department through the Secretary to the Government, concerned with the subject-matter of the suit. The orders will be communicated to the Officer-in-charge by the Administrative Department with a copy to Head of the Department together with any instructions which may be necessary.

- (2) Report for the case instituted in the Courts of Civil Judge (Junior Division) and Civil Judge (Senior Division) shall be examined by the Head of the Department concerned and orders shall be issued to the Officer-in-charge with a copy to the Collector and the Administrative Department together with any instructions which may be necessary.

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

127. Instructions from Legal Remembrancer-

- (1) Once orders are issued under Rule 125 (1), it shall not be necessary to refer the matter again to the Legal Remembrancer unless:-
- (a) special instructions are required on some unusual points;
 - (b) Proposals are made for reference on arbitration;
 - (c) Proposals are made to compromise the suit.
- (2) The Administrative Department can request the Legal Remembrancer to assist Government Pleader/ Standing Counsel/ Panel Lawyer with advice only in case where it is considered extremely necessary; normally in all cases the Government Pleader/ Special Counsel/ Panel Lawyer/ Standing Counsel; if engaged, are primarily responsible for the conduct of cases in their charge; and references should not be made under this rule on ordinary points of law and procedure.

128. Responsibility of Officer-in-charge or Government Pleader/ Panel Lawyer/ Standing Counsel for timely action in suits-

- (1) When a suit is under trial, the Officer-in-charge should be present in the Court on every date of hearing to instruct the Government Pleader/ Panel Lawyer/ Standing Counsel in regard to any matters which may be arise unexpectedly and to invite the attention of the Government Pleader/ Panel Lawyer/ Standing Counsel to any document or other evidence at each stage of the trial.
- (2) When the issues have been framed and recorded by the Court the Officer-in-charge shall send a copy of the same to the Head of the Department/ Administrative Department as the case may be in view of the provisions of Rules 125(1) & 125(2).

- (3) Unless otherwise provided by these rules, the Government Pleader/ Panel Lawyer/ Standing Counsel/ Special Counsel if engaged, appearing on behalf of Government is directly responsible for the prosecution of a case in Court, and it is his duty to make all necessary applications to the Court in connection with it. Where revision of any interim order passed in the course of a suit is required he shall forward a copy of such order to the Head of the Department/ Administrative Department concerned along with his opinion and specific recommendations.

129. Report of result of suit-

- (1) As soon as the suit is decided the officer-in-charge or the Government Pleader/ Panel Lawyer/ Standing Counsel or special counsel if engaged, appearing on behalf of the Government will report the result to the Head of the Department/ Administrative Department as the case may be along with a copy of judgment.
- (2) When the case is submitted for advice for filing or not filing an appeal/ revision against any judgment and decree/ order it should be accompanied by a certified copy of judgment and decree a copy of issues, statement of witnesses and opinion of the Government Pleader concerned. The case should be submitted 15 days before the expiry date of limitation period.
- (3) (a) If the suit has been decided against the Government by the Court of Civil Judge (Junior Division) or Civil Judge (Senior Division) and Head of the Department concerned decides to file appeal, he will manage to get the instructions issued to the Government Pleader for filing appeal in the Court of District Judge.
- (b) If the suit has been decided against the Government by the Court of District Judge and the Administrative Department decides to file appeal in the High Court it will issue instructions to the Government Advocate/ Panel Lawyer/ Standing Counsel for filing appeal in the High Court.
- (c) If any revision is to be filed against any interim order of any Subordinate Court then necessary instructions for filing revision in the High Court shall be issued to Government Advocate/ Panel Lawyer/ Standing Counsel by the Administrative Department.
- (4) When the Head of Department or the Administrative Department takes a decision not to file any appeal or revision in any case, the matter will be referred to the Law & Legal Affairs Department for final decision and the

Head of Department or Administrative as the case may be shall take action as per the final decision of the Law & Legal Affairs Department; unless the Law & Legal Affairs Department directs otherwise.

130. Important points respecting the conduct of suits- The following important points relating to the conduct of all suits should be carefully attended to by the Government Pleader/ Panel Lawyer/ Special Counsel/ Standing Counsel and the Officer-in-charge concerned:-

- (a) no averment should be made in a plaint or in a written statement unless it can be proved from the evidence, which is or which may be available. In the preparation of plaint or written statements, the Government Pleader/ Panel Lawyer/ Special Counsel/ Standing Counsel concerned shall observe the provisions of Orders VI and VII and VIII of the Code of Civil Procedure.
- (b) the evidence, whether oral or documentary on which it is intended to reply should be carefully scrutinized by the Government Pleader/ Panel Lawyer/ Special Counsel/ Standing Counsel concerned before it is adduced and he should advise as to its admissibility and its probably utility or otherwise importance or unimportance for the purpose of the suit and suggest what evidence, if it be forth coming, may with advantage be substituted for evidence which in his opinion, would be weak or inadmissible;
- (c) all the witnesses, where it is necessary or advisable to examine on behalf of the State, should be kept present and produced in the Court on the day fixed for hearing. The necessity of making applications for adjournment should, as far as possible, be avoided and such applications on behalf of the opposite party should be resisted as tending to prolong the litigation and to give opportunities for the fabrication of false evidence; and
- (d) the documents filed or disclosed by the opposite party should be carefully examined at the earliest opportunity by the Government Pleader/ Panel Lawyer/ Special Counsel/ Standing Counsel concerned in order to raise such objections, as to their admissibility, as may be proper. They should also be compared with originals in the Government records, or with the papers which may tend to establish or disprove their authenticity.

