

**MADHYA PRADESH LAW AND LEGISLATIVE AFFAIRS DEPARTMENT MANUAL****CONTENTS****Introduction****Rule :-**

1. Constitution of Law & Legislative Affairs Department.
2. Definitions.
3. Manner of making reference to Government.

**PART-I OFFICERS OF THE LAW DEPARTMENT AND GOVERNMENT  
COUNSELS.**

**CHAPTER I-APPOINTMENT, POWERS AND DUTIES OF OFFICERS OF THE  
LAW DEPARTMENT AND GOVERNMENT COUNSELS**

4. Officers of the Law Department and Government Counsels.

**ADVOCATE GENERAL**

5. Declaration Prior to appointment.
6. Report to Government of cases in which Advocate-General cannot represent the State.
7. Duties.
8. Disabilities.

**ADDITIONAL ADVOCATE GENERAL AND DEPUTY ADVOCATE GENERAL**

9. Appointment, duties and conditions of service of Additional Advocate General and Deputy Advocate General.

**GOVERNMENT ADVOCATES**

10. Appointment, Duties and Conditions of service.
11. Withdrawal from prosecution.

**PRINCIPAL LEGAL REMEMBRANCER**

12. Offices held by Principal Legal Remembrancer, his powers and duties.

**SECRETARIES AND LEGAL REMEMBRANCERS**

13. Powers and duties.

**ADDITIONAL SECRETARIES/DEPUTY SECRETARIES/UNDER SECRETARIES**

14. Powers and duties.

(ii)

**CHIEF DRAFTSMAN/DRAFTSMAN**

15. Powers and duties.

**PUBLIC PROSECUTOR/GOVERNMENT PLEADER AND ADDITIONAL  
PUBLIC PROSECUTOR/ADDITIONAL GOVERNMENT PLEADER.**

16. Appointment of Public Prosecutors and Additional Public Prosecutors.
17. Appointment of Government Pleaders and Additional Government Pleaders.
18. Participation in politics and freedom from pecuniary embarrassments.
19. Probation and confirmation.
20. Term of Office.
21. Termination of term.
22. Leave of absence.
23. Powers and duties.
24. Withdrawal from prosecution.
25. Duties in Criminal Courts.
26. Duties in Civil Courts.
27. Allotment of cases to Public Prosecutor/Government Pleader or Additional Public Prosecutor/Additional Government pleader.
28. Transfer of cases pending without-going to Public Prosecutor/Government Pleaders.
29. Duties in cases under the Public Trust Act..
30. Advisory and other duties.
31. Disabilities.
32. Relations with District Magistrates and Police.
33. Government's power to engage private pleaders instead of Government pleaders.
34. Consultation with the Advocate-General or Principal Legal Remembrancer.

**PANEL LAWYERS**

35. Panel Lawyers.
36. Appointment and Term.
37. Participation in politics.
38. Maintenance of Register of cases entrusted to panel lawyers.
39. Removal of Panel Lawyers.
40. Duties of panel Lawyers.
41. Supply of list of panel Lawyers to the Sessions Judge.
42. Distribution of work between Panel Lawyers.

**CHAPTER II-PERQUISITES OF LAW OFFICERS**

**ADVOCATE GENERAL, ADDITIONAL ADVOCATE-GENERAL,  
DUPUTY ADVOCATE-GENERAL AND GOVERNMENT ADVOCATE**

43. Perquisites of Advocate-General/Additional Advocate-General/Deputy Advocate-General and Government Advocates.
44. Fee in Land Acquisition Cases.
45. Fee in court of Wards Cases.
46. Fee for conducting the cases before Supreme Court, etc.
47. Fee for period spent in journey.
48. Fee for appearance on behalf of Union of India in civil cases in the High Court.
49. Travelling Allowance and Daily Allowance.
50. Advocate-General's Office Establishment.

**PUBLIC PROSECUTOR/GOVERNMENT PLEADER**

51. Fee of Public Prosecutor and Additional Public Prosecutor
52. Fee in civil cases.
53. Fee in revenue cases.
54. Case fee in Labour Court and other Tribunals.
55. Special Fee.
56. Fee when on circuit.
57. No fee for out of court work save in exceptional cases.
58. Fee for advisory duties.
59. Payment of fee when engagement is subsequently revoked.
60. Travelling and Daily-allowances.
61. Fee for work outside jurisdiction.
62. Necessity of Government's sanction for excess fee.
63. Travelling and Daily Allowances.
64. Government's power to forfeit fee in certain cases.
65. Principal Legal Remembrancer's decision final on question of remuneration.
66. Establishment.

**CHAPTER III-EMPLOYMENT OF PRIVATE LEGAL PRACTITIONERS AND THEIR PERQUISITES**

67. Employment of counsel in criminal cases wherein public prosecutor is bound to appear but is no available.
68. Employment of counsel in criminal cases wherein public prosecutor is not bound to appear.
69. Counsel to be local resident.
70. Private arrangement by Public Prosecutor in Certain Cases.
71. Employment of counsel in civil cases in absence of Government Pleader.
72. Employment of Counsel in absence of Advocate General or Additional Advocate General or Deputy Advocate General or Government Advocates, etc.
73. Engagement of Counsel for the defence of indigent accused.
74. Employment of counsel for special reasons in civil or criminal cases.
75. Fee of Panel Lawyers and private Legal Practitioners engaged in Criminal Cases.
76. Fee of Counsel in Civil Cases.
77. Special Fee.
78. Necessity of Government's sanction for excess fee.
79. Travelling Allowance and Daily Allowance of counsel.
80. Payment of fee when engagement is subsequently revoked.
81. Fixation of fee in doubtful and special cases.

**PART-II PROCEDURE IN ADVISORY WORK**

**CHAPTER IV-REFERENCES TO THE PRINCIPAL LEGAL REMEMBRANCER**

82. Scope of the Chapter.
83. Matters on which Principal Legal Remembrancer's advice may be sought.
84. Matters on which Principal Legal Remembrancer's advice may not be sought.

85. Who may make reference.
86. Method of correspondence.
87. Case to be clearly stated.
88. References Concerning drafting of deeds.
89. Drafting of Bills and Ordinances.
90. Examination of title in housebuilding advance cases.
91. Personal discussion.
92. Demi-official references.
93. Principal Legal Remembrancer to advise certain departments of Central Government.

#### **CHAPTER V-REFERENCES TO THE ADVOCATE-GENERAL**

94. Direct reference to Advocate-General..
95. Advocate-General's Opinion to be taken in cases in which he may have to appear in Court.

### **PART-III CONTROL OF GOVERNMENT LITIGATION IN CRIMINAL COURTS**

#### **CHAPTER VI-PROCEDURE IN CASES BEFORE SUBORDINATE COURTS**

##### **(A) IN MAGISTRATE'S COURTS**

96. Powers of State Prosecuting Officers.
97. Conduction of prosecution by a Private Lawyer on behalf of Government.
98. Engagement of Public Prosecutor in Magistrate's Court.

##### **(B) IN COURTS OF SESSION**

99. Public Prosecutor to appear in all sessions trial.
100. Notice of appeal in Courts of Session.
101. Appearance of Public Prosecutor in Appeals etc.

##### **(C) SUPPLY OF DOCUMENTS AND OTHER FACILITIES TO PUBLIC PROSECUTORS**

102. Supply of copies in Sessions Cases.
103. Copies of original case diaries in sessions cases.
104. Facility for inspection of records in Sessions Cases.
105. Supply of copies to Public Prosecutor in cases before a Court of Session.

##### **(D) RESPONSIBILITY OF PUBLIC PROSECUTOR IN CRIMINAL CASES**

106. Public Prosecutor's duty to report result.
107. Further report when decision is adverse.
108. Revisions against orders of Magistrates.

(v)

**CHAPTER VII-PROCEDURE IN CASES BEFORE THE HIGH COURT  
AND OTHER AUTHORITIES**

**(A) APPEALS BY CONVICTED PERSONS**

109. Notice to District Magistrate and Advocate-General from High Court.  
110. Requisition by District Magistrate in important cases.

**(B) APPEALS BY GOVERNMENT AGAINST ACQUITTALS**

111. Responsibility of District Magistrates.  
112. Duty of Public Prosecutor regarding orders of acquittals.  
113. Procedure when District Magistrate Proposes an appeal against acquittals.  
114. Special reference by Director General of Police and other Head of the Department.  
115. Appeal against acquittals in Delhi Special Police Establishment Case/Cases.  
116. Reference to be prompt.  
117. Facilities to accused.  
118. Application to District magistrate from private persons.

**(C) REVISION CASES**

119. Notice of revision cases in High Court.  
120. Procedure on issue of Rule to show Cause.  
121. Duty of Public Prosecutor to report about inadequate sentences and subsequent procedure.  
122. Procedure in other case of revision.

**(D) COMBINATION OF APPEALS AND APPLICATIONS FOR REVISION**

123. Procedure relating to appeals by accused in cases involving capital charges.

**(E) APPLICATIONS TO HIGH COURT FOR TRANSFER OF CASES**

124. Procedure in cases of transfer.

**(F) MISCELLANEOUS PROVISIONS REGARDING CRIMINAL CASES**

125. Appearance of Advocate-General at the instance of High-Court.  
126. Assistance to Advocate General.  
127. Supply of copies to Advocate-General.

**(G) APPEALS TO SUPREME COURT**

128. Appeals.

**CHAPTER VIII-PROSECUTION OF CRIMINAL CASES INSTITUTED  
AT THE INSTANCE OF DEPARTMENTAL OFFICERS**

129. Scope of the Chapter.  
130. Expediency of consulting District Magistrate in all cases.

(vi)

131. Report to police in cognizable cases.
132. District Magistrate to be consulted in non-cognizable cases
133. Complaint in cases not requiring sanction of Government.
134. Procedure in cases requiring sanction.
135. Appointment of Prosecutor in simple cases.
136. Engagement of Public Prosecutor/Additional Public Prosecutor in complicated cases.
  
137. District Magistrate to assist railway authorities.
138. Intimation to railway or departmental officers of the filing of appeal.
139. Procedure in cases involving loss mentioned in Section VIII of Chapter 15 of the Madhya Pradesh Financial Code Vol. I.

**CHAPTER IX-ASSISTANCE TO GOVERNMENT SERVANTS IN CRIMINAL CASES  
INSTITUTED BY OR AGAINST THEM**

140. Scope of the Chapter.
141. Assistance in prosecutions for defamation.
142. Engagement of Counsel other than public Prosecutor by Government servants for defamation cases.
143. Reporting Prosecution.
144. Defence of Government Servants.
145. Engagement of Counsel.
146. Procedure when Decision is in favour of Government Servant.
147. Procedure when decision is against Government Servant.
148. Duty of counsel when proceedings are likely to prolong.
149. Requests for assistance to be routed through the Collector.

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

150. Scope of the Chapter.
151. Intimation to the District magistrate.
152. Arrangement of the conduct of cases.
153. Fee of counsel in cases.
154. Report of result in cases.

**CHAPTER XI-DEFENCE OF INDIGENT ACCUSED**

**LEGAL AID TO ACCUSED AT STATE EXPENSE IN CERTAIN CASES**

155. Defence of Indigent accused persons at State Expense.

**PART-IV CONTROL OF GOVERNMENT LITIGATION**

**CHAPTER XII-WRIT PETITIONS**

**PETITIONS UNDER ARTICLE 32**

156. Procedure in cases filed under Article 32 of the Constitution.

(vii)

PETITIONS UNDER ARTICLE 226

- 157. Procedure in cases filed under Article 226 of the Constitution.
- 158. Preparation of report.
- 159. Preparation and filing of returns and affidavits.
- 160. Procedure when Government Servant made a party.
- 161. Duty of the Advocate General to intimate result.

**CHAPTER XIII-SUITS AND OTHER PROCEEDINGS  
AGAINST GOVERNMENT**

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

- 162. Legal Advice before receipt of notice.
- 163. Previous notice of suit against Government.
- 164. Procedure when suit filed without due notice.
- 165. Procedure when notice relates to suit against Central Government.
- 166. Notice to be endorsed and copy sent to Law Department.
- 167. Duty of the Officer-in-Charge.
- 168. Procedure for compromising claim below rupees five thousand.
- 169. Procedure in other cases.
- 170. Orders of Government.
- 171. Procedure where orders direct compromise.

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

- 172. Collector appointed as Government Pleader for service for Processes.
- 173. Transfer of summons to Officer-in-Charge.
- 174. Officer-In-Charge to be recognised agent of Government.
- 175. Engagement of Government Pleader.
- 176. Report after receipt of summons.
- 177. Orders of Government on report.
- 178. Responsibility of Officer-in-charge for production of evidence.
- 179. Further instructions from Law Department.
- 180. Responsibility of Officer-in-Charge and Government Pleader for timely action in suits.
- 181. Report of result of suits.
- 182. Application of Rules to proceedings before Motor Accidents claims Tribunals, Arbitration Tribunals and Administrative Tribunals,
- 183. Personal Responsibility of the Officer-in-Charge of the cases
- 184. Periodical Review of Pending cases.

**CHAPTER XIV-SUITS INSTITUTED BY GOVERNMENT**

- 185. Sanction to institution of suit by Government.
- 186. Desirability of amicable settlement.
- 187. Preliminary Departmental enquiry.
- 188. Report when suit recommended.
- 189. Contents of report.
- 190. Orders of Government on the report.
- 191. Engagement of Government Pleader.
- 192. Submission of draft plaint.
- 193. Officer-in-charge to sign and verify plaint.
- 194. Further procedure.

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

**(A) GENERAL RULES FOR PREPARING PLEADINGS**

- 195. Definition of Government Pleader.
- 196. Pleadings and memorandum of appeals.
- 197. Materials to accompany draft pleading.

**(B) THE BRIEF**

- 198. Contents.
- 199. No amendment of Pleading without permission of the Law Department.
- 200. Duties of Government Pleader and Officer-in-Charge.
- 201. Emergency cases.

**(C) CONDUCT OF THE CASES IN COURTS**

- 202. Government Pleader's responsibility.
- 203. Material for the cross-examination of opposite party's witnesses.

**(D) GOVERNMENT AS INTERVENER**

- 204. Intervention in pending suits.

**CHAPTER XVI**

**(A) APPEALS AND REVISIONS**

- 205. Procedure when decision adverse.
- 206. Report when appeal recommended.
- 207. Orders of Government on the report.
- 208. Departmental assistance to counsel conducting an appeal.
- 209. Appeals against decision in favour of Government.
- 210. Second appeals and revisions.
- 211. Letters patent Appeals.
- 212. Responsibility of Officer-in-Charge or Government pleader for timely action in appeals.
- 213. Procedure in case before the Board of Revenue.

**(B) APPEALS TO SUPREME COURT**

- 214. Appeals.
- 215. Advocate General's duty in respect of certificate under Article 132(1) of the Constitution.
- 216. Procedure to be followed in regard to an appeal to the Supreme Court.
- 217. Refusal of certificate.
- 218. Preparation of Record etc.
- 219. Filing of appeal and engagement of counsel.
- 220. Preparation of statement of case.



**(ix)**

- 221. Procedure with regard to an appeal or a petition for leave to appeal in the Supreme Court by a Private Party.
- 222. Copies of Notice to be endorsed to Law Department.
- 223. Intimation regarding result of the appeal/petition.

**CHAPTER XVII-EXECUTION OF DECREE AND  
RECOVERY OF COSTS**

- 224. Satisfaction of decree against Government.
- 225. Execution of decree in favour of Government.
- 226. Collector to assist Officer-in-charge.
- 227. Stay of execution on appeal.
- 228. Payment out of court.
- 229. Responsibility of Collector.

**CHAPTER XVIII-SUITS AGAINST  
GOVERNMENT SERVANTS**

- 230. Suits against Government Servants.
- 231. Defence of Government servants and payment of cost.
- 232. Separate Rules for Police Officers.

**CHAPTER XIX-SUITS RELATING TO PUBLIC MATTERS**

- 233. Officers who may institute suits relating to public matters.
- 234. Procedure when suit proposed to be instituted by Government Agency.

**CHAPTER XX-MISCELLANEOUS**

- 235. Maintenance of registers.
- 236. Returns.

**APPENDIX**

- Appendix I. Procedure of payment of fee etc. to Law Officers.
- Appendix II. Forms.
- Appendix III. Instructions regarding the procedure to be followed for defence of Civil suits issued by the Army HORS, Ministry of Defence.
- Appendix IV. Procedure in respect of Legislation.

## THE MADHYA PRADESH LAW AND LEGISLATIVE AFFAIRS DEPARTMENT MANUAL

### INTRODUCTION

In a society governed by rule of Law, every organ of the Government is supposed to act in accordance with Law. It is the duty of Law Department to advise the Government and its various departments as to the legality of a particular measure which the Government propose to take. This is the advisory function of this Department.

Administration of justice is the back bone of a democratic set up. It is the duty of the State to ensure that guilty persons are brought to trial and that trial must be fair. With this object in view, the department appoints Law Officers such as Public prosecutors and Government Advocates/Pleaders and it kept a watch over their performance. This department proposes appeals and revisions wherever they are deemed necessary. This department's function concerns Administration of justice.

This Department also gives legal opinion to various department whenever the department requires help in the interpretation of law and rules.

The State Government has delegated the power to sanction prosecution against the Government Servants to this department. Various department of the Government send their proposals for drafting legislations and rules and this department drafts them as per requirement.

The various other functions discharge by this department are set out below.

1. **Constitution of Law and Legislative Affairs Department.-(1)** The law and Legislative Affairs Department consists of branches, namely A,B,C,D,E,F and G The work conducted in each branch is as stated below :-

#### **“A” Drafting, Vetting, Translation and Hindi Vidhai Samiti Branch**

This Branch deals with (i) Drafting of Bills and Ordinances, (ii) Publication of Acts and Ordinances, (iii) Drafting and vetting of Rules, Bye-laws and Notifications, (iv) Preparation and publication of Madhya Pradesh Code, (v) Annual Compilation of Acts and Ordinances, alphabetical lists of Central and State Acts and indexes of Local Rules and Orders and (vi) Translation of Acts, Bills, Ordinances and subordinate legislations.

#### **“B” Judicial Branch-1 & 2**

This Branch deals with (i) the administration of justice (Civil and Criminal), (ii) all administrative matters concerning the judiciary, (iii) appointment of Law Officers as enumerated in rule 4 (1), (iv) Matters relating to Arbitration Tribunal and (v) matters relating to Madhya Pradesh Legal [Aid and Legal advisory Board.] Sources Authority.

#### **“C” Opinion Branch**

This Branch deals with (i) all cases referred to Legal Remembrancer for opinion by various departments and drafting of deeds contracts and other instruments and (ii) preparation and compilation of Digest of opinions. This branch shall also deal with the matters relating to the office of the Administrator General and Official Trustees.

### **“D” Civil and Criminal and Prosecution Branch**

This Branch deals with (i) all matters connected with Civil and Criminal litigations, (ii) appointments of Government Counsel, (iii) Briefing Counsel, (iv) matters concerning payment of their fees and (v) other matters relating to employment of Government Counsel.

### **“E” Establishment and Budget Branch**

This Branch deals with all matters concerning the establishment of the legal Remembrancer, budgeting, and accounting work of the Law Department and work connected with the Library, Records and Stores of the Department.

### **“F” Election Branch**

This Branch deals with all the work connecting with elections to Parliament and the State Legislature and matters ancillary thereto.

### **“G” Gram Nyayalaya Branch**

This Branch deals with all matters relating to Gram Nyayalaya.

(2) This Manual contains rules relating mainly to the working of its Branches.

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

- (i) “Government” or “State Government” means Government of Madhya Pradesh.
- (ii) “Government Advocate” includes Additional Government Advocate and Deputy Government Advocate.
- (iii) “Government Pleader” includes Additional Government Pleader.
- (iv) “Government Servant” means a person appointed to Civil Services and posts in connection with the affairs of the union or of the State.
- (v) “High Court” means the High Court of Madhya Pradesh.
- (vi) “Law Department” means the Law and Legislative Affairs Department of the Government.
- (vii) “Panel Lawyer” means a lawyer entered in the list of legal Practitioners maintained by the District Magistrate under rules 35 and 36.
- (viii) “Public Prosecutor” includes Additional public Prosecutor,
- (ix) “Secretary” includes Principal Secretary, Additional Secretary and Deputy Secretary to Government in the Law and Legislative Affairs Department.
- (x) “State” means the State of Madhya Pradesh.

3. Manner of making reference to Government.- Reference to the Government in the Law and Legislative Affairs Department, under any rule of this Manual, shall be addressed to the Principal Secretary to Government, Law and Legislative Affairs Department, unless otherwise stated.

**PART I-OFFICERS OF THE LAW DEPARTMENT AND GOVERNMENT COUNSELS**

**CHAPTER I-APPOINTMENT, POWERS AND DUTIES OF OFFICERS OF THE DEPARTMENT AND GOVERNMENT COUNSELS**

4. **Officers of the Law Department and Government Counsels.**-(1) The following shall be the officers of the Law Department, namely :-

- (i) Principal Legal Remembrancer and Principal secretary.
- (ii) Legal Remembrancer and Secretary.
- (iii) Additional Legal Remembrancer and Additional Secretary.
- (iv) Principal Draftsman and Additional Secretary.
- (v) Chief Draftsman and Deputy Secretary.
- (vi) Deputy Secretary.
- (vii) Deputy Secretary (Hindi Draftsman).
- (viii) Under Secretary.
- (ix) Draftsman and Under Secretary.
- (x) Under Secretary (Translation).
- (xi) Under Secretary (Vidhai Samiti).
- (xii) Assistant Director.

**Note.-** Principal Draftsman and Additional Secretary shall be incharge of 'A' Branch under the Administrative control of Principal Secretary, Law.

(2) The following shall be Government Counsels, namely :-

- (i) Advocate General.
- (ii) Additional Advocate General.
- (iii) Deputy Advocate General.
- (iv) Government Advocate.
- (v) Additional Government Advocate.
- (vi) Deputy Government Advocate.
- (vii) Government Pleader.
- (viii) Additional Government Pleader.
- (ix) Public Prosecutor.
- (x) Additional Public Prosecutor.

**Note.-** Additional Advocate General, Deputy Advocate General, Government Advocate, Additional Government Advocate and Deputy Government Advocate will assist the Advocate General and will work under his direction and control.

**THE ADVOCATE GENERAL**

5. **Declaration prior to appointment.**-No person shall be appointed Advocate General unless he gives a declaration in writing that he is free from embarrassments.

6. **Report to Government of cases in which Advocate General can not represent State.**-whenever an Advocate General is appointed, he shall on his appointment report to the Government :

- (i) the cases in which he can not represent Government owing to his having received instruction from the other party
- (ii) in case he is a Director or Advisor of a company, the fact of his being such a Director or Advisor.

7. **Duties.**-(1) The Advocate General is appointed under Section 24 of the Code of Criminal Procedure, 1973 (2 of 1974) to be the public Prosecutor for all cases before the High Court.

(2) Under clause (2) of Article 165 of the Constitution, the Governor has also assigned, the following duties to the Advocate General, namely :-

#### (A) ADVISORY DUTIES

- (i) To advise Government of any legal matter which may be referred to him for opinion.
- (ii) To assist the Principal Legal Remembrancer in conveyancing work and to draft such instruments and other Legal documents as the Government may require.
- (iii) To advise the Principal Legal Remembrancer in all such matters in which his opinion is sought.
- (vi) To advise district officer (as per rule 94 infra) on any proceedings whether civil or criminal conducted by him or to be conducted by him, on behalf of Government.
- (v) To advise, when required by Government, the Court of Wards in matters of civil nature in which litigation may arise or which are subject matter of pending litigation.

#### (B) LEGISLATIVE DUTIES

- (i) To scrutinies such Drafts, Bills, as may be referred to him, for a scrutiny by the Law and Legislative Affairs Department and advise generally upon the proposed measures.
- (ii) To report to the Law and Legislative Affairs Department, any flaws in any law and any matter arising out of cases already, which, in his opinion should be brought to the notice of Government.
- (iii) To attend, take part and speak in any proceeding of the State Legislative assembly, as provided in Article 177 of the Constitution, when requested by Government to do so.

#### (C) OTHER DUTIES

- (i) To prepare briefs for use of counsel engaged to represent the Government in appeals and references (Civil or Criminal), before the Supreme Court.
- (ii) To represent Government before the Supreme Court in all such cases in which the Government requires him to do so.

- (iii) To represent State of Union Government in the High Court in the following matters/cases, namely :-
- (a) All civil and criminal cases on the original side ;
  - (b) Such criminal cases which the High Court transfers to itself from any other court for trial ;
  - (c) All letters patent appeals ;
  - (d) Appeals by accused persons against capital sentences and against conviction for murder if any of its forms;
  - (e) Appeals preferred by Government against orders of acquittals ;
  - (f) Appeals filed by accused persons set down for bi-party hearing, in which the appellants are represented by a lawyer ;
  - (g) Revision petitions filed by Government ;
  - (h) Revision petitions filed on behalf of private persons and set down for bi-party hearing in which the applicant is represented by a lawyer;
  - (i) Proceedings regarding the transfer of cases, which have been set down for bi-party hearing;
  - (j) Any other proceedings in which his services may be required by Government.

Provided that his services shall not be requisitioned to defend a Government servant in the proceedings under contempt of Courts Act.

- (iv) To appear in any court subordinate to the High Court, in any civil case, when specially directed by the Government.
- (v) To represent Government in all suits, appeals, revisions, references and other proceedings of civil nature in which Government is a party before the High Court or **Arbitration Tribunal**.
- (vi) To represent Government in any civil, criminal or quasi-judicial proceedings of special importance in the High Court, in any court or before any authority or Tribunal in the State, when so directed by Government.
- (vii) To represent Government in all cases before the Board of Revenue of the State Industrial Tribunal, when so directed by the Government.
- (viii) To represent the court of Wards in the High Court, in proceedings of civil nature, when so directed by the Government.
- (ix) To represent Government in all departmental or other enquiries, when so required by the Government in writing.
- (x) To represent a party before any court in a proceedings of public importance whether or not the State Government, is a party when so required by the State Government.

- (xi) To represent the Union of India in such cases as may be directed by the State Government.
- (xii) To report to the Government the result of all cases, together with his opinion, instituted or conducted by him at the instance of or on behalf of Government.
- (xiii) To procure certified copies of any judgement or order passed by the High Court which may be required by Government or may contain comments on any action taken by Government; and
- (xiv) To perform such other duties of a legal character as may be assigned to him by the Government from time to time and to discharge the duties imposed on him by any law for the time being in force.

8. **Disabilities.**-(1) The advocate General is debarred from acceptance brief from any private person in any criminal case in any court.

(2) He may accept a brief from a private person in any civil case in any court: Provided that-

- (i) Such acceptance does not interfere with his duties under these rules, and
- (ii) Is not a case in which Government or the court of Wards is a party.

(3) He is debarred from accepting a brief on behalf of a legal practitioner or an Advocate in proceeding taken against him under the Legal Practitioners Act, 1879 (XVIII of 1879) or under the Advocate Act, 1961 (XXV of 1961) or under other similar enactment for time being in force.

(4) He shall not accept appointment as a director or as an advisor to any company without the sanction of Government.

(5) He shall not give legal advice to a private person on matters in which his interest is adverse to Government.

(6) He shall not give advice in any case to private persons in his opinion, he is likely to be called upon to advise Government in the case.

(7) He shall not accept brief from any person, whether a petitioner or a respondent, challenging the decision regarding a candidate to local bodies or to the State Legislature or Parliament.

#### **ADDITIONAL ADVOCATE GENERAL AND DEPUTY ADVOCATE GENERAL**

9. **Appointment, duties, conditions of service of Additional Advocate General and Deputy Advocate General.**-(1) The Additional Advocate General and Deputy Advocate General may be appointed by the State Government to assist the Advocate-General and they may be invested with the powers of the Additional Public Prosecutor as per Section 24 (1) of the Code of Criminal Procedure, 1973.

(2) They shall perform such duties of the Advocate General as may be assigned to them.

(3) The provisions of Rule 10 shall, mutatis mutandis, apply to the Additional Advocate General and the Deputy Advocate-General.

#### **GOVERNMENT ADVOCATE**

10. **Appointment, Duties and conditions of Service.**-(1) Government Advocate may be appointed by the Government to assist the Advocate General at any place where the High Court or its Benches function. Government Advocates

shall perform such duties of the Advocate-General as he may assign to them, but they shall not directly advise Government on any matter other than one relating to litigation, nor shall they exercise the functions of the Advocate General under Article 177 of the Constitution.

(2) He may be invested with the powers of Additional public Prosecutor as per Section 24(1) of the Code of Criminal Procedure, 1973.

(3) The terms of appointment of a Government Advocate shall be such as the State Government may determine in each case. A Government Advocate may tender his resignation by giving one month's prior notice in writing to the Government.

(4) A Government Advocate shall receive such remuneration as the State Government may determine from time to time.

(5) Except in the cases referred to in sub-rule (7) of Rule 8, Government Advocate may, with the previous permission of the State Government, accept brief from private parties. The provisions of Rule 5 and 8 shall apply of Government Advocates.

(6) (i) A Government Advocate may be granted leave of absence. During the period of such leave, he shall not be entitled to any salary.

(ii) A Government Advocate may be granted by the Advocate General casual leave on the same terms and conditions as are applicable to Government Servants.

(iii) A Government Advocate shall not leave head quarters without the permission of Government, except while on leave granted as above.

(iv) During the High Court vacation, Advocate-General may allow a Government Advocate to enjoy such part of the Vacation not exceeding fifteen days without prejudice to Government work.

(v) A government Advocate is not entitled to any pensionary and consequential benefits.

11. **Withdrawal from prosecution.**- The Advocate General may not withdraw from a prosecution which he has been directed by Government to initiate, without prior concurrence of the department which directed him to initiate the Proceeding, nor may be withdraw from a prosecution initiated by him suo-motu without prior concurrence of the Law and Legislative Affairs Department.

#### **THE PRINCIPAL LEGAL REMEMBRANCER**

12. **Offices held by Principal legal Remembrancer, his powers and duties.**-(1) The Principal Secretary to Government in the Law and Legislative Affairs Department shall be ex-officio Principal Legal Remembrancer, Administrator-General, Official Trustees and Chief custodian of Government Property.

(2) The Principal Legal Remembrancer shall exercise control over all the Government Pleaders/Public Prosecutors and Additional Government Pleaders/Additional Public Prosecutors.

(3) He is empowered to act on behalf of Government in all judicial proceedings pending in any civil court, to which the State is a party and is the recognised agent of Government under Rule 2 of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (v of 1908).

(4) His duties in additions to those indicate in the proceeding sub-rules are-

(a) to advise the State Government and departments of the Central Government in any matter the disposal of which depend upon the interpretation of Law.



- (b) to advise executive departments in the drafting of conveyances, agreements and other formal deeds.
- (c) to supervise the conduct of all litigation (Civil and Criminal) to which Government is a party or in which Government interest is involved, and
- (d) to advise the court of Wards in all Civil Litigation and to arrange for the conduct of all suits, appeals and proceedings effecting the Court of Wards, if so directed by Government.

#### **SECRETARIES AND LEGAL REMEMBRANCER**

13. **Powers and duties.**-(1) The Secretaries shall be ex-officio Legal Remembrancer. They shall perform such duties as may be assigned to them from time to time by general or special orders.
- (2) The Secretaries are empowered to dispose of all references relating to the respective branches in their charge. It shall however, be open to them to refer any important file to the Principal Secretary, Law.
  - (3) In a civil suit in which the Government Pleader not already engaged but is asked by the Collector or the officer-in-charge of the suit to appear and apply for an adjournment shall be paid such fee for his appearance and apply as may be fixed by the Government from time to time.
  - (4) The Secretary in charge of prosecution shall accord sanction for prosecution on behalf of the Government wherever it is required in any law for the time being in force.

#### **ADDITIONAL SECRETARIES/PRINCIPAL DRAFTSMAN/DEPUTY SECRETARIES/CHIEF DRAFTSMAN, UNDER SECRETARIES/DRAFTSMAN**

14. **Powers and duties.**-(1) The Additional Secretaries shall be the ex-officio Additional Legal Remembrancer. They shall render such assistance as may be required by the Secretaries in respect of the work of the respective branches assigned to them and shall dispose of such other work as the Principal Secretary and Secretaries Law may, from time to time assign to them.

(2) The Additional Secretaries shall have power to dispose of all references relating to civil litigation concerning Government. They may however refer important cases to the Secretary.

(3) The Principal Draftsman and Additional Secretary shall draft and scrutinise Bills, Rules, Byelaws, Notifications, Orders etc., and advise generally upon the proposed measures. He shall also attend to such other work, as may be assigned to him by the Principal Secretary, Law from time to time.

(4) The Deputy Secretaries shall perform such duties as may be assigned to them by Principal Secretary, Law/Secretaries and Additional Secretaries from time to time.

(5) The Chief Draftsman and Deputy Secretary shall assist the Principal Draftsman in drafting and scrutinising Bill, Rules, Bye-laws, Notifications, Orders etc. He shall also attend to such other work, as may be assigned to him by the Principal Secretary, Law/principal Draftsman, from time to time.

(6) The Under Secretaries shall attend to such work as assigned to them by the Principal Secretary/Secretaries/Additional Secretaries, from time to time. They shall also assist the Additional Secretaries and Deputy Secretaries in discharging the work assigned to them, from time to time.

(7) The Draftsman and under Secretary shall assist the Principal Draftsman/Chief Draftsman in drafting and scrutinising Bills, Rules, Bye-laws, Notifications, Orders etc. He shall also attend to such other work, as may be assigned to him by the Principal Secretary, Law/Principal Draftsman and Chief Draftsman from time to time.

#### **CHIEF DRAFTSMAN/DRAFTSMAN**

15. **Powers and duties.**- The Chief Draftsman and Draftsman shall assist the Principal Draftsman in drafting and scrutinising bills, rules, bye-laws, notifications, orders etc. They shall also attend to such other work as may be assigned to them by the Principal Secretary, Law.

**PUBLIC PROSECUTOR/GOVERNMENT PLEADER AND ADDITIONAL PUBLIC  
PROSECUTOR/ADDITIONAL GOVERNMENT PLEADER**

**16. Appointment of Public Prosecutor and Additional Public Prosecutor-**(1) All the Public Prosecutors and Additional Public Prosecutors shall be appointed as per Section 24 of the Code of Criminal Procedure, 1973.

(2) Before appointing Public Prosecutors or Additional Public Prosecutors Government shall ask a panel of names from the District Magistrate concerned. The District Magistrate shall in consultation with the Sessions Judge, dimi-officially submit the Letter's opinion along with his own and shall submit panel of Lawyers practising in the district. The Public Prosecutor or Additional Public Prosecutor may also be designated as Government Pleader/Additional Government Pleader :

Provided that nothing contained in this sub-rule shall apply to the Public Prosecutor/Additional Public Prosecutor appointed by virtue of sub-section (6) of Section 24 of the Code of Criminal Procedure, 1973.

**17. Appointment of Government Pleaders and Additional Government Pleaders.-**(1) All appointments of Government Pleaders and Additional Government Pleaders shall be made by the Government from amongst the panel submitted by District Magistrate under rule 16(2) *ibid*.

(2) A person shall be eligible to be appointed as a Government Pleader or Additional Government Pleader only if he has put in a practice, as an advocate, for not less than seven years.

(3) The State Government may designate Public Prosecutors/Additional Public Prosecutors as Government Pleaders/Additional Government Pleaders respectively for their respective districts.

**18. Participation in politics and freedom from pecuniary embarrassments.-** No person shall be appointed as Public prosecutor/Government Pleader or Additional Public Prosecutor/Additional Government Pleader unless he declares in writing that he shall not take active part in politics during the tenure of his appointment and he shall give a further declaration in writing that he is free from pecuniary embarrassments.

**19. Probation and confirmation.-**(1) Every Public Prosecutor/Government Pleader or Additional Public Prosecutor/Additional Government Pleader shall be on probation for a period of one year from the date of his assuming office. Before the expiry of the period of one year the District Magistrate/Collector in consultation with the District and Sessions judge/District Judge shall report about the work and conduct of the Public prosecutor/Government Pleader or Additional Public Prosecutor/Additional Government Pleader to the Government. If his work and conduct is not found up to the mark, his appointment can be terminated by the Government. without any prior notice. If the report is found satisfactory Government may appoint him for a further period of 3 year. The Government may however, extend the period of probation for a further period not exceeding one year.

(2) The District Magistrate/Collector shall submit a confidential report annually about the work and conduct of public prosecutor/Government pleader and Additional Public Prosecutor/Additional Government Pleader in consultation with the District and Session Judge to the Government, by 15<sup>th</sup> January each year.

**20. Term of office -** A Public Prosecutor/Government Pleader or Additional Public Prosecutor/Additional Government Pleader shall be appointed for a period no exceeding three year, excluding the period of his Probation. He may be re-appointed for further period not exceeding three year at a time, provided his name appears in the panel sent by the District Magistrate/Collector in consultation with District and Session Judge/District Judge from that year. No person will be appointed or continued as a Public Prosecutor/Government Pleader or Additional Public Prosecutor/Additional Government pleader after he attains the age of sixty two years. Notwithstanding the expiry of the period, a public Prosecutor/Government Pleader or Additional Public Prosecutor/Additional Government Pleader shall continue, to hold office until he is re-appointed or his successor takes over.