Suits Instituted By Government

131. Sanction to institution of suit by Government- No suit on behalf of Government shall be instituted without the sanction of Government.

132. **Desirability of amicable settlement-**

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

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

134. **Report when suit recommended-** Whenever it appears to any officer of Government that a suit should be instituted on behalf of Government, he shall submit a complete report, to the Head of the Department for taking action under Rule 136.

135. **Contents of report-** The report should contain the following particulars-

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

136. **Orders on the report-**

- (1) Orders of the Government to the Law & Legal Affairs Department, on the report for the cases which are to be instituted in the Court of District Judge

shall be obtained by the Head of Department through the Secretary to Government, concerned with the subject-matter of the proposed suit. The orders will be communicated by the Administrative Department together with any instructions which may be considered necessary to the Officer-in-charge of the suit to be specified in these orders. In cases where the opinion of the Law & Legal Affairs Department is taken the notes recorded by the Law and Legal Affairs Department in the case should be treated as confidential.

- (2) Report for the cases which are to be instituted in the Courts of Civil Judge (Junior Division) and Civil Judge (Senior Division) shall be examined by the Head of the Department concerned with the subject-matter of the proposed suit and orders shall be issued to the Officer-in-charge together with any instructions which may be necessary with a copy to the Collector and Administrative Department.

137. Engagement of Government Pleader-

- (1) If Government decides to institute the suit, the Officer-in-charge should move the Administrative Department to engage Government Pleader, Panel Lawyer, Standing Counsel or Private Legal Practitioner as may be deemed proper looking to the facts and circumstances of the case to appear and conduct the case on behalf of Government, if the suit is to be instituted in the Court of District Judge.
- (2) If the suit is to be instituted in the Court of Civil Judge (Junior Division) or Civil Judge (Senior Division), the Officer-in-charge shall move the Head of the Department or the Collector to engage Government Pleader, Panel Lawyer, Standing Counsel or Private Practitioner.
- (3) In difficult cases the Government Pleader may be engaged to help in the Departmental Enquiry under Rule 133 or in the preparation of report under Rule 135.

138. Submission of Draft Plaint- Before the suit is instituted a draft of the Plaint with a list of the documents to be filed and the copies of these documents should be submitted through the Head of Department to Government if the suit is to be instituted in the Court of District Judge and to the Head of Department if the suit is to be instituted in the Court of Civil Judge (Junior Division) or Civil Judge (Senior Division) and instructions should be awaited.

139. Officer-in-charge to sign and verify plaint- The Officer-in-charge should sign and verify the plaint and also discharge the other functions described in

Rule 121 in regard to the suit. Any process issued to Government in the suit shall be received by the Civil Pleader provided in Rule 119.

140. **Further Procedure-** After the suit is instituted the provisions of Rules 126, 127, 128 & 129 should be followed, as far as, they are applicable.

Suits by or against Government Servants

Suits by Government Servants

141. **No suit to be instituted by Government Servant without the Sanction of the Government-** The Sanction of the Government shall be obtained before any Government Servant has recourse to the Courts for the vindication of his Public Acts or of his Character as a public functionary.

142. **Procedure in obtaining Government sanction-**

- (1) When a Government Servant considers that a suit should be instituted for the vindication of his public Acts (Official Acts) or of his character as a public functionary, he shall submit a report in conformity with the directions contained in Rule 135.
- (2) The Head of the Department, after recording his opinion, will forward the report, together with his opinion there upon, to the Government for orders as to whether the suit is to be filed or is not to be brought, and whether it is to be conducted at the Government expenses or that of the Officer concerned.
- (3) If sanction be given by the Government to the conduct of the suit at the Government expenses, the controlling authority will request the Administrative Department arrange for the conduct of the Case. If such sanction is not given, the Officer concerned shall be informed accordingly by the Administrative Department/ Head of the Department, as the case may be.

Suits Against Government Servants

143. **Suits against Government Servants-** The Procedure and principles of Rules 91 to 95 shall be applicable to Civil suits instituted against Government Servants.

144. **Notice in suits against Government Servants-**

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

- (2) If a suit brought against a Government Servant the Officer/ Government Servant 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.

145. **Dismissal of suits brought without notice-** If any such suit is brought against a Government Servant without the proper notice, he should at once represent the matter to the Court and ask that the suit should be dismissed under Section 80 of the Code of Civil Procedure, 1908 (V of 1908).

Note:- For the purpose of this chapter, in suits by or against Government Servants, the Government Servants concerned will be the Officer-in-charge.