21. **Termination of term** – (1) Government may at any time before the expiry of the normal term without assigning any reason, dispense with the services of a Public Prosecutor/Government Pleader or Additional Public Prosecutor/Additional Government Pleader without giving him any notice.

(2) A Public Prosecutor/Government Pleader or Additional Public Prosecutor/Additional Government Pleader may resign his appointment after giving to the Government one month's notice in writing.

22. **Leave of absence-** (1) Public Prosecutor/Government Pleader or Additional Public Prosecutor/Additional Government Pleader may be permitted to leave headquarter for a period not exceeding 10 days by the District Magistrate/Collector. If the period exceeds 10 days prior permission of the Government is necessary .

(2) A Public Prosecutor/Government Pleader or Additional public Prosecutor/Additional Government Pleader shall not be entitled to pension and other post retirement benefits.

23. **Power and duties- (1)** It shall be the duty of the public Prosecutor to receive notice under Section 209 of the Code of Criminal Procedure, 1973.

(2) With reference to clause (a) of rule 8-B of order XXVII, of the order code of Civil procedure, 1908 the Central Government have appointed the Government Pleader in every district in Madhya Pradesh to be the Government Pleader. The Public Prosecutor or other officers appointed by the State Government as the Government Pleader of each district generally are the recognised agents of the Central Government. This sub-rule neither apply to suits against Railway Administration nor to suits against public Officers in the employment of the Central Government.

24. **Withdrawal from prosecutor-** If on examining the record of any case in his charge for trial, or during the hearing of such a case, the Public Prosecutor/Additional Public prosecutor as the case may be, is of the opinion, or the trial Court suggests, that all or any of the charges framed against an accused be withdrawn, the Public Prosecutor or the Additional Public Prosecutor, as the case may be, should, after obtaining an adjournment, if necessary, refer the case through the District Magistrate to the Principal Legal Remembrancer for orders . He shall not apply for the permission, without the prior approval of the principal Legal Remembrancer.

25. **Duties in Criminal Courts-** The Public Prosecutor or the Additional Public Prosecutor shall perform the following duties in criminal Courts, namely :-

- (a) he shall conduct the prosecution in all cases tried by the Court of Session in that Session Division;
- (b) he shall appear, when instructed by the District Magistrate in appeals, references revisions and other miscellaneous criminal proceedings before the Court of Sessions; and
- (c) he shall appear, when so instructed by the District Magistrate in any Criminal proceeding in any Court, in the district, which has been allotted to him.

26. **Duties in Civil Courts - (1)** It shall be the duty of the Government Pleader of Additional Government Pleader to conduct all Civil cases including the Court of Ward cases, instituted in the district in which the Government is a party provided that if the Collector feels that some other lawyer should be engaged to conduct the case he may entrust the case to such lawyer with the permission of the Government.

(2) The Government Pleader shall appear in all the cases instituted against the Central Government in which he is authorised to receive summons or notice as per rule 23(2) above.

(3) The Government Pleader or the Additional Government Pleader may be engaged by the Collector to conduct the cases tried in Labour Courts or other Tribunals situated at the head-quarters of the district.

27. **Allotment of cases to public Prosecutor/Government Pleader or Additional Public Prosecutor/Additional Government Pleader-** The Public Prosecutor/Government Pleader or Additional Public Prosecutor/Additional Government Pleader shall conduct such cases, Criminal , Civil or others as the District Magistrate or the Collector may entrust them in accordance with the instruction issued in this behalf by the State Government from time to time.

28. **Transfer of cases pending with out- going public prosecutor/Government Pleader-** On the termination of the appointment of a Public Prosecutor/Government Pleader or Additional Public Prosecutor/Additional Government Pleader, all Pending cases in which he was engaged shall, unless Government otherwise directs Stand transferred to his successor and fees in such cases shall be apportioned between him and his successor in accordance with the instructions issued in this behalf by the State Government from time to time.

29. **Duties in cases under the public trust act-** Government Pleader or Additional Government Pleader if directed by the Registrar Public Trust shall represent him and conduct the proceedings on his behalf in a suit or proceeding pending in Courts in the districts.

30. **Advisory and other duties-** (1) The Public Prosecutor/Additional Public Prosecutor shall advise the District Magistrate on any legal question arising out of any criminal Proceeding.

(2) Government Pleader or Additional Government Pleader shall also advise the Collector and Departmental Officers in Civil matters of an urgent nature whenever there is no time to make a reference to the Principal Legal Remembrancer and shall further tender them such assistance as is requires under these rules in matters connected with suits and appeals filed or proposed to be filed by or against Government.

31. **Disabilities-** Public Prosecutor/Additional Public Prosecutor shall not appear for the defence of non-applicant in a criminal trial or proceeding . However, nothing contained herein shall apply to proceeding under Chapter IX of the Code of Criminal Procedure, 1973.

(2) He shall not give legal advice to private persons in matters in which the interests of these persons are adverse of Government .

(3) He shall not Give advice in any case to private persons if, in his opinion , he is likely to be called upon to assist Government in the same case.

32. **Relations with District Magistrate and Police-** (1) The Public Prosecutor or Additional Public Prosecutor should apply for any instruction he may need to the District Magistrate, and shall keep in close touch with him in the discharge of his duties in the criminal Courts.

(2) He Shall also keep in close touch with the Superintendent of Police, and other responsible police officer including those of the Special Police Establishment, in the discharge of his duties in the Criminal Courts, and shall furnish such police officers with any information or reports relating to such cases as may reasonably be demanded from him .

33. **Government's Power to engage private pleaders instead of Government Pleaders -** Nothing contained in this Chapter which provide for the engagement of a Public Prosecutor//Government Pleader or Additional Public Prosecutor/Additional Government Pleader in any case shall preclude Government from engaging in his Place a private legal practitioner for conducting any such case.

34. **Consultation with the Advocate General or Principal Legal Remembrancer-** If in any case, a Public Prosecutor/Government Pleader or Additional Public Prosecutor/Additional Government Pleader thinks that an interview with the Advocate-General or Principal Legal Remembrancer is necessary in connection with any legal question arising out of such case, he may with the previous consent of the District Magistrate/Collector seek interview with the Advocate General or Principal Legal Remembrancer, as the case may be . The Counsel proceeding for discussion with Advocate General or Principal Legal Remembrancer shall be entitled to fees, travelling allowance and daily allowances as laid down in rule 126 infra.

PANEL LAWYERS

35. **Panel Lawyer – (1)** A List of Panel lawyers not exceeding ten number shall be maintained in each district having commissioners headquarters.

- (2) A list of not more than five Panel Lawyer shall be maintained in every other revenue district.
- (3) A separate list of three Panel Lawyers may also be maintained in Tahsils wherever necessary.

36. **Appointment and Term –(1)** The District Magistrate shall, after inviting applications from amongst the practising lawyers who have put in at least 7 years of practice and after consulting the District and Session judge, forward to the Principal Legal Remembrancer the names of twice the number of Lawyers intended to be appointed on the list in order of preference, along with his opinion and that of the District and Sessions Judge. The District Magistrate shall also send all other application to the principal Legal Remembrancer with such comments as he and/or the District and Sessions judge may like to record.

(2) The Principal Legal Remembrancer shall examine the recommendations of the District Magistrate and the District and Sessions Judge and may call for such further information from the District Magistrate in respect of all or any of the applications as he may consider necessary.

(3) The Principal Legal Remembrancer shall submit the papers to the Government along with his own recommendation.

(4) The Government shall, after taking into consideration the recommendation of the District Magistrate, the District and Sessions judge and the Principal Legal Remembrancer select such candidates as it deems fit and the applicant so selected shall be appointed as panel Lawyers for a period not exceeding three years.

(5) The term of a Panel Lawyer may be renewed for a further period not exceeding three years if his work is found satisfactory .

37. **Participation in politics-** No person shall be appointed as Panel Lawyer unless he agrees in writing not to take active part in politics during the tenure of his appointment.

38. **Maintenance of Register of cases entrusted to Panel Lawyers -** The District Magistrate shall maintain register showing the number of cases entrusted to each of the Panel Lawyers during the financial year, the result of each case and shall forward a copy of the statement to the Principal Legal Remembrancer in the month of June every year along with his comments about the work of each of the panel Lawyer.

39. **Removal of Panel Lawyers.-** The Government may remove the name of any Panel Lawyer from the list, without assigning any reason if his work is found to be unsatisfactory.

40. **Duties of Panel Lawyers –** Whenever the District Magistrate considers that the appearance of a legal practitioner in any criminal case pending in the Court of any Magistrate is necessary, he may appoint one of the Panel Lawyer to conduct it, but ordinarily the services of a Panel Lawyer shall not be requisitioned by the District Magistrate unless the prosecuting staff can not adequately deal with the case.

41. **Supply of list of Panel Lawyers to the Sessions judge-** The District Magistrate shall supply an up to date list of Panel Lawyers to the Sessions judge and Shall communicate to him all changes which may be made in the list from time to time .

42. **Distribution of work between Panel Lawyers-** The District Magistrate shall, as far as possible, allot cases by rotation to the Panel Lawyers.

**CHATER II-PERQUISITES OF LAW OFFICERS**

**ADVOCATE GENERAL, ADDITIONAL ADVOCATE GENERAL, DEUTY ADVOCATE  
GENERAL AND GOVERNMENT ADVOCATE**

**43. Perquisites of Advocate General/Additional Advocate General/Deputy Advocate General and Government Advocate.**-(1) The Advocate General shall receive such remuneration as may be fixed by the Governor under Article 165(3) of the Constitution.

(2) The Additional advocate General, the Deputy Advocate General and Government Advocate shall receive such remuneration as may be fixed by the State Government from time to time.

**44. Fee in Land Acquisition cases.**- Whenever the Advocate General or the Additional Advocate General or the Deputy Advocate General or a Government Advocate represents Government in a appeal to the High Court in any proceedings for acquisition of land for the purpose of a local authority or a company, he shall be entitled to such fees as may be fixed by Government for that appeal. The fees in such cases shall be payable by such authority or the company for whom the land has been acquired.

**45. Fee in Court of Wards Cases.**-(1) The Advocate General or Additional Advocate General or the Deputy Advocate General or a Government Advocate shall be entitled to receive such fee as may be agreed upon between himself and the State concerned for appearing in the High Court in Court of Wards cases under clause (VII), under head 'c' of rule 7(2).

(2) The Advocate General or the Additional Advocate General or the Deputy Advocate General or a Government Advocate shall also be entitled to such fee as the State Government deem fit, for each opinion under clause (V) under head or rule 7(2) except when the question is one between the Government and the Ward in which case he shall receive no fee.

**46. Fee for conducting the cases before Supreme Court etc.**- If the Advocate General, the Additional Advocate General, the Deputy Advocate General or a Government Advocate is required to conduct the case before the Supreme Court or any other Court whether within or out of Madhya Pradesh other than High Court, He may be paid such fees as may be fixed by the State Government.

**Explanation.**- No extra remuneration shall be payable for appearing before the Central Administrative Tribunal, Madhyasthan Adhikaran and Board of Revenue.

**47. Fee for period spent in journey.**-The Advocate General, the Additional Advocate General, the Deputy Advocate General or a Government Advocate while travelling on duty shall be entitled to such fee as may be prescribed by the Government from time to time for each day spent in journey either in side or out side the State: Provided that,-

- (a) No fee will be admissible under this rule if the hours of Journey do not encroach on Court hours.
- (b) Where Journey by air is feasible, only one day shall be counted as spent in journey, notwithstanding what other means of conveyance is actually employed.

**48. Fee for appearance on behalf of Union of India in civil cases in the High Court.**- The Advocate General or the Additional Advocate General or the Deputy Advocate General or a Government Advocate when required to appear on behalf of the Union of India in any civil case or a case under Article 226 of the Constitution of India, shall be entitled to receive such fees from the Central Government in the respective Department as may be prescribed.

**49. Travelling Allowance and Daily Allowance.**-For journeys performed by the Advocate General, the Additional Advocate General, the Deputy Advocate General and a Government Advocate, travelling allowance and daily allowance shall be admissible at the rates prescribed for 'A' grade (Higher Class) officer of the State Government.

50. **Advocate General's Office and Establishment.**-The Advocate General, the Additional Advocate General, the Deputy Advocate General and Government Advocate shall be provided such staff for their offices as may be sanctioned by Government from time to time.

#### **PUBLIC PROSECUTOR/GOVERNMENT PLEADER**

51. **Fee of Public Prosecutor/Additional Public Prosecutor.**-A Public Prosecutor or Additional Public Prosecutor other than Public Prosecutor/Additional Public Prosecutor appointed under sub-section (6) of Section 24 of the Code of Criminal Procedure, 1973, shall be entitled to such monthly retainer fees as may be fixed, by the State Government from time to time. In Addition to retainer fees they shall also be entitled to such fees, for conducting criminal cases, for preparation of criminal appeals and for assisting, the Advocate General as may be fixed by the State Government from time to time.

52. **Fee in Civil Cases.**-(1) The fees of the Government Pleader/Additional Government Pleader in civil cases in which they appear for Government or the Union of India or the Court of Wards shall be as prescribed by the rules for the time being in force under Section 27 of the Legal Practitioner's Act, 1879 (XVIII of 1879) or the fees allowed by the court whichever is less:

Provided that where the Pecuniary value of the suit can not be defined or is so low that the fees calculated thereon are trifling, the Collector may fix a fee within such limit as may be determined by the Government from time to time.

(2) In a civil suit in which the Government Pleader not already engaged but is asked by the Collector or the Officer-in-charge of the suit to appear and apply for an adjournment shall be paid such fee for his appearance as may be fixed by the Government from time to time.

53. **Fees in Revenue cases.**-When a Government Pleader/Additional Government Pleader appears in any revenue case or proceeding on behalf of the government other than cases before the Board of Revenue or the court of wards, he shall receive such fees, as may be determined by the Collector within such limit, as may be fixed by the Government from time to time:

Provided that the case decided by one judgement shall for the purpose of calculating fee under this rule, be deemed to be a single case.

54. **Fees in cases of Labour Court, Board of Revenue and Other Tribunals.**-When a Government pleader/Additional government pleader in any case or proceeding on behalf of Government before any Labour Court, Board of Revenue or any Tribunal, he shall receive such fees, as may be fixed by the Government from time to time.

55. **Special Fee.**- When a Public Prosecutor/Additional Public Prosecutor is required to conduct a criminal case on behalf of Government in a court situated outside his headquarters he shall be allowed such fee as may be prescribed from time to time, for any day on which courts are working, spent by him in a journey between his headquarters and the place at which the court is situated, if the journey entails encroachment upon Court hours and no fees has been claimed for day appearance in any court.

56. **Fee When on circuit.**- A Public Prosecutor/Additional public Prosecutor on circuit shall be allowed a full days fee for every working. Day on which he had to be absent from headquarters on duty.

57. **No fee for out of court, work save in exceptional cases.**- Save in exceptional circumstances and with the previous sanction of Government, the Government Pleader/Additional Government Pleader shall not be entitled to any remuneration for out of court work and all such work shall be regarded as covered by the daily fee paid to him for appearance in Court.

58. **Fee for advisory duties.-** Public Prosecutor/Government Pleader or additional Public Prosecutor/Additional Government Pleader shall not be entitled to any fees for advisory work.

59. **Payment of fee when engagement is subsequently revoked.-** If a Government Pleader/Additional Government Pleader has been engaged to conduct a case and his appointment is subsequently revoked, he shall be entitled to such fee as may be determined by the competent authority within such limit as may be fixed by Government from time to time.

60. **Travelling and Daily Allowances.-(1)** Public Prosecutor/Government Pleader and Additional Public Prosecutor/Additional Government Pleader travelling on duty under these rules shall be entitled to draw travelling allowance and daily allowance at the rate prescribed for an officer of the Grade 'B' of the Government.

(2) A Public Prosecutor/Additional Public Prosecutor conducting a trial in a Court of Session or Court of a Magistrate away from his headquarters shall be deemed to be engaged on duty in that court on Sunday or holidays which may intervene during the trial. Even though he leaves the place of trial during those days.

(3) A Public Prosecutor/Government Pleader or Additional Public Prosecutor/Additional Government Pleader returning to headquarters without finishing the work for which he is engaged shall not get travelling allowance for the journey occasioned by the return unless the return was with the previous permission of the District Magistrate or the Collector, as the case may be, or was, in the opinion of the District Magistrate or the Collector in the Public Interest.

61. **Fee for work outside jurisdiction.-** In case where a Public Prosecutor/Government Pleader/Additional Public Prosecutor/Additional Government Pleader is engaged for Government work in a Court which lies outside his jurisdiction, he shall be entitled to the same case fees as he would have received had such Court been situate within his district.

62. **Necessity of Government's sanction for excess fees.-** The case fees paid to a Public Prosecutor/Government Pleader and Additional Public Prosecutor/Additional Government Pleader are to be regarded as average fees and will be paid to him whether the case is a simple one or a complex one. The sanction of Government is require for the payment of any fee in excess of the prescribed scale and will be given only in case of complexity upon the special recommendation of the District Magistrate or the Collector, as the case may be.

63. **Fixation of fees in doubtful and special cases.-** In case where there is doubt as to the applicability of the above scales or where the above scales do not apply, the fee shall be fixed by Government with due regard to the amount of labour involved in the case.

64. **Government's power to forfeit fees in certain cases.-** In any case, civil, revenue or criminal in which it appears that Public Prosecutor/Government Pleader/Additional Public Prosecutor/Additional Government Pleader has been guilty of any neglect or misbehaviour, Government may after considering the explanation, if any of the Public Prosecutor/Government Pleader or Additional Public Prosecutor/Additional Government Pleader concerned direct that whole or any portion of the fees which would otherwise have been payable to him should be forfeited.

65. **Principal Legal Remembrancer's decision final on question of remuneration.-** When any question arises as to the amount of fees or travelling or daily allowance to which a Public Prosecutor/Government Pleader/Additional Public Prosecutor/Additional Government Pleader is entitled, the matter shall be referred to the Principal Legal Remembrancer whose decision shall be final.

66. **Establishment.-** Every Public Prosecutor/Government Pleader/Additional Public Prosecutor/Additional Government Pleader will be allowed one peon who will be borne on the establishment of the Collector.



**CHAPTER III-EMPLOYMENT OF PRIVATE LEGAL PRACTITIONERS  
AND THEIR PERQUISITES**

**67. Employment of counsel in criminal cases wherein Public Prosecutor is bound to appear but is not available.-** (1) In any criminal case in which the Public Prosecutor/Additional Public Prosecutor is duly bound to appear or may be instructed under Rule 25, but is unable to appear he shall direct a panel lawyer to appear on behalf of the State with the prior approval of the District Magistrate.

(2) This rule should be applied only to tide over temporary inability of the Public Prosecutor/Additional Public Prosecutor and should not be frequently use. If there is reason to believe that the inability of Public Prosecutor or Additional Public Prosecutor is likely to continue for a long period, the District Magistrate should make recommendations for the appointment of a successor, either temporarily or permanently, as the circumstances may require.

**68. Employment of counsel in criminal case wherein Public Prosecutor is not bound to appear.-** In any Criminal Case in which the Public Prosecutor is not bound to appear or is not instructed to appear under rule 25, the District Magistrate may engage either the Additional Public Prosecutor or one of the Panel Lawyers or a Private Legal Practitioner, if the District Magistrate consider the case to be a special category or importance.

**69. Counsel to be local resident.-** The private legal practitioner engaged under rule 67 or rule 68 should ordinarily be a resident of the place where the Court is situated.

**70. Private arrangement by Public Prosecutor in certain Cases.-(1)** one the Public Prosecutor or the Additional Public Prosecutor has taken charge of a case, he shall be responsible for the conduct of the whole trial, If at any particular hearing he is unavoidably prevented from appearing, he may, with prior approval of the District Magistrate, make a private arrangement with another legal practitioner out of Panel Lawyers approved by State Government to appear on his behalf. In such cases the private counsel so engaged shall be entitled to separate fee as admissible under rules.

(2) This rule should never be construed to authorise the Public Prosecutor to engage private legal practitioners in Government cases to enable them to attend to their private cases in other Courts and the District Magistrates before giving their approval under this rule, should satisfy themselves that Government is not burdened with any avoidable extra expenditure in the shape of fees to the Private legal practitioner so engage and that the prosecution of the case does not suffer due to temporary absence of the prosecutor.

**71. Employment of counsel in civil cases in absence of Government Pleader.-** (1) The Collector may distribute civil cases between Government Pleader and Additional Government Pleader. If Government Pleader or Additional Government Pleader is unwilling to represent the State, for personal reasons, the Collector may engage a private lawyer on behalf of State.

(2) The private legal practitioner engaged under sub-rule (1) should ordinarily be resident of the place where the Court is situated.

**72. Employment of Counsel in absence of Advocate General or Additional Advocate General or Deputy Advocate General or Government Advocate etc.-**Government may make such arrangement, as may be considered necessary from time to time, for its representation before the High Court in cases in which the Advocate-General or Additional Advocate General or Deputy Advocate General or any of the Government Advocate is unable to appear.

73. **Engagement of Counsel for the defence of indigent accused.**-The Court shall appoint lawyers at the State Expenses to defend the indigent accused persons as per rules framed by the High Court under Section 304(2) of the Code of Criminal Procedure, 1973 i.e. Madhya Pradesh Legal Aid to accused at State Expense Rule, 1976.

74. **Employment of Counsel for a special reasons in civil or criminal cases.**-If the State Government, on the bases of representation received either from Public or Government officers, feels that the private lawyers should be engaged to represent the State Government or assist the Advocate General, Additional Advocate General, the Deputy Advocate General, a Government Advocate, Public Prosecutor, Government Pleader, Additional Public Prosecutor or Additional Government Pleader, one or more private lawyer may be engaged, in the case.

75. **Fees of Panel Lawyers and Private Legal Practitioners engaged in Criminal Cases.**-When a Panel Lawyer or a Private Legal Practitioner is engaged to represent the Government, in any Criminal case, he shall receive such fees as may be fixed by the Government from time to time.

76. **Fees of Counsel in civil Cases.**-The fees of Private Legal Practitioners in Civil Cases in Which they appear for Government or the Court of wards shall be as prescribed by the rule for the time being in force under Section 27 of the Legal Practitioners Act, 1879 (XVIII of 1879) or the fees allowed by Court which ever is less:

Provided that where the pecuniary value of the suit can not be defined or when defined is so low that the fees calculated therein are trifling, the Collector may fix a fee within such limit as may be determined by the Government from time to time.

77. **Special fee.**-When a Private Legal Practitioner is required to conduct a criminal case on behalf of Government or to defend an indigent accused in a Court situated outside the headquarter of a district in which he resides, he shall be allowed such special fees as may be prescribed from time to time for any working day, spent by him in journey between the headquarters of the district and the place at which the Court is situated, if the journey entails an encroachment of Court hours:

Provided that the total fees admissible to a counsel under rule 75 and this rule for any day shall not exceed full day's admissible to him under rule 75.

78. **Necessity of Government sanction for excess fees.**-The case fees paid to a private legal practitioner are to be regarded as average fees, and will be paid to him whether the case is a simple or complicated. The sanction of Government is required to the payment of any fee in excess of the prescribed scale and will be given only in cases of complexity upon the special recommendation of the District Magistrate or the Collector, as the case may be.

79. **Travelling Allowance and Daily Allowance of Counsel.**-The grant of travelling allowance and daily allowance of a private legal practitioner and panel lawyer leaving his headquarters in connection with either Government work or the defence of pauper accused shall be governed by rule 60.

80. **Payment of fee when engagement is subsequently revoked.**-If a Private Legal Practitioner or a panel Lawyer has been engaged to conduct a case and his appointment is subsequently revoked, he shall be entitled to such fee as may be determined by the competent authority within such limit as may be fixed by the Government from time to time.

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

**PART II-PROCEDURE IN ADVISORY WORK**  
**CHAPTER IV-REFERENCES TO THE PRINCIPAL LEGAL REMEMBRANCER**

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

83. **Matters on which Principal Legal Remembrancer's Advice may be sought.**- The advice of the Principal Legal Remembrancer may be sought on the following matters:-

- (a) Interpretation of statutes, statutory rules, byelaws, orders, deeds.
- (b) cases in which disputes have arisen or likely to arise between Government and other persons or action in a Court of law is threatened against Government.
- (c) Defamatory attacks on a Government servant

84. **Matters on which Principal Legal Remembrancer's advice may not be sought.**- The Principal Legal remembrancer's advice may not be sought on the following matters:-

- (a) points arising for decision in judicial or quassi-judicial proceedings before any court or tribunal or any officer empowered to exercise jurisdiction in such proceeding under a statute.
- (b) points arising before a revenue officer in the course of a revenue proceeding in which his order is subject to a revenue appeal.
- (c) points arising before a Government Officer acting as an arbitrator or umpire in any disputes.
- (d) hypothetical cases.
- (e) cases where the advice is for the benefit of a private individual or a local body.
- (f) ordinary departmental procedure of which the department itself has special knowledge.

85. **Who may make reference.**-(1) Subject to the provisions of rules 88 and 89 the following authorities only may make a request to the Principal Legal Remembrancer for an opinion in connection with a matter arising in any Department of Government :-

- (i) Minister incharge of the Department.
- (ii) Secretary or Additional Secretary to Government of the concerned Department.
- (iii) Any other officer specially authorised by Government.

(2) Any other officer desiring an opinion must submit the case through the Secretary or the Additional Secretary of the Department concerned.

86. **Method of correspondence.**-(1) References by Ministers of Government and Secretaries to Government should be made on the connected files in accordance with Secretariat procedure.

(2) References by authorised officers may be made either by official letter, or by un-official reference on the connected file. The later method is the more convenient when the referring officer is in the same station as the Principal Legal Remembrancer.

(3) When a reference by a head of department, who is also a secretary to Government, relates to a civil suit by or against Government is shall be made by official letter in accordance with the procedure laid down in Part IV.

(4) Confidential references should be sent in sealed packets and marked "Confidential" and addressed to the Principal Legal Remembrancer by name.

87. **Case to be clearly stated.**-(1) the pointes on which advice is sought should be stated clearly and categorically and all materials within the knowledge of the officer making the reference, must be placed on the file referred to.

(2) When the case involves complicated facts, a Precis should be drawn up with reference to relevant documents.

(3) The Principal Legal Remembrancer has the right to return any reference which does not comply with the provisions of this rule.

88. **References Concerning drafting of deeds.**-(1) When a draft deed is on the lines of any prescribed or agreed form, a complete draft should be submitted for scrutiny, and it should also be stated where the form is to be found. Any important deviation from the standard form should be explained.

(2) When a Draft deed is not based on any prescribed form, or deviates widely from it, the most convenient mode of making the reference is to state the proposed contents of the deed in simple language, and in concise and clear paragraphs, and to leave the form and legal Pharseology to the Principal Legal Remembrancer's office.

89. **Drafting of bills and Ordinances.**- While drafting bills and ordinances, the procedure laid down in paragraph 34 to 42 of Part V-supplementary instructions under rule 13 of the Rules of Business of Government of Madhya Pradesh should be strictly followed. The Department concerned shall also follow the procedure detailed in Appendix IV.

90. **Examination of title in house building advance cases.**-(1) Administrative Department will make references after complying with the provisions of rules contained in Section IV read with Appendix-9 of the Financial Code to the Principal Legal Remembrancer for examination of the title of applicants in cases in which advances are applied for, the construction, purchase or repair of houses.

(2) The reference should show the exact nature of the applicant's title and the security offered, when the applicant is a Hindu, the circumstances of his family, as to jointness and the number of coparceners should be ascertained and stated.

(3) The history of the title should be traced from twelve years prior to the date of application and relevant documents or certified copies thereof submitted when obtainable.

91. **Personal discussion.**-(1) Much time and labour may be saved by oral discussion. The officer making a reference may seek an appointment with Principal Legal Remembrancer.

(2) When the officer making reference desires an appointment, he should ordinarily make the reference in advance in accordance with rule 86 to enable the Principal Legal Remembrancer.

92. **Demi-official references.**-(1) References by demi-official letter are generally to be deprecated. However a short demi-official letter on one or two simple issues may be sent in urgent cases and the Principal Legal Remembrancer may reply them promptly. The Principal Legal Remembrancer will have the power to return any such demi-official reference and insist on a formal reference.

(2) Any such opinion given by the Principal legal remembrancer sought through demi-official letter can be used on the personal responsibility of the departmental officer concerned and can not be quoted or referred to as an opinion by the Principal Legal Remembrancer.

(3) The Principal Legal Remembrancer will refuse to answer demi-official reference wherein an officer of the department seeks detailed arguments to support his contention on any point to convince his departmental superior, unless the reference is made through the departmental superior.

93. **Principal Legal Remembrancer to advice certain departments of Central Government.**-According to an arrangement agreed upon between the Central Government and the State Government, the Principal Legal Remembrancer shall give advice to certain departments of the Central Government.

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**CHAPTER V-REFERENCE TO THE ADVOCATE GENERAL**

94. **Direct reference to Advocate General.**-References may be made direct to the advocate-general on matters relating to any case which he has conducted or which he may be conducting :-

- (a) by the District Magistrate, if the case is of criminal nature;
- (b) by the officer-in-charge, if the case is of the civil nature;
- (c) by the officer-in-charge, if the case is one under Article 226 of the Constitution;
- (d) By the Officer-in-charge in any case pending before the Board of Revenue in which representation of government has been sanctioned;
- (e) By the Director, Special Police Establishment, Secretary and Legal Advisers of Lokayukt Organisation;

Otherwise no direct reference shall be made to the Advocate-General by any officer.

**Explanation.**-For the purposes of this rule the officer-in-charge means the officer-in-charge as explained in rule 166.

95. **Advocate-General's opinion to be taken in cases in which he may have to appear in Court.**-(1) Whenever the Principal Secretary to Government in the Law Department records an opinion which, if accepted and acted upon by Government would involve an appearance by the Advocate-General before the High Court or any other Court, he will, as a matter of course, pass it on unofficially to the Advocate-General in order that the latter may note whether he concurs to such extent as is necessary to enable him to argue the case on the lines indicated. If he does not concur to that extent, the Advocate-General shall record his reasons in full.

(2) If the Advocate-General records a dissenting opinion the case shall be resubmitted to Government for orders.

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**PART III-CONTRAL OF GOVERNMENT LITIGATION IN CRIMINAL COURTS**

**CHAPTER VI-PROCEDURE IN CASES BEFORE SUBORDINATE COURTS**

**(A) IN MAGISTRATES COURTS**

96. **Powers of State Prosecuting officer.**-Under Section 25(1) of the Code of Criminal Procedure, 1973 (No. 2 of 1974) the State Government shall appoint in every district one or more Assistant Public Prosecutors for conduction prosecution in cases instituted in Magistrial courts.

97. **Conduction of Prosecution by a Private Lawyer on behalf of Government.**-If the District Magistrate feels that in order to conduct a case of Public importance appointment of Special Prosecutor is necessary, he may appoint a Criminal lawyer of repute to conduct any particular case as per Section 25(3) of the Code of Criminal Procedure, 1973.

98. **Engagement of Public Prosecutor in Magistrate's Court.**-Notwithstanding anything contained in rule 97' but subject to rule 25, the District Magistrate may with the previous sanction of the Principal Legal Remembrancer instruct the Public Prosecutor to appear on behalf of Government in a case under enquiry or trial in a Magistrate's Court when, in his opinion, such appearance is necessary in the public interest.

**(B) IN COURTS OF SESSION**

99. **Public Prosecutor to appear in all sessions trial.**-(1) On receipt of an order notifying the commitment of case to the Court of Session as provided in rule, 23, the Public Prosecutor shall conduct the prosecution on behalf of Government in that Court.

(2) The District Magistrate shall arrange for the appointment of a substitute under rule 67 whenever the Public Prosecutor is not available.

100. **Notice of appeal in Courts of Session.**-The District Magistrate is the authorised Officer under Section 385(1) of the Code of Criminal Procedure, 1973 (No. 2 of 74) on whom notices are to be served on behalf of the State :

Provided that the District Magistrate shall intimate the concerned Superintendent of Police of Special Police Establishment of the receipt of the notice of hearing of appeal from Court of Session in cases where the conviction is in respect of cases instituted by the Special Police Establishment.

101. **Appearance of Public Prosecutor in Appeals etc.**-(1) If the District Magistrate is of the opinion that any appeal, reference, revision or other miscellaneous criminal proceeding arising out of a case instituted by a private party is pending before a court of Session is of public importance or involves intricate questions of law or fact, the District Magistrate may instruct the Public Prosecutor to appear and make submissions on behalf of the State under rule 25.

(2) The District Magistrate shall arrange for representation by the Public Prosecutor of Special Police Establishment where the case is one relating to Special Police Establishment and if necessary the Director of special Police Establishment.

**(B) SUPPLY OF DOCUMENTS AND OTHER FACILITIES TO PUBLIC PROSECUTOR**

102. **Supply of copies in Sessions Cases.**-When Public Prosecutor or Additional Public Prosecutor conducting sessions trial desires to have copies of depositions he should apply before the commencement of trial and the copies shall be made available to him under rules, free of charge.

103. **Copies of original case diaries in sessions cases.**-(1) If the original case diary is not made available to the Public Prosecutor or Additional Public Prosecutor, during the course of trial, a copy thereof shall be supplied to him by the Court.

(2) The contents of the case diary is confidential, and it is the duty of the Public Prosecutor to see that the contents of the case diary are not divulged, save in accordance with law.

104. **Facility for inspection of records in Sessions Cases.**-The Public Prosecutor has a right to inspect the record and case diary before the commencement of the Sessions trial. He should avail of the opportunity and may take detailed notes.

105. **Supply of copies to Public Prosecutors in cases before a Court of Session.**- In appeals, revisions and references before Sessions Court, where the services of the Public Prosecutors is considered necessary, he should invariably be supplied with a copy of the judgement or order by the Court.

#### (D) RESPONSIBILITY OF PUBLIC PROSECUTOR IN CRIMINAL CASES

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

Provided that the Public Prosecutor, if he is not specially for the Special Police Establishment, shall forward a copy of his report to the District Magistrate, to the Superintendent of Police concerned of the Special Police Establishment.

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

Provided that the Public Prosecutor, if he is not specially for the Special Police Establishment, shall forward a copy of his report to the District Magistrate, to the Superintendent of Police concerned of the Special Police Establishment.

108. **Revisions against orders of Magistrates.**-If the District Magistrate feels that a revision should be preferred against an order of the Magistrate, the District Magistrate, shall be competent to direct the Public Prosecutor to file a revision in the Court of Sessions without making any reference to the Government.

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## CHAPTER VII-PROCEDURE IN CASES BEFORE THE HIGH COURT AND OTHER AUTHORTIES

### (A) APPEALS BY CONVICTED PERSONS

109. **Notice to District Magistrate and Advocate-General from High Court.**-(1) The District Magistrate is the officer appointed under Section 385 (1) of the Code of Criminal Procedure, 1973 (No. 2 of 74), to whom notices of the date of hearing of appeals, filed in the High Court are sent :

Provided that the District Magistrate shall inform the Director, Special Police Establishment of the notice of hearing in cases before the High Court relating to Special Police Establishment.

(2) Under the rules of the High Court, notices of the date of hearing are also sent by the High Court to the Advocate General through the Law Department, in the under mentioned cases of appeal, if they are set down for hearing both parties :-

- (a) Appeals by accused persons against decisions of Sessions Judges in which counsel appear for the applicant;
- (b) Appeals in murder cases;
- (c) The Advocate General shall appear, on behalf of Government in all the cases referred to in sub-rule(2) without further instruction.

110. **Requisition by District Magistrate in important cases.**-The arrangements described in rule 109 should ordinarily suffice for all appeals against the decisions of Sessions Judges. However, the District Magistrate may request the Advocate-General to appear personally in any important appeal. Such a request is to be routed through the Law Department.

### (B) APPEAL BY GOVERNMENT AGAINST ACQUITTALS

111. **Responsibility of District Magistrate.**-(1) Special attention should be paid to the provisions of Section 378 of the Code of Criminal Procedure, 1973 (No. 2 of 1974), enabling Government to appeal in time against orders of acquittal. District Magistrates should bear in mind that great responsibility rests upon them of bringing to Law Department's notice instances of unjust acquittals.

(2) The District Magistrate shall be personally responsible for remitting the proposals for filing an appeal against acquittal within 30 days of the date of Judgement against which the appeal is proposed.

(3) Each case of delay must be explained to Law Department by the District Magistrate, after holding an enquiry.

112. **Duty of Public Prosecutor regarding orders of acquittals.**-In every case in which the order of acquittal is passed by a Sessions Judge it shall be the duty of the Public Prosecutor concerned to report to the District Magistrate concerned within two weeks of such an order with the opinion, whether an appeal should be filed or not. In case an appeal is recommended to be filed, the Public Prosecutor shall invariably point out the errors in the Judgement and the material points on which the judgement is unsound. The grounds of appeal should be clearly drafted and an evasive statement should be avoided. It is intended to point out that certain parts of the deposition have been mis-quoted, the extracts of the deposition should be reproduced. In case the appeal is recommended to be filed on the questions of law, the exact legal position to that effect should be unambiguously pointed out.

113. **Procedure when District Magistrate proposes an appeal against acquittal.**(1) When the District Magistrate considers that an appeal should be preferred by the Government under Section 378 of the Code of Criminal Procedure, 1973, from an original or an appellate judgement of acquittal passed by a Sessions Judge or a Magistrate he shall submit to the Principal Legal Remebrancer, a brief narrative of the facts of the case with his reasons for filing an appeal or an application for revision. He shall also enclose a certified copy of the judgement, certified copies of documents, statements of witnesses and other substantial document and police case diaries with the proposal. No marginal note or underlinings should be made on the certified copies of the judgement.

(2) In cases where the concurrence of any Administrative Department of the Government is necessary, the District Magistrate shall send the proposal for appeal or revision to the head of the Department along with one certified copy of the Judgement or order against which an appeal or revision has to be preferred. The certified copy of judgement, certified copies of statements and documents should be submitted to Law Department directly.

**114. Special reference by Director General of Police and other Heads of the Department.**-In any case in which the Director General of Police or the Head of the Department considers that an appeal against an acquittal should be filed he may move the District Magistrate. If the District Magistrate refuses to move in the matter and the Director General or the Head of the Department disagrees with his decision or should the circumstances of any case be such that reference to the District Magistrate would involve delay as to prevent the appeal being filed within the prescribed time, the Director General or the Head of the Department, as the case may be, may refer the case directly for the orders of Government.

**115. Appeal against acquittal in cases of Delhi Special Police Establishment, Special Police Establishments Madhya Pradesh.**-(1) In such case an appeal against conviction on the ground of inadequacy of sentence may be filed as provided in Section 377(2) of the Code of Criminal Procedure, 1973.

(2) If such an order of acquittal is passed in such cases investigated by the Delhi Special Police Establishment and other Central Government agency an appeal shall be filed as per Section 378(2) of the Code of Criminal procedure, 1973.

(3) In such appeals the Advocate General would formally nominate the Lawyers appointed by the Ministry of Home Affairs, Government of India or the Lokayukta Madhya Pradesh, as the case may be, to represent him for arguments. The advocate General would keep the Government of India and the Lokayukta Madhya Pradesh informed of the date or dates fixed for hearing.

**116. Reference to be prompt.**-All cases to be referred for orders of Government should reach the Law Department within four weeks from the date of the order of acquittal. In case any proposal for any reason could not be referred to the Law Department within the prescribed period an explanation giving reasons for the delay should invariably accompany the proposals.

**117. Facilities to accused.**-(1) When an appeal is filed against an acquittal, the District Magistrate will be responsible for seeing that the accused, if he wishes to remain present during the hearing of appeal, has and opportunity of attending to this end. If the accused is in custody the District Magistrate will in every case make necessary arrangements for his production in the High Court on the dates of hearing. If the accused is not in custody and cannot afford to bear the expenses for the journey to the seat of the High Court or its Bench, Where the appeal is to be heard, the District Magistrate should provide him with sufficient funds in accordance with sub-rule (8) for the journey to the bench of the High Court and back.

(2) The District Magistrate should further intimate to the accused that, if the accused cannot afford to engage a lawyer, a lawyer can be provided to him at State expense. The intimation to this effect should be given in every case. If the accused is in Jail, the intimation should be given through the superintendent of the Jail. The accused should also be informed that he may select his own counsel and that in case the counsel selected by him demands more fee than the rates approved by the Government, the accused will have to bear the extra amount himself.

(3) If an appeal is filed against the acquittal of more accused than one and if it appears from the defences disclosed that it is desirable to entrust their defence in the High Court to more counsel than one, the District Magistrate shall decide as to how many counsel would be necessary.

(4) If the accused wishes to select his own counsel, the District Magistrate shall furnish him with a certificate that Government would pay fee to the counsel engaged by the accused for his defence in the High Court at rates approved by the State Government.

(5) If the accused is in Jail, the superintendent of Jail should put him in communication with the counsel selected by him.

(6) If the accused desires that Government should arrange a counsel for him, the District Magistrate should address the Law Department for making provision for a lawyer.

(7) The fee shall be paid to the counsel who appears in the High Court for the accused on his producing the certificate referred to in sub-rule(4) or the authority received by him from the Law Department under sub-rule (6).

(8) If the accused is on bail, the District Magistrate shall provide him fare for a second class railway fare from the District Headquarters to the place where the appeal is to be heard and back plus such pocket money as may be fixed by the Government.

(9) For the purposes of sub-rules (1) and (2), the decision as to the question whether accused is eligible to receive such help, the District Magistrate shall be the sole arbitrator.

118. **Applications to District Magistrate from private person.**-(1) In any case in which a private person makes an application to the District Magistrate requesting him to move the Government, under Section 378 of the Code of Criminal Procedure, 1973, to present an appeal against acquittal, he may decline to do so if he sees no adequate reasons to do so. If however, he is of opinion that an appeal should be presented, he should follow the procedure laid down in rules 113, 114 and 116.

(2) If the State Government is satisfied that, grounds exist for preferring an appeal against acquittal, it may direct the Advocate-General to file an appeal in such cases.

#### (C) REVISION CASES

119. **Notice of revision cases in High Court.**-(1) In the under mentioned cases, the High Courts issues notices, if the case is fixed for by-party hearing, to the Advocate General through Law Department :-

- (2) petitions for revision by private persons against judgements or orders passed by Sessions Courts in which the application is either filed through counsel or in which counsel enters appearance for the applicant, before the petition is admitted for hearing parties;
- (3) in all cases of enhancement of sentence, when the court considers that there is prima-facie cases for alteration of the sentence.

(2) If, on receipt of a report from the District Magistrate or otherwise, is considered that the case is not important or is one in which Government is not interested the notice referred to in sub-rule (1) may be ignored by the Government. However, it will inform the High Court that Government does not intend to participate in the case.

(3) If the Government desires that the State should be represented in the case, it shall forward the notice to Advocate-General with a direction that State should be represented. On receipt of the notice referred to in sub-rule (1), the Advocate General shall appear on behalf of Government in all such cases without seeking further instructions.

120. **Procedure on issue of rule to show cause.**-(1) It is also the practice of the High Court, when it sets down an application for revision for hearing both parties, to issue a rule nisi calling upon District Magistrate to show cause why the application should not be allowed. Such a rule should be construed as an opportunity afforded to the District Magistrate to take steps to defend a conviction. It should not be regarded as a command to show cause in every case.

(2) If the District Magistrate considers that the case is important or one in which Government should defend the order attacked, he should in a brief report, state reasons in support of the judgement or order and forward it to the Law Department with a requisition for the services of the Advocate General. Copies of all papers received from the High Court should be sent with the report.

(3) In cases in which the District Magistrate considers that the order objected need not be supported he should likewise sent a brief report stating reasons for his view to the Law Department.

(4) In no case should a reply to a order be sent direct to the High Court by the District Magistrate.

**121. Duty of Public Prosecutor to report about inadequate sentences and subsequent procedure.-** (1) If in the opinion of Public Prosecutor the sentence passed by the session Court is inadequate he shall move the Law Department through the District Magistrate for preferring an appeal to the High Court for enhancement of sentence.

(2) The District Magistrate shall thereupon ask the Superintendent of the Jail concerned to inform him as soon as the prisoner files a Jail appeal. If in the mean time the District Magistrate decides to request the Government to make an application for enhancement of the sentence, he shall at once inform the Advocate General of his intention. He shall request the Advocate General to request the Court not to decide the Jail appeal summarily. The Law Department shall receive the proposal not later than two weeks from the date of despatch of the Jail appeal.

**122. Procedure in other cases of revision.-**(1) If the District Magistrate considers that an order passed by the Court of Sessions should be revised by the High Court, he may apply to Government to move for revision. Such application should show the grounds on which the proposed petition for revision is to be filed.

(2) If Government agrees with the proposal, the Advocate General will be instructed to apply for revision.

(3) An application for revision before the High Court is to filed within ninety days. Every proposal for filing revision should reach the Law Department within four weeks from the date of the order against which a revision application is to be made along with certified copy of the said order.

#### (D) COMBINATION OF APPEALS AND APPLICATIONS OF REVISION

**123. Procedure relating to appeals by accused in cases involving capital charge.-** (1) Whenever an appeal is filed in the High Court by an accused person in a case involving a capital punishment the High Court gives a notice of lodgement to the Advocate-General. It is for Government to inform the High Court through the Advocate-General, within three weeks there after, whether Government intends to file an application for enhancement of sentence or intends to prefer an appeal against acquittal, if any, in that case.

(2) The Advocate General should forward to Government a copy of every notice, as soon as it is received from the High Court under sub-rule(1). After examining the record of the case if it is available in the High Court the Advocate General shall advice Government as to whether it would be desirable to file an appeal against acquittal or file an application for enhancement of sentence, in the case.

(3) After receipt of the proposal from Advocate-General, the decision of Government shall be communicated to the Advocate General soon thereafter.

(4) It will be noticed that the procedure laid down in rules 111 to 116 and rule 122 is of general application while the procedure laid down in this rule applies specially to cases in which a capital punishment is involved. The object of laying down special emphasis on this special procedure is that all the appeals and applications for enhancement arising out of one case may be heard together by the High Court along with the appeal already filed by an accused.

#### (E) APPLICATIONS TO HIGH COURT FOR TRANSFER OF CASES

**124. Procedure in cases of transfer.-**(1) Under the rules of the High Curt notices of the date of hearing are sent by the High Court to the Advocate-General through the Law Department in all proceedings regarding the transfer or cases if they are set down for hearing both parties.

(2) Such cases are sometimes of great administrative importance, and it is necessary that the Advocate-General should be fully instructed by the concerned authorities. As soon as the District Magistrate receives notice of the date of hearing he should at once communicate full details confidentially, if necessary, to Government. The state Government shall thereafter issue necessary instructions to Advocate General:

Provided that in a proceeding relating to transfer of a private complaint case is a case which is not of public importance, a notice issued under this rule may be withheld by the Government and the Government will inform the High Court that Government does not intend to be represented in the case.

(A) MISCELLANEOUS PROVISIONS REGARDING CRIMINAL CASES

125. **Appearance of Advocate-General at the instance of High Court.**-If, in an appeal or other criminal proceeding, the High Court *sou-motu* express a desire that the Advocate General should appear and address the Court on any point of Law of fact, the Advocate-General shall forthwith refer the matter to Government for orders.

126. **Assistance to Advocate-General.**-(1) If in an appeal pending in the High Court, the Advocate General requires the help of a counsel or prosecutor who has conducted the Criminal trial in the Trial court the Advocate General may direct the District Magistrate of the District to spare the services of such lawyer or prosecutor. The District Magistrate shall thereupon make arrangements for sending the counsel to Advocate General. Prior permission of the Government should be obtained before the services of the Public Prosecutor or Additional Public Prosecutor, Assistant Public Prosecutor or Private Legal Practitioner are made available to Advocate General.

(2) When applying for Government's sanction under sub-rule(1) the District Magistrate shall explain the circumstances under which he considered it necessary to send the Counsel/Prosecutor for briefing the Advocate-General. If such Permission is sought at the instance of the Advocate-General that fact should also be stated. It should not be assumed that Government's sanction will be given as a matter of course.

(3) The fee, T.A. and D.A. payable to such Public Prosecutor and Additional Public Prosecutor or Private Legal Practitioner shall be such as may be prescribed by the State Government from time to time.

127. **Supply of copies to Advocate-General.**-Every rule nisi issued under sub rule(1) of rule 120, all notices received by the District Magistrate from the High Court, either under sub-rule (1) of rule 119 or in appeals, shall be treated and disposed of as urgent references. If the District Magistrate feels that the appearance of the Advocate-General is necessary in a particular case, he shall forward to the law Department a letter of requisition for the Advocate-General's appearance along with copies of the judgements or orders of the lower Courts, copies of the evidence, both oral and documentary and a copy of the charges framed:

Provided that no copies shall be prepared in a case in which under the standing orders of the High Court, a paper book is prepared by the registry of the High Court.

The requisite copies should reach the Advocate-General at least a week before the date of hearing.

(G) APPEALS TO SUPREME COURT

128. **Appeals.**-(1) Appeals to supreme Court in criminal proceedings lie under Article 132 or Article 134 or on special leave granted by the Supreme Court under Article 136 of the Constitution.

(2) As per rules of the High Court, a petition for a certificate under Article 132(1) or 134(1) (c) of the Constitution has to be filed within seven days, in case of sentence of death, or within fifteen days in other cases, from the date of the judgement of final order against which an appeal is proposed.

(3) As per Order XXI, Rule 1 of the Supreme Court Rules a Special Leave petition has to be lodged where leave to appeal to the Court was refused. In case where the High Court has refused to grant leave to appeal within sixty days from the date of such order and in any other case within 90 days from the date of judgement or order sought to be appealed.

## CHAPTER VIII-PROSECUTION OF CRIMINAL CASES INSTITUTED AT THE INSTANCE OF DEPARTMENTAL OFFICERS

129. **Scope of the Chapter.**-The rules in this Chapter relate to departmental prosecution i.e., criminal case instituted at the instance of a Government officer relating to acts of which he has knowledge in his official capacity. Its contents are intended mainly to help officer who have no experience of the procedure followed in the institution and conduct of cases in criminal courts.

130. **Expediency of consulting District Magistrate in all cases.**-Before launching a prosecution Government officer should consult the District Magistrate informally regarding the procedure to be adopted, unless of course the case is of a kind in which prosecutions are frequently launched by the department. In all cases of doubt, the District Magistrate should invariably be consulted.

131. **Report to police in cognizable cases.**-When the offence is cognizable, (i.e. one in which column (3) of Schedule-I of Code of Criminal Procedure, 1973, provides that police may arrest without warrant) a report should be sent, giving a clear, consecutive and chronological statement of the salient facts, To the nearest police station. All further steps will be taken by the police, but the officer making the report must render all assistance to police during investigation within his power.

132. **District Magistrate to be consulted in non-cognizable cases.**-When the offence is non-cognizable [i.e. one in which column (3) of Schedule-I of the Code of Criminal Procedure, 1973 provides that the police may not arrest without warrant] and is of a kind with which the Department is not familiar, the District Magistrate should always be consulted. The case might require certain formalities before launching prosecution. The formalities are set out in sub-section (1) (a) of Section 195 and in Section 197 of the Code Criminal Procedure, 1973.

133. **Complaint in cases not requiring section of Government.**-(1) When the case does not fall within the scope of Section 197 of the Code of Criminal Procedure, 1973 the officer instituting the prosecution should send a written complaint to the Magistrate having jurisdiction.

(2) The complaint should give a clear, consecutive and chronological statement of the salient facts.

(3) If the case falls within the scope of sub-section (1) (a) of Section 195 of the Code of Criminal Procedure, 1973, the complaint shall contain the statement that the complainant is a public servant.

(4) Under proviso (a) to Section 200 of the Code of Criminal Procedure, 1973, it is not necessary for a public servant to be examined by the Court when he makes a complaint in his official capacity. But if the complaint is intricate, the officer making it should present it personally in order that the court may have an opportunity of seeking clarification on obscure point.

134. **Procedure in case requiring Sanction.**-(1) When the case falls within the scope of Section 197 of the Code of Criminal Procedure, 1973, no prosecution can be instituted without the previous sanction of the Central Government or the State Government as the case may be.

(2) It should be borne in mind that the State Government by notification No. 1799-II-B(III) dated the 14<sup>th</sup> May 1981 has directed that the sanction under Section 197 (2) shall be necessary before launching prosecution against the police personnel for an offence alleged to have been committed by them while acting or purporting to act In discharging their official-Duties.

(3) The departmental authorities should consult the District Magistrate and submit a complete report to Government through the head of the department concerned. Further steps to be taken, will be indicated in Government's order.

(4) If there be any doubt whether Section 197 of the Code of Criminal Procedure, 1973, applies, the Legal Remembrancer should invariably be consulted.

135. **Appointment of Prosecutor in simple cases.**-In simple cases of departmental prosecutions, the officer laying the complaint is responsible for the proper prosecution of the case. This should ordinarily be done by appointing a departmental officer or a subordinate familiar with the facts of the case, to be prosecutor. Such prosecutor must ask for the Court's permission to appear under Section 302 of the Code of Criminal Procedure, 1973. The District Magistrate may also direct that such a prosecution shall be conducted by Assistant Public Prosecutor.

136. **Engagement of Public Prosecutor/Additional Public Prosecutor in complicated cases.**-When the case is a complicated one, the officer instituting it should approach the District Magistrate for engaging Public Prosecutor or Additional Public Prosecutor to conduct the prosecution case.

137. **District Magistrate to assist railway authorities.**-When prosecutions are instituted by a railway administration the District Magistrate may render officers of the railway administration such advice as they may require regarding preliminary formalities. The District Magistrate should direct the Public Prosecutor or other suitable legal practitioner, to conduct the case, if a prosecuting counsel is required.

138. **Intimation to railway or departmental officers of the filing of appeal.**- When the District Magistrate received notice of an appeal against a conviction in a case instituted by an officer of a department or by railway administration he should inform the department or the railway officer concerned.

139. **Procedure in cases involving loss mentioned in Section VIII of Chapter 15 of the Madhya Pradesh Financial Code Vol.-I.**-When a prosecution against a Government servant is necessary in connection with the losses mentioned in Section VIII of Chapter 15 of the Madhya Pradesh Financial Code, Volume I, the following procedure shall be followed by the officer of the Department concerned :-

- (a) The officer of the department concerned shall follow the procedure laid down in the said section in making reports of losses to the competent authority;
- (b) As soon as a reasonable suspicion exists that a cognizable offence has been committed, the senior most officer of the department in the district shall report to the District Magistrate and seek a regular police investigation under the Code of Criminal Procedure, 1973.
- (c) If the District Magistrate agrees that an investigation is necessary, the senior officer of the department concerned should –
  - (i) request the District Magistrate to arrange for the investigation to proceed from day to day
  - (ii) see that all witnesses and documents are made available to the investigating officer and
  - (iii) associate a departmental officer with the investigating agency. Such officer of the department should be one who is not personally concerned with the irregularity leading to the loss, but who is fully cognizant of the rules and procedure of the office in which the loss has occurred;
- (d) When the investigation is completed, an officer of the department (accompanied by the officer who attended the investigation) shall be made available for conferences with the authority who will decide where a prosecution should be instituted. If it is decided not to prosecute, the case shall be reported through the usual channel to Government for orders;
- (e) If it is decided that the prosecution should be launched the representative of the department should ascertain from the prosecution department the probable time within which the trial shall conclude. If the department wants speedy trial, it should request the prosecution branch to make necessary application to the court;
- (f) When the case is filed in the court by the police, the senior officer of the department concerned should see that all witnesses serving in the department and all documentary evidence in the control of the

- department. Are punctually produced, and should also appoint an officer of the department, preferably the officer who attended the investigation to attend the proceedings in court and assist the prosecuting staff;
- (g) If any prosecution results in discharge or acquittal of the accused, or the sentence imposed appear to be inadequate, the senior officer of the department concerned should at once consult the District Magistrate as to the advisability of preferring appeal against acquittal or enhancement of sentence or preferring a revision against the order of discharge and if the District Magistrate is satisfied, he should direct the Public Prosecutor to prepare draft memo of appeal. The District Magistrate shall then move the Law Department for necessary action in the matter;
- (h) The senior most officer of the department posted in the district should see that, in addition to the reports required under clause (a), (b) and (d) above, prompt reports are submitted to Government through the usual channel regarding :-
- (i) the commencement of a police investigation;
  - (ii) the decision to prosecute in a particular case;
  - (iii) the result of any prosecution;
  - (iv) the decision to proceed further in revision or appeal in any case;
  - (v) The result of any proceedings in revision or appeal.
- (i) Notwithstanding anything contained in clauses (b) to (h), the senior most officer of the department posted in the district may, if he thinks fit, refer any matter through the usual channel for the orders of Government, before taking action.
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**CHAPTER IX-ASSISTANCE TO GOVERNMENT SERVANTS IN CRIMINAL CASES  
INSTITUTED BY OR AGAINST THEM**

140. **Scope of the Chapter.**-The rules in this chapter provide for assistance to be given to government servants in instituting criminal cases or defamation and in defending criminal cases instituted against them for any act done by them in their official capacity. There are separate rules made under the Police Act, 1861 (v of 1861), for the defence of Police personnel and said rules are contained in Section 6 of Chapter VIII of Part-II of Madhya Pradesh Police Regulations.

141. **Assistance in Prosecution for defamation.**-(1) When Government considers it expedient that a prosecution under Section 500 of the Indian Penal Code, 1860 (XLV of 1860) for a defamation should be launched, where an officer has been defamed while acting in his public capacity it would direct the Public Prosecutor to launch a prosecution as procedure laid down in sub-section (2) of Section 199 of Code of Criminal Procedure.

(2) Nothing contained in sub-rule (1) above shall bar the filing of private complaint under Section 500 IPC by the Public servant concerned, with prior permission of the State Government [See 199 (6) Code of Criminal Procedure].

(3) An application for launching prosecution or for permission to file a private complaint in the Court of magistrate, shall be routed through District Magistrate of the district or head of the department under whom the official defamed is serving.

142. **Engagement of counsel other than Public Prosecutor by Government servant for defamation case.**-When a Government servant, who has obtained the permission of the Government to prosecute any person at the State expense, for defamation, desires to employ a legal practitioner other than the public prosecutor, he shall report the name of such legal practitioner to the Legal Remembrancer. If the legal Remembrancer deems it proper he may grant permission for the purpose:

Provided that if the fees demanded by such legal Practitioner is in excess of the schedule of fee payable to the public Prosecutor prior sanction of the Government must be obtained before handing over the brief to the counsel.

143. **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. The officer shall also report to them the actual facts and circumstances relating to the case.

(2) The head of the department shall then get such enquiries made, as may be deemed necessary, and forward the report to Government with his comments and recommendations.

144. **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, revived his act was justified by law or provided he bonafide believed his act to be justified and lawful. The Government while considering the defence of the officer shall take the following points in view :-

- (a) that the act was strictly in accordance with law, or
- (b) act was covered by any of the recognised 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 the Government servant shall be free to make arrangements for his defence, provided that his defence of the case will not interfere with the performance of his official duties. If such a case is decided in favour of the Government servant, Government may reimburse such expenses, as it may consider reasonable.

(3) When a prosecution is instituted against a Government servant who is or was 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 and if no prior sanction has been obtained, the court should be requested to reject the complaint for want of the sanction.

145. **Engagement of Counsel.**-When the defence of a Government servant is sanctioned by the Government, the services of the Public Prosecutor may be made available, if considered desirable. Where the services of the Public Prosecutor are not made available, a private legal practitioner may be engaged. The fee payable to the public prosecutor or private legal practitioner for the whole case shall be such as the District Magistrate may fix within such limit as may be determined by the Government from time to time. If it is proposed to fix the fee higher than the limit fixed by the Government prior Sanction of the Government shall be obtained. The said fee and any incidental charges, such as court fee and diet money of witnesses etc., shall be borne by the Government.

146. **Procedure when decision is in favour of Government Servant.**- If the case, defended at State expenses is decided in favour of the Government servant, and if any compensation, costs or damages recovered from the adversary, the Government shall be reimbursed of the extent of cost incurred out of the amount of cost and compensation realised in the case.

147. **Procedure when decision is against Government Servant.**-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 Government shall be decided by Government, either on the application of the officer concerned or on the representation of his official superior. The application or representation shall be submitted to Government through the head of the department. The head of the Department shall forward the application to Government after recording his own considered opinion.

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

149. **Requests for assistance to be routed through the Collector.**-All requests for assistance to Government servants, in criminal cases or Civil suits, shall be routed to the Government, through the Collector or head of concerned department.

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

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

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

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

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

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

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

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

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## CHAPTER XI-DEFENCE OF INDIGENT ACCUSED

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

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

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

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

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

- (b) (i) has, for atleast five years held a judicial office in the territory of India; or  
(ii) has, for atleast five years, been a pleader; or  
(iii) has, an experience of at least five years as a pleader and judicial officer taken together.
- (3) The Panel prepared under sub-rule (1) shall be in force for a period of one year commencing from the 1<sup>st</sup> day of January following and a copy thereof shall be furnished to the pleader included therein.
4. **Engagement of Pleader.**-(1) The Sessions Judge shall engage a pleader out of the Panel to defend the unrepresented accused by rotation in such a manner that, as far as possible, every pleader included in the panel shall get a chance:  
Provided that looking to the nature of the case, under exceptional circumstances, if the Sessions judge is of the opinion that it is desirable to assign a pleader of better calibre and experience and such pleader is not in the panel, he may engage such other pleader as he may think fit to defend the unrepresented accused.
- (2) in case any unrepresented accused taken an objection about a particular pleader being appointed from the panel and his objection, in the opinion of the Sessions judge, is a reasonable one, then the Sessions Judge may nominate any one else from the Panel for defending that unrepresented accused.
- (3) If in any trial before the Sessions Judge there are more than one accused and all of them have common interest, only one pleader shall be engaged for their defence.
- (4) If in any trial before the Sessions Judge there are more than one accused having conflicting interest, one pleader shall be engaged for each group of such persons having common interest.
5. **Fees.**-The Pleader engaged under rule 4 shall be entitled to receive fee at the rate of Rs. 30 per day on which he appears in the trial and the rules governing the manner of payment of fees of public prosecutors shall be applicable for payment of fees under this rule:  
Provided that pleader engaged under the proviso to sub-rule (1) or rule 4 shall be entitled to receive fee at the rate or Rs. 40 per day on which he appears in the trial.
6. **Facilities of pleaders.**-The pleader engaged under rule 4 shall :-
- (i) be entitled to have free of cost a copy of the record that is supplied to the unrepresented accused whom he defends; and  
(ii) have a right to inspect the records of the Court free of cost pertaining to the trial for which he is engaged.  
[published in Madhya Pradesh Rajpatra Part IV (3a) dated 1<sup>st</sup> February 1980 pages 23-24]
- (2) As regards the warrant cases in magisterial courts, the State Government in exercise of the powers under Section 304(3) of the Code of Criminal Procedure, 1973 has extended the above rules to such cases also [ vide Notification 17 (e)- 118-81-XXI-B, dated 12-11-81].
- (3) If any indigent accused person tried in a summons case, is desirous of the services of a lawyer for his defence, he may be directed to approach the Legal Aid Officer of the District for Legal Aid and advice.
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## PART IV-CONTROL OF GOVERNMENT LITIGATION

### CHAPTER XII-WRIT PETITIONS

#### PETITIONS UNDER ARTICLE 32

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

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

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

#### PETITIONS UNDER ARTICLE 226

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

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

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

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

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

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

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

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

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

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## CHAPTER XIII-SUITS AND OTHER PROCEEDING AGAINST GOVERNMENT

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

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

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

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

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

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

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

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

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

“Provided that no such injunction shall be granted-

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



- (c) To stay, any disciplinary proceeding pending or intended or, the effect of any adverse entry against any person appointed to public service and post in connection with the affairs of the state including any employee of the Company owned or controlled by the State Government; or
  - (d) To restrain any election; or
  - (e) To restrain any auction intended to be made, or, to restrain the effect of any auction made by the Government; or to stay the proceeding for the recovery of any dues recoverable as land revenue unless adequate security is furnished; and any order for injunction granted in contravention of these provisions shall be void".
- (5) By M.P. Act no. 29 of 1984, rule 4 of order XXXIX has also been amended, which is reproduced below :-

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

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

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

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

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

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

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

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

**165. Procedure when notice relates to suit against Central Government.-(1)**

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

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

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

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

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

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

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

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

**168. Procedure for compromising claims below rupees five thousand.-**

Where the value of the claims is below rupees five thousand, action shall be taken as follows :-

(a) If on the perusal of the report of the Officer-in-charge, the Collector considers the claim to be genuine in whole or in part, he shall forward all the connected papers to the Government Pleader for his opinion on the merits of the claim and also as to whether the claim should be compromised;

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

(c) If the person who has given notice is willing to settle his claim amicably on terms which appear to the Collector to be reasonable, the Collector shall forthwith send all the connected papers, along with the opinion of the Government Pleader and his recommendation, to the head of the department concerned (which expression shall, in the case of a department having on separate head of the department shall be construed as referring to the Secretary to Government in that department.)

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

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

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

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

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

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

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

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

## (B) PROCEEDINGS SUBSEQUENT TO INSTITUTION OF SUITS

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

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

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

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

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

- (2) Along with the report there shall be sent :-
- (a) a copy of the plaint;
  - (b) a draft of the proposed written statement;
  - (c) a list of all documents which are proposed to be filled in evidence, or production in Court is required;
  - (d) copies of any papers needed for the elucidation of the case.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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## CHAPTER-XIV-SUITS INSTITUTED BY GOVERNMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) CENTRAL RULES FOR PREPARING PLEADERS

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

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

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

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

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

(B) THE BRIEF

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

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

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

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

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

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

(C) CONDUCT OF THE CASE IN COURT

202. **Government Pleader's responsibility.**-The Government Pleader is directly responsible for the prosecution of a case in court and it is his duty personally to attend the case, when it is called and to make all necessary applications to the court in connection with the case. He is also to keep the Collector informed on all matters in which his cooperation is required.

203. **Material for the cross-examination of opposite party's witnesses.**-When the opposite party files his list of witnesses, and required court to summon his witnesses, the Government Pleader must insist on strict compliance of rule 1 (2) of order XVI of the Code of Civil Procedure so as to compel the adversely to disclose the points on which each witnesses is going to depose. The Government Pleader shall supply a copy of it to the Officer-in-charge who shall cause enquiries to be made about the said witness and shall furnish the Government Pleader with available material for their effective cross examination.

(D) GOVERNMENT AS INTERVENER

204. **Intervention in pending suits.**-(1) If the Collector considers that the interest of the Government require that state should be made a party to any pending suit, he shall, as promptly as possible, after obtaining all the information possible in the circumstances of the case, submit a full report showing clearly his reasons for joining the Government as a party to the suit.

- (2) The report shall be sent of :-
- (a) to the Government in the administrative department concerned, when the dispute relates to a department with which the Collector is administratively concerned.
  - (b) to the head of the department in other cases.

(3) The Government may after taking such legal advice as it may deem fit and after consulting Law Department, direct the Collector to intervene in such suit or proceedings.

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## CHAPTER-XVI-(A) APPEALS AND REVISIONS

205. **Procedure when decision adverse.**-When a suit has been decided, wholly or in partly adversely to Government, the Officer-in-charge of the suit should at once consider the advisability of filing an appeal and should consult the Government Pleader.

206. **Report when appeal recommended.**-(1) If the Officer-in-charge considers that an appeal should be filed, he shall submit a report through the head of the department, for the orders of Government, giving his reasons for recommending an appeal.

- (2) The report shall be accompanied by-
- (i) a copy of the judgement and decree against which appeal is proposed; and
  - (ii) a draft of the proposed memorandum of appeal drawn up by the Government Pleader.

(3) The report must be despatched so as to reach Government within fifteen days of the date of the decree, in case where the appeal lies to the District Court, and within one month where the appeal lies to the High Court:

Provided that, in a case where the appeal lies to the District Court, if there is a risk of appeal becoming barred by time, the Officer-in-charge may, on his own responsibility after consultation with the Government Pleader, file the appeal and immediately report the action taken to Government.

(4) If the Officer-in-charge is of the opinion that filing of an appeal is not considered advisable, he shall, send a report to this effect to the administrative department concerned for obtaining Government Orders. Such report should invariably be sent to the administrative department well in time.

207. **Orders of Government on the report.**-Orders of Government on the report will be obtained from the Law Department by the Secretary of the Administrative Department concerned. The order will be communicated to the Office-in-charge by the Law Department together with any instruction which may be necessary. The notes recorded by the Law Department in the case should be treated as confidential.

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

209. **Appeals against decisions in favour of Government.**-(1) In an appeal where the State Government is respondent, it shall be the duty of the Officer-in-charge to give proper instructions to the Government Pleader and to take all such steps as would be necessary, in the circumstances of the case.

(2) Ordinarily, it shall not be necessary to apply for instructions from the Law Department, but a reference may be made in cases of doubt or difficulty, or when new pleas are raised:

Provided that in important cases the Government Pleader shall report his proposals for the defence of the appeal to the Law Department directly for approval.

(3) A notice of an appeal filed in the High Court shall be forwarded to the Advocate-General through the Law Department together with a power of attorney in form No. 10 in Appendix II.

210. **Second appeals and revisions.**-Rules 188 to 193 shall be applicable to appeals filed against appellate judgements and mutatis mutandis, to applications for revision.

211. **Letters Patent Appeal.**-As soon as a case is decided by a single Bench, against the Government, the Advocate General shall send a report together with his opinion regarding advisability of preferring a Letters Patent Appeal in that case, to the Law Department, The Law Department shall obtain orders of the Government thereon, through the Secretary in charge of the Administrative Department. In case an appeal is ordered, the latter shall return the file, together with a power of attorney in favour of the Advocate-General, to the Law Department immediately so as to enable the Advocate-General to file the appeal within the period of limitation i.e. 30 days.

212. **Responsibility of Officer-in-charge or Government Pleader for timely action in appeals.**-The Officer-in-charge or the Government Pleader shall be responsible for seeing that timely action is taken in appeals coming within the limit of Section 97 of the Code of Civil Procedure, 1908 (V of 1908).

213. **Procedure in case before the Board of Revenue.**-(1) If in a case before the Board of Revenue representation of Government is considered necessary, the Commissioner of Division shall send requisition for the service of a local Government Counsel.

(2) The counsel so engaged shall be paid such fees, as may be prescribed by the Government from time to time. The fee shall be paid after disposal of the appeal.

#### (B) APPEAL TO SUPREME COURT

214. **Appeals.**-(1) Appeals to Supreme Court lie either on a certificate granted by the High Court under Article 132 or Article 133 or on Special Leave granted by the Supreme Court under Article 136 of the Constitution.

(2) As per article 132 of the Limitation Act, 1963 a petition for a certificate under Article 132 (1) or 133 (1) of the Constitution has to be made within sixty days from the date of the decree, judgement or final order to be appealed against.

(3) As per order XVI, Rule 1 of the Supreme Court rules, a petition for special leave to appeal has to be lodged within sixty days from the date of refusal of a certificate by the Court or within ninety days from the date of the judgement sought to be appealed from.

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

216. **Procedure to be followed in regard to an appeal to the Supreme Court.**-(1) Whenever an appeal or other proceedings in which Government is involved is decided against the Government by the High Court the Advocate General shall intimate the fact to Law Department along with his opinion whether an appeal should be preferred to the Supreme Court.

(2) On receipt of the opinion of the Advocate General under sub-rule (1) the Law Department shall obtain the orders of Government in the administrative department whether an appeal to the Supreme Court should be filed or not, and convey the same to the Advocate-General.

(3) When it is decided by Government to go up in appeal to the Supreme Court from any judgement, decree or any final order of the High Court, the Advocate-General, shall, if necessary apply to the High Court for grant of a certificate as required by Articles 132 (1), 133 (1), 134 (1) (c) of the constitution or order XLV of the Code of Civil Procedure, as the case may be.

217. **Refusal of certificate.**-If a certificate is refused by the High Court, the Advocate General shall, without delay, intimate the fact to the Law Department along with his advice whether an application for special leave to appeal should be filed in the Supreme Court. The Law Department shall then issue necessary instructions to the Standing Government Counsel at New Delhi, under intimation to the Advocate General, who (Advocate General) would then draft petition for special leave, along with certified copies of judgement, decree or final order which are required to be filed in the Supreme Court along with petition for special leave and send it directly to the Standing Government Counsel at New Delhi.

**218. Preparation of record etc.-** On the grant of certificate by the High Court or on receipt of the intimation regarding the grant of special leave to appeal by the Supreme Court, as the case may be, the Advocate General shall without delay, take steps to have the record prepared in the High Court, in accordance with the Supreme Court Rules, and under the Rules of the High Court and take further steps for transmission to the Registrar of Supreme Court. He shall at the same time prepare a brief of the case and the tentative grounds of appeal for the use of standing Government Counsel at Delhi. He shall forward the same to the Law Department for further action.

**219. Filing of appeal and engagement of counsel.-** After receipt of the brief of the case and the tentative grounds for appeal from the Advocate General, the Law Department shall take necessary steps for the filing of the appeal and for engagement of counsel for the proper conduct thereof in the Supreme Court.

**220. Preparation of statement of case.-** On receipt of the notice of dispatch or record from the High Court or upon the receipt of certificate or receipt of record from the Registrar, Supreme Court, as the case may be, the Advocate General shall prepare a statement of the case and send it to the Standing Government Counsel for filing in the Supreme Court.

**221. Procedure with regard to an appeal or a petition for leave to appeal in Supreme Court by a private party.-** (1) On receipt of a notice of appeal or a petition for leave to appeal in the Supreme Court by a private party against Government, the Law Department shall intimate the fact to the Advocate General and to the department concerned. The Law Department shall at the same time send intimation of receipt of such notice to the Standing Government Counsel at Delhi.

(2) On receipt of intimation, the Advocate General shall prepare a brief of the case for the use of the Standing Government Counsel and send the same to the Standing Counsel at Delhi under intimation to the Law Department.

(3) The Law Department shall then send necessary instructions along with power of Attorney in form No. 11 in Appendix II to Standing Government Counsel for the proper conduct of the appeal or petition, on behalf of the State Government.

**222. Copies of Notice to be endorsed to Law Department.-** In order to keep the Law Department posted fully with the progress of a case pending in the supreme Court, copies of all notices received either in the administrative department or by the Advocate General shall be endorsed immediately to the Law Department. The date of the receipt of the said notice shall be specifically noted on the said notice.

**223. Intimation regarding result of the appeal petition.-** The Standing Counsel at Delhi shall intimate the result of the appeal/petition forthwith to the Officer-in-charge and Law Department. A copy of the judgement or order of the Supreme Court also accompany the intimation.

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**CHAPTER-XVII-EXECUTION OF DECREE AND RECOVERY OF COSTS**

**224. Satisfaction of decree against Government.-** Whenever it has been finally decided not to contest further a decision which is either wholly or partly adverse to Government, the Officer-in-charge of the suit shall at once direct the Collector to satisfy the decree, care being taken that the decree is fully satisfied within three months from the date of the decree as per Section 82 (2) of the Code of Civil Procedure, 1908 (v of 1908).

**225. Execution of decree in favour of Government.-** Consequent upon a decree being passed in favour of Government, the Officer-in-charge of the case shall at once take steps to execute the decree and shall make necessary application under Rule 11 of Order XXI of the First Schedule of the Code of Civil Procedure, 1908 (v of 1908).

**226. Collector to assist Officer-in-charge.-** The Collector shall render all possible help to the Officer-in-charge in the execution of decrees and in particular shall help such officer to trace out the property of recalcitrant judgement debtors and see that such property is not fraudulently concealed or alienated.

**227. Stay of execution of appeal.-** When execution of a decree has been stayed pending the disposal of an appeal under the provisions of Rule 5 of Order XLV of the First Schedule of the Code of Civil Procedure, 1908 (v of 1908) the Officer-in-charge shall assure himself that the security offered is sufficient. If it is insufficient he should apply to the court for directing fresh solvent surety or else proceeding with the execution of decree.

**228. Payment out of Court.-** (1) Any sum due to Government under a decree may be recovered otherwise than through the agency of the Court, but the Officer-in-charge is required, under rule 2 of Order XXI of the First Schedule of the Code of Civil Procedure, 1908 to certify every such recovery to the Court.

(2) The Officer-in charge receiving decretal amount, out of court, shall pass a receipt in form No. MPTC 6.

**229. Responsibility of Collector.-** The Collector will be responsible to see that proper action is taken to recover all moneys due to Government under decrees and orders of Civil Courts in all cases. In order to enable the Collector to discharge this function adequately, the Officer-in-charge will, from time to time, keep him informed through the head of the office, of the steps taken under rules 224 to 228.

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**CHAPTER-XVIII-SUITS AGAINST GOVERNMENT SERVANTS**

**230. Suits against Government servants.-** (1) Procedure and principles of Rules 141 to 147 and 149 shall be applicable to Civil Suits instituted against Government servants.

(2) The same procedure and principles shall be applicable to civil suits instituted against Government servants, who are on deputation to Municipal Councils or Municipal Corporations or Panchayats or Co-operative Societies or Market Committees or similar bodies for acts done by them in their official capacity.

**231. Defence of Government servants and payment of costs.-** (1) Where Government undertake to defend a Government Servant at State Expense, in any suit or proceeding, expenses may in the first instance be borne by Government. In the event of Government servant losing the case partly or fully, the Government to such extent as Government may fix and in the event of Government servant succeeding in the litigation shall take all necessary steps through the Government Pleader to realize the cost and reimburse the Government the expense incurred by the State.

**232. Separate rules for Police Officer.-** Rules 230 and 231 do not apply to Police Act, 1861 (v of 1861) for the defence of Police Officer in cases instituted against them and these rules are contained in regulations 242-A to 244-B of M.P. Police Regulations.

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**CHAPTER-XIX-SUITS RELATING TO PUBLIC MATTERS**

**233. Officers who may institute suits relating to Public matters.-** (1) Under Section 91 of the Code of Civil Procedure, 1908, a suit for relief against nuisance may be instituted by the Advocate General or by two or more persons with the leave of the Court.

(2) Under Section 92 of that code, a suit relating to affairs of a trust created for public purpose or a trust of charitable or religious nature, may be instituted by the Advocate General or by two or more persons interested in the trust with the leave of the court.

(3) Under Section 93 of the Code the powers conferred by section 91 and 92 on the Advocate General are exercised, with the previous sanction of the State Government, also by the Collectors within their respective districts.

**234. Procedure when suit proposed to be instituted by Government Agency.-** (1) When the Collector considers that the circumstances require that a suit relating to a public matter should be filed by himself or the Advocate General he shall follow the procedure laid down in Chapter XIV.

(2) While making the report required by rule 189 (a) the Collector shall report specially on the circumstances rendering it expedient that the suit should be instituted by Government.

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**CHAPTER-XX-MISCELLANEOUS**

**235. Maintenance of registers.-** (1) The following registers shall be maintained in the office of the Collector-

- (i) a register of notice received under Section 80 of the Code of Civil procedure in Form No. 1 in Appendix II;
- (ii) a register of civil suits or other proceedings for or against Government in Form No. 2 in Appendix II;
- (iii) a register showing recovery of court fees and other costs in pauper suits in Form 3 in Appendix II;
- (iv) a register showing the work done and the accounts of fees of Government Pleader/Public Prosecutors and  
Additional Government Pleaders/Additional Public Prosecutors and other Legal Practitioners in Form No. 4 in Appendix II;
- (v) a register of cases instituted by indigent persons in Form No. 5 of Appendix II;
- (vi) a register of civil suits or other proceedings by or against Government servants in Form No. 6 in Appendix II;
- (vii) a register of criminal proceedings instituted by or against Government servants for anything done by them in their official capacity in Form No. 7 in Appendix II.

**236. Returns.-** (1) The Collector shall send to the Law Department annual statements in Form No. 8 and No. 9 in Appendix II. These statements shall be sent on the 1<sup>st</sup> February of the next following year.

**APPENDIX-I-PROCEDURE OF PAYMENT OF FEE ETC. TO LAW OFFICERS**  
**1. THE ADVOCATE GENERAL**

1. (a) The monthly salary of the Advocate General, Additional Advocate General, Deputy Advocate General, Government Advocate, Additional Government Advocate and Deputy Government Advocate is drawn on a bill from the treasury situated at their headquarters on the authority of a pay slip issued by Accountant General. The bill should be prepared on the form of salary bill of a Gazetted Officer (form No. M. P. T. C. 21).

(b) Travelling Allowance.-Their travelling allowance bill should be prepared in the form prescribed for a Gazetted Officer and it shall be countersigned by Advocate-General, if the bill relates to an Advocate other than Advocate-General.

**II GOVERNMENT PLEADERS/PUBLIC PROSECUTORS AND ADDITIONAL  
GOVERNMENT PLEADER/ADDITIONAL PUBLIC PROSECUTORS**

**2. Fee in Criminal Cases.-** (1) The Public Prosecutor engaged in any criminal case on behalf of State shall maintain a register of fees of criminal cases in Form A. At the conclusion of the sitting on each day on which the Public Prosecutor or the person acting under his directions is engaged in any court, the Public Prosecutor will make necessary entries in Part I of this register and obtain the signature of the presiding officer of the court in column 6 thereof. At the close of each month the Public Prosecutor shall prepare his bill in duplicate in Part II of the register and present it along with a copy of Part I, register duly attested by the Additional Sessions Judge of the place where the prosecutor conducted the cases and where there are more than one Additional Sessions Judges by the Additional Sessions Judge nominated by the Sessions Judge for this purpose, to the District and Sessions Judge within whose jurisdiction his headquarter lies. On receipt of the bill, the District and Sessions Judge will after verifying the entries in the bill with reference to the entries in Part I, countersign the original copy of the bill and return it to the Public Prosecutor duly endorsed for payment for presentation at the District Treasury. The duplicate copy of the bill in Form A, Part II and the attested copy of Part I will be retained by the District and Sessions Judge in his office.

(2) At the end of each month, the Public Prosecutor shall prepare a separate bill in duplicate in respect of fee for preparation of criminal appeals conducted by him and finally decided during the month in form 'B' and present it to the District and Sessions Judge within whose jurisdiction his headquarter lies, who after verifying the attendance of the Public Prosecutor from the copy of Part I of statement. A retained in his office under sub-rule (1) countersign the original copy of the bill and return it to the Public Prosecutor duly endorsed for payment for prevention at District Treasury.

**3. Fees in Special Cases.-** A bill for enhanced or special fees or for appearance in a special criminal case, for which Governments' sanction has been accorded, should be prepared separately in the same manner as prescribed in rule 2 supra after the case is finished with the number and date of the sanctioning letter quoted therein.

**4. Fees in civil cases.-** A bill on account of fees for civil suits in any court except the High Courts, should be prepared separately and should be presented to the Court concerned for endorsing a certificate of the court certifying. (1) the engagement of the Government Pleader, (2) Valuation of the suit and (3) the date of decision. The bill, with necessary court certificate should be submitted to the District and Sessions Judge within whose Jurisdiction the headquarter of the Government pleader is situated, who would, after verifying the amount of fees claimed, will countersign the bill and return it to the Government pleader duly endorsed for payment for presentation at the District Treasury.

**5. Travelling Allowance.-** (1) A Public Prosecutor's travelling allowance for a journey performed in connection with a sessions case at a Court not situated at his own headquarters should be drawn on a bill in the form prescribed for non-gazetted officers (from M.P.T.C. 28) and submitted direct to the District treasury. The bill should be countersigned by the District and Sessions Judge.

(2) A bill prepared in connection with a journey performed to assist the Advocate-General or under the orders of Government for his visit out of headquarter, for any purpose other than conducting cases, shall be countersigned by the Secretary to Government in the Law Department.

(3) When Government sanctions a special scale of travelling allowance for Government Pleader/Public Prosecutor, the bill shall not be encashed without countersignature of the Secretary to Government in the Law Department.

(4) For Journeys performed for appearing in courts outside their headquarters, the bill of Government Pleader/Public Prosecutor should be countersigned by the Sessions Judge who is competent to countersign his fee bills.

**6. Procedure applicable to Additional Government Pleader/Additional Public Prosecutor.-** The procedure laid down in rules 3 to 5 ibid shall apply to Additional Government Pleader/Additional Public Prosecutors also.

### III PANEL LAWYERS

**7. Case fee and Travelling allowance.-** The procedure laid down in rules 2(1) and 3 to 5 shall be applicable to Panel lawyers engaged on behalf of Government. But however, their bills shall be countersigned by the District Magistrate, and the copy of Part I of the register referred to in rule 2 shall be attested by the Magistrate in whose court the case was conducted or by one of the Magistrates nominated by the District Magistrate in whose court the case was conducted or by one of the Magistrates nominated by the District magistrate or District and Sessions Judge, depending upon the position whether the case was conducted before an executive or judicial magistrate.

### IV PRIVATE LEGAL PRACTITIONERS

**8. Case Fees.-** A private legal practitioners fees, where he has been engaged to represent Government, in committal proceeding, the court of session or the High court shall be drawn by the District Magistrate, the District and Sessions Judge or the Registrar of the High Court, as the case may be, on an abstract contingent bill:

Provided that the procedure prescribed in rules 2,3,4 and 7 ibid for preparation and submission of bills shall otherwise be followed by the private legal practitioner in preparing and submitting his fee bills:



Provided further that fees of a private legal practitioner engaged in a case by the Government pleader or Additional Government Pleader shall be drawn and paid to the Government Pleader or Additional Government Pleader, as the case may be, as if the Government Pleader or Additional Government Pleader as the case may be, himself had appeared in the case. In such case the Government Pleader or Additional Government Pleader shall be responsible for payment of fee to such private legal practitioner out of the fee received from the Government. A certificate to this effect that such Legal Practitioner has been paid his fee shall be obtained form Government Pleader or Additional Government Pleader (as the case may be) and shall be enclosed in the office copy of the bill maintained in the office of District Judge.

**9. Fees in case against Pauper accused.-** (1) A private Legal Practitioner’s fees in connection with cases in which he has appeared in the High Court for pauper accused in appeals against acquittal or otherwise shall be drawn by the Registrar, High Court, on abstract contingent bill and paid to him.

(2) A private legal practitioner’s fees for appearing in a Committee proceedings or in a sessions trial for the defence of pauper accused shall be drawn by the District Magistrate or the District & Sessions Judge as the case may be, on an abstract contingent bill.

V-GENERAL

**10. Promptness in submission of bills.-** (1) Delay in submission of bills entails unnecessary trouble to all concerned. A bill should therefore be submitted to the officers concerned monthly or as provided in the foregoing paragraphs. If it is found that bill has not been submitted within six months from the last date of the month to which it relates the fact should be brought to the notice of Government.

(2) It is advisable that charges incurred in one year should not be so deferred as to be a charge on the budget of the following year.

**11. Doubtful charges.-** If any bill contains any doubtful entry/item, the payment should be withheld and the matter referred to Government for orders.

**12. Accounts Books.-** An account of all receipts and disbursements made shall be kept by the office of the Advocate-General and the Government Pleader/Public Prosecutor in the ordinary form of a day book, with such subsidiary ledgers as may be necessary so that expenses, incurred in each case can be ascertained. The accounts and other books as maintained shall be produced when required by the audit or any other officer who is required to Verify the accounts.

The District Magistrate shall have power to inspect the day book or ledger maintained in the office of Government Pleader/Public Prosecutor.

FORM ‘A’  
PART-I

**(Statement of appearance of Government Counsel in Court)**

Name .....				*Designation.....		
				Headquarter .....		
Date (1)	Name of Case (2)	Name of the Court (3)	From what hour (4)	To what hour (5)	Initials of the Judge (6)	Remarks (7)

District.....	Name..... Public Prosecutor/Additional Public Prosecutor/Private Legal Practitioner/ Panel Lawyer.
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\*State whether Public Prosecutor, Additional Public Prosecutor, Private Legal Practitioner or Panel Lawyer

## FORM 'A'

## PART- II

## (Case fee Bill of Government Counsel)

Name ..... \*Designation ..... Headquarter.....

Payable at the ..... District Treasury.

Detailed bill of fees due to Public Prosecutor/Additional Public Prosecutor in Criminal cases.

Month of .....200

Head of Service 21 Administration of

Voucher No .....of the list of

Payment for .....justice 200

Date	Name of Case	in what Court	From what hour	To what hour	Name of Govt. Pleader/Panel Lawyer etc.	Amount of Fee	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

Total in work

Total

Received Payment .....

Under Rs .....Signature.

Certified that the entries in columns 1 to 5 have been correctly copied from Part I.

**Public Prosecutor/Additional Public  
Prosecutor/Private Legal Practitioner/  
Panel Lawyer.**

District Signature

Countersigned for Rs.....

Checked by

District & Sessions Judge/  
District Magistrate.

\*State whether Public Prosecutor/Additional Public Prosecutor/Private Legal Practitioner/Panel Lawyer.

## FORM 'B'

(Fee Bill of Government Counsel for preparation of Criminal Appeals conducted by them)

Payable at the .....District Treasury.

Details Bill of Preparation Fee due to Public Prosecutor/Additional Public Prosecutor in Criminal Appeals conducted by them and decided during the Month of .....200

Serial No.	Head of Service Chargeable No. Of Criminal Appeal	21 Administration of Justice Name of parties	Name of the Court	Name of P.P./A.P.P.	Order NO ....of the list of payment for .....19 Date of appearance of Govt. Pleader	Date of Judgement	Amount of fee	Remark
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

Rs. P.

Total in words

Total

Under Rupees .....

Received Payment

(Signature)  
Public Prosecutor/  
Additional Public Prosecutor

District

Countersigned for Rs. ....

Checked

District and Session Judge

## APPENDIX-II

FORM No. 1

(See rule 235)

## Register of Notices under Section 80 of the Code of Civil Procedure

Total No.	Date of receipt of notices	Name and Address of the notice giver	Nature of claim made	Action taken	Remarks
(1)	(2)	(3)	(4)	(5)	(6)

## APPENDIX-II

FORM NO. 2  
(See Rule 235)

**Register of Civil Suits or other proceedings for or against Government**

Serial No.	Civil suit No. and Court	Parties	Date of hearing	Work done on each date	Dated of judgement
(1)	(2)	(3)	(4)	(5)	(6)

Details of decree		Whether appeal/revision Filled	Result of appeal/revision	Date of execution application in court	Result of execution application with amount realised
For Government	Against Government				
(7)	(8)	(9)	(10)	(11)	(12)

## APPENDIX-II

FORM NO. 3  
(See Rule 235)

**Register showing the recovery of court fees and other costs in Pauper Suits**

Serial No.	Name of Court	Number of Suits	Name of parties	Substance of plaint and Value	Date and nature of final order
(1)	(2)	(3)	(4)	(5)	(6)

Parties Liable	Amount of stamps duties due to Government and costs		Amount realised	Measures taken for recovery of the amount due	Remarks	
	Stamps duties Amount	Costs and expenses Parties liable Amount				
(7)	(8)	(9)	(10)	(11)	(12)	(13)

**APPENDIX-II****FORM NO.4**  
(See Rule 235)**Register showing the work done and account of fees of Government Pleaders and  
Additional Government Pleaders and Private Legal Practitioners**

Number of Civil or Criminal Cases	Name of Court	Name of Parties	Dates of hearing	Details of work done on each date
(1)	(2)	(3)	(4)	(5)

Name of Counsel attending the hearing	Fees including special fees, if any, claimed with dates	Amount received with dates	Remarks
(6)	(7)	(8)	(9)

**APPENDIX-II****FORM NO.5  
(See Rule 235)****Register of Pauper Cases**

Serial No.	Name of Court	Number of suit	Names of Parties	Substance of plaint and value	Date & nature of final order	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)

**APPENDIX-II****FORM NO.6  
(See Rule 235)****Register of Civil Suits or other proceedings by or against a Government Servant**

Serial No.	Civil Suit No. and Name of Court	Parties	Date of hearing	Work done on each date	Date of judgement	<u>Details of Decree</u>	
(1)	(2)	(3)	(4)	(5)	(6)	For Govt. servant	Against Govt. servant

Whether appeal/ revision filed	Result of appeal/ revision	Compensation and costs awarded by the court	Amount to be paid to Government on account of expenses incurred by them	Amount to be reimbursed to the Govt. Servant concerned	Date of filling the execution application in the court	Result of execution application with amount realised
(8)	(9)	(10)	(11)	(12)	(13)	(14)

**APPENDIX-II****FORM NO.7**  
(See Rule 235)**Register of Criminal Proceedings instituted by or against Government Servants  
For anything done by them in their Official capacity**

Serial No.	Number of Criminal case and name of the Court	Section of offences under which the prosecution is launched	Date of hearing	Work done	Date of judgement	Result
(1)	(2)	(3)	(4)	(5)	(6)	(7)

Whether appeal/ revision if any filed	Result of appeal or revision	Compensation and costs awarded by the court	Amount to be paid to Government on account of expenses incurred by them	Amount to be reimbursed to the Govt. Servant concerned	Amount of fees paid to public Prosecutor	Remark
(8)	(9)	(10)	(11)	(12)	(13)	(14)



**APPENDIX-II****FORM NO.8**  
(See Rule 236)**Return regarding Civil Suit Notices received and Suits and appeals to which the State Government is a party in the district of.....during the year.....**

Total No. of notices	Total No. of claim	Total No. of suits	Total No. of suits	Total Number of suits decided		Total No. of suits
received under section 80 of CPC	compromised before suit & the amount involved	instituted	pending at the commencement of the year	In favour of Govt.	Against Govt.	pending at the end of the year
(1)	(2)	(3)	(4)	(5)	(6)	(7)

Total No. Of appeals	Total No. of appeals	Total No. of appeals	Total number of appeals decided		Total No. of appeals	Remarks
filed by Government	filed against Government	pending at the commencement of the year	In favour of Government	Against Government	pending at the end of the year	
(8)	(9)	(10)	(11)	(12)	(13)	(14)

**APPENDIX-II****FORM NO.9**  
(See Rule 236)**Return showing the Decree in favour of State Government and the amount realised and outstanding and the recovery of Court Fees during the year 19.....**

Total No. of decree in Govt. favour outstanding at the commencement of the year (1)	Total amount involved (2)	Total No. of decrees passed in favour of Government (3)	Total amount involved (4)	Total amount realised (5)	Balance outstanding (6)
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Total amount of court fees outstanding for recovery in pauper suits at the commencement of the year (7)	Total amount of court fees to be recovered in pauper suits decided during the year (8)	Total amount realised (9)	Balance outstanding (10)	Remarks (11)
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APPENDIX-II

**FORM NO. 10**  
[See Rule 203(3)]

**In the High Court of Madhya Pradesh at Jabalpur / Indore / Gwalior**

Miscellaneous Petition / Appeal / Revision .....of.....  
.....Petitioner / Applicant / Appellant .....

*Versus*

Respondent / Non-Applicant / Opposite Party .....

Know, all men by these present that I .....  
do hereby appoint and authorise Shri ..... Advocate General /  
Additional Advocate General / Deputy Advocate General / Government Advocate / Additional  
Government Advocate / Deputy Government Advocate to appear for and represent the State of  
Madhya Pradesh / Respondent No..... in the  
above proceedings to conduct these on behalf of the State of Madhya Pradesh / Respondent  
No ..... and do all necessary acts for the purposed  
whatever, I authorise the said counsel to file all petitions and applications save excepted by this  
authorisation, on behalf of the State of Madhya Pradesh/Respondent No ..... He is  
hereby also authorised to make statements, to examine witnesses, to file affidavits and  
documents and to do all acts and things necessary in the case i.e. to deposit process fees and  
diet money and withdraw the return diet money from the court, on behalf of the State of Madhya  
Pradesh/Respondent No. .... He is hereby also authorised to make  
statements, to examine witnesses, to file affidavits and documents and to do all acts and things  
necessary in the case i.e. to deposit process fees and diet money and withdraw the return diet  
money from the court, on behalf of the State of Madhya Pradesh/Respondent No.

Further I, do hereby authorise the said counsel to engage other counsel or pleaders on  
behalf of the State of Madhya Pradesh/Respondent No. .... to appoint, agents  
to apply for revision or review or prefer appeals and to appear for and represent the State of  
Madhya Pradesh/Respondent No. .... in a Superior Court in any case arising  
out of this case.

Nothing contained herein shall be deemed to be an authorisation to compromise the case or  
to withdraw the case or to make any concession on the points of facts. This authority shall also  
not extend to withdrawal of money deposited in Civil Court Deposit.

I hereby ratify all acts whatever done by the said counsel on behalf of the State of Madhya  
Pradesh/Respondent No. ....

Signed this day.....day of.....200

Accepted

Signature and Designation.

1.....

2.....

3.....

4.....

Counsel for State/Respondent.

**APPENDIX-II****FORM NO. 11**  
[See Rule 221(3)]**In the Supreme Court of India Appellate/Criminal Jurisdiction**

Appeal / Petition No.....of

Between

Appellant/s  
Petitioner/s

Respondent/s

**VAKALATNAMA**

I / We .....Respondent/s in the above Appeal/petition hereby appoint and retain Shri .....Advocate of Supreme Court to act and appear for me/us in the above appeal/Petition and on my/our behalf to defend the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein including proceedings in execution and application for Review to file and obtain return of Documents, and to deposit and receive money on my/our behalf in the said Appeal/Petition and in applications for review and to represent me/us and to take all necessary steps on my/our behalf in the above matter. I/We agree to retify all acts done by the aforesaid Advocate in pursuance of this authority.

However, nothing contained herein shall authorise the counsel to make concession on the points of fact or to withdraw the case or to enter into a compromise on behalf of the Government.

Dated this the.....day of .....

Accepted

Additional Secretary to Government  
Madhya Pradesh Law Department

Advocate Supreme Court

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**APPENDIX-II****Instructions Regarding the Procedure to be followed for Defence of Civil Suit issued by the Army Hqrs., Ministry of Defence**

When a Defence Ministry or a army personnel issued and the Army Headquarter request the Legal Remembrancer for defending the suit Law Department shall direct the Government Pleader/Additional Government Pleader to conduct the case on behalf of the defendant. The following instructions shall be followed after the counsel enters into an appearance.

When the defence of the suit is sanctioned by the Area or equivalent Commander, the documents relating to it will be return to the Officer detailed for assisting the Government Pleader in the defence of the suit. The Officer handling the case will than arrange with the local Government Pleader to prepare the defence and will give him each assistance as may be required. The defence thus prepared will be submitted for the approval of Area or equivalent Headquarters and will then be signed and verified by the competent authority (vide AL 73/65) and presented in the Court through the Government Pleader, copies of any additional statement filed by the plaintiff and the issues framed will be obtained from the Government Pleader by the

Army Service Representative who in turn will forward copies of the same without delay to the Area Headquarter (A' Branch) and the Dte/Brach concerned at this Headquarters for information. As regards cases involving policy or intricate questions of law the Branch concerned will submit a brief to the administrative section in the Ministry of Defence who will take the advice of the advice Branch of Ministry of Law if necessary before forwarding it to the Government Pleader.

(Extracts of Army headquarter Letter No. 18899/PSI. Dated 28-12-69).

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#### APPENDIX-IV

##### **Procedure in respect of Legislation**

Legislation is brought about by means of Acts or Ordinances. A bill, when introduced and passed by Legislature becomes an Act when assent is given by Governor or President of India as the case may be. A bill may be official as well as non-official depending upon the fact as to whether it has been introduced by the Government or by an individual member of the Legislature.

##### OFFICIAL BILLS

An official bill may be either an amending bill or an original bill, but the procedure of approval by the house remains the same. The same is outlined at pages 19-21 of the Business Rules summarised below :-

- (i) Every proposal to initiate legislation has to originate in the Department to which the subject matter of the Legislation relates. If a Department feels the necessity of enacting or a change in Law, it should send the proposal to the Administrative Department concerned for examination. In no case the matter be referred to Law Department directly or a draft bill be sought without observing aforesaid procedure.
- (ii) The Administrative Department should first decide whether there is necessity for such legislation or amendment. It should then lay down the points of substance to be embodied in the bill. It should also examine whether any proposal of a like nature, or having a bearing on the subject matter, was at any time considered by the Department in the past and with what result? After the examination the case, the proposal should be sent to the Minister-in-charge only. It is not yet a co-ordination case and need not go to the Chief Minister (See proviso to S.I. 36 under Business Rule 13).
- (iii) A reference shall then be made to the Law department for recording an opinion on the points noted in S.I. 36 (under Business Rule 13), i.e. to examine as to whether there is any need for the legislation and whether the State Legislature is competent to legislate on the subject matter of the bill.
- (iv) If in view of the Law Department there is no need for legislation on the ground that the existing Law sufficiently provides for the case, or that State Legislature is not competent to enact the measures the matter should rest at that.
- (v) If it is decided to initiate the Legislation, the Administrative Department should treat the proposal as a case and prepare a detailed memorandum indicating, with precision, the points to be incorporated in the bill. The only function of the Law Department while drafting legislation is to give it a legal shape as per policy laid down in the proposal of the administrative department. It is for the administrative department to consider how the legislation will work in practice and what difficulties or contingencies have to be provided for. If the bill confined to a particular case or point without taking a comprehensive view, the law has to be amended soon after it is passed. Hence the necessity for care, precision thoroughness and foresight in drafting the memorandum cannot be over emphasized.

- (vi) After the Minister-in-charge has approved the memorandum, the proposal has to be submitted to Chief Minister for approval. If the Chief Minister orders that the case be brought before the Council of Ministers, procedure laid down by the S.I. 18 under Business Rule 13 shall be followed.
- (vii) If the Chief Minister approves of the memorandum, the case is then sent to the Law Department for drafting the bill.
- (viii) The draft prepared by the Law Department when received, should be carefully scrutinised by the Administrative Department in order to see that it embodies all material points including incidental matters.
- (ix) After the draft is finally settled, the Administrative Department should prepare a statement of objects and reasons and send it for scrutiny to the Law Department. If, as a result of further discussion between the Administrative Department and the Law Department draft of any bill is amended, the Administrative Department should make further suggestion to the Law Department regarding such consequential changes in the statement of objects and reasons as may be considered necessary.
- (x) In case where the subject matter of the bill falls in the concurrent list the Government of India has to be consulted according to an established convention. (vide General Administrative Department endorsements No. 661-43 II, dated the 6<sup>th</sup> March, 1940 and No. 4496-3387-II, dated the 8<sup>th</sup> November 1948). The Administrative Department should at this stage address a letter with a copy of the draft bill to the appropriate Ministry of the Government of India for obtaining their concurrence. The same procedure should also be followed in case where the subject matter of a bill attract the provisions of Article 31(2) and 31-A(1) of the Constitution.
- (xi) After final approval of the draft bill, the Administrative Department should take action to obtain sanction or recommendation, if necessary, under the Constitution for the introduction of the bill in the Vidhan Sabha. Whether a bill requires prior sanction under clause (b) of Article 304 of the Constitution or a recommendation under Article 207, *ibid*, is always stated by the Law Department when the examination of a measure is made under S.I. 36 under Business Rule 13. In all proposal the following contingencies arise :-
  - (i) When prior sanction of the President under the proviso to clause (b) of Article 304 is required, the administrative department should, according to the instructions contained in the Government of India, Ministry of Commerce and Industry, Letter No. 13(6)-TMP-54, dated the 17<sup>th</sup> April, 1954, submit such proposals to that Ministry at least three weeks before the commencement of next session of the State Legislature. In case of amendment and replacement of an earlier Act, a copy of the Act sought to be amendment and also other relevant documents and papers, if any, should also be furnished; or
  - (ii) When recommendation of the Governor under Article 207 of the Constitution is necessary, the Administrative Department should obtain the same in the form appended to the General Administration Department Circular Memorandum No. 2477-1749-2, dated the 17<sup>th</sup> May, 1954.

The Administrative Department should then send a copy of the bill together with the statement of objects and reasons, duly signed by the Minister-in-charge of the bill, to the Secretary to Madhya Pradesh, Vidhan Sabha with a request to the Speaker for the publication of the bill in the Madhya Pradesh Gazette under rule 59 of the Madhya Pradesh Vidhan Sabha Rules. In the letter of request for publication, the following particulars should also be furnished to the Vidhan Sabha Secretariat :-

- (i) Clause of the bill, if any, involving expenditure from the consolidated fund of the state and also a financial memorandum as required by rule 61 of the Madhya Pradesh Vidhan Sabha Rules, if any such expenditure is involved.
- (ii) Clause of the bill, requiring sanction or recommendation under the Constitution of India shall be submitted along with such sanction or recommendation if

obtained in original (If such a sanction or recommendation, if obtained in original) If such a sanction or recommendation has not been received, this fact should be stated and it should be communicated to Vidhan Sabha Secretariat immediately on its receipt and in any case, before the date fixed for the introduction of the Bill;

- (iii) Next motion after introduction of the bill in the Vidhan Sabha;
- (iv) The item of list of the Seventh Schedule to the Constitution of India under which the subject matter of the bill falls as advised by the Law Department.

The Vidhan Sabha Secretariat has, with a view to facilitate the communication or correct information prescribed a proforma, vide its Memorandum No. 3847, dated the 5<sup>th</sup> September, 1933, which would invariably be used for the purpose. It may be noted that no motion under rule 65 of the Madhya Pradesh Vidhan Sabha Rules can be moved unless copies of the bill have been made available to members five days before the day on which the motion is to be made or in the case of a motion made on the first day of the session after an intervening recess of not more than seven days, on the last day immediately before such recess. Normally, therefore, the bill should reach the Vidhan Sabha Secretariat fifteen days before the date on which the bill is due to be placed on the agenda. Thereafter, the Vidhan Sabha Secretariat would deal with the Bill.

- (xii) If, however, it is considered necessary to publish any bill immediately in the Gazette and the obtaining of sanction or recommendation under the constitution or is likely to take some time the administrative department may, as soon as the Council of Ministers had taken decision, send the bill to the Assembly Secretariat for publication, as laid down in paragraph (xi). But in such a case, the administrative department should see that the sanction, recommendation etc., is obtained and communicated to the Vidhan Sabha Secretariat before the bill is due to be introduced in the Vidhan Sabha.

### **ORDINANCES**

1. The procedure outlined above *mutatis mutandis* applies to promulgation of Ordinances, particularly to the extent of the preparation of a draft bill. As soon as a draft of the Ordinance is received by the Administrative Department it should send the case to the Council of Ministers for approval.

2. An Ordinance which-

- (i) Contains provision which, had it been a bill, would, require the previous sanction of the President for the introduction, or
- (ii) Deals with any matter following in the concurrent list and which gives rise to a repugnancy with any existing Act, or
- (iii) Contains such provisions which, would under the Constitution, have been invalid unless such bill had been reserved for the consideration of the President or require prior sanction of President of India before their promulgation.

As a matter of practice Law Department advises the Administrative Department to obtain prior approval of the Central Government, before promulgation of ordinances, whenever necessary. It is for the Administrative Department to move the Home Ministry, Government of India for according necessary approval.

3. A first and neat copy of the Ordinance would be submitted for Governor's signature (after receipt of instructions where necessary). After the Governor has appended his signature on the Ordinance, the same should be forwarded to the Law Department for the publication in the Gazette.

4. An ordinance can remain in force only for a period of six weeks from the date of the commencement of the next session of the Vidhan Sabha. Unless an Ordinance is intended to be of a temporary measure, it has to be passed as an Act of Legislature. The Administrative Department may in such cases, request the Law Department for a draft bill, without observing the requirements laid down in points (i) to (vi) in respect of official bills if no substantial changes are required by the Administrative Department. This should be done at the earliest but much before the commencement of the next session of Vidhan Sabha.

### NON-OFFICIAL BILLS

1. As soon as notice of a non-official bill is received in the Vidhan Sabha Secretariat, a copy of the bill is forwarded to the Administrative Department concerned and to the Secretary to Governor pointing out the need for any sanction or recommendation, if so required. The Vidhan Sabha Secretariat should also intimate to the Administrative Department, either at the same time or subsequently, the motion which the member proposes to make in case, and such intimation is received from the member concerned.

2. It is the duty of Administrative Department to obtain the sanction or recommendation (when required), the convention is that no bill should be prevented from being introduced, and, therefore, the grant of the necessary sanction or recommendation should be recommended by the Department, even when the Government is likely to oppose bill. Action should be taken without waiting for the policy decision of the Government on the bill.

3. The Administrative Department may also take a decision about the policy to be adopted by Government respect of the bill. This action should be taken simultaneously with action as required in paragraph 2, above.

4. Where a motion for circulation of the bill (whether official or non-official) is accepted by the House,-

- (a) The Vidhan Sabha Secretariat fixes a date in consultation with the Administrative Department for elucidating public opinion. The bill is published together with a notice in the Gazette inviting public opinion along with a direction to send the opinion to the Secretary to Government in the Administrative Department, by the date to be fixed.
- (b) The Administrative Department should also send copies of draft bill to persons likely to be effected thereby and to Collectors and other Officers, as may be considered necessary;
- (c) On receipt of such opinions the Administrative Department shall summarise, consolidate and get it printed;
- (d) Four hundred printed copies of the summary shall be supplied to the Vidhan Sabha Secretariat for circulation amongst legislators at least fifteen clear days before the date on which the bill is likely to be taken up in the House.

### AMENDMENTS

1. Under rule 78 of the Madhya Pradesh Vidhan Sabha Rules, notice of an amendment is ordinarily required to be given one day before the date on which the bill is likely to be taken up by the House. The Speaker can, in his discretion, permit an amendment to be moved at a shorter notice. In practice notices of all proposed amendments are circulated to members.

2. **Notice of amendments by official members.**-It is open to the Government to give notice of amendments to official as well as non-official bill where the Minister-in-charge of a department decides to give notice of an amendment to a pending bill, the Law Department should be apprised of in advance so as to enable it to prepare proposed amendment, short notice results in hurried legislation which at times attracts public criticism.

3. **Notice of amendment by non-official members.**-As soon as a notice is received, a copy is forwarded by the Vidhan Sabha Secretariat to the Minister-in-charge and to the Secretary of the Administrative Department under S.I. 40 (under Business Rule 13) orders of Government are required before taking substantial amendments in a bill where a department decides to accept an amendment, proposed by a non-official member, the department should obtain a prior approval of the Council of Ministers. If time does not permit an order of the Chief Minister must be obtained. If a non-official amendment is acceptable to Government, the Vidhan Sabha Secretariat should be asked whether any changes in wording of the proposed amendment is necessary.

If it necessary to obtain prior sanction or recommendation under the constitution, the same should be obtained by the Administrative Department in accordance with the procedure outlined in paragraph 2 under head "Non-Official Bills."



**Immediate**

No. 17/23/72-Judl.  
**GOVERNMENT OF INDIA**

**MINISTRY OF HOME AFFAIRS**

New, Delhi 1, the 3<sup>rd</sup> August, 1972  
 12 Sravana, 1984.

To,

The Chief Secretaries to All State Government  
 (Except Jammu & Kashmir).

**Subject.-**Procedure to be followed in processing State Legislation requiring references to Central Government.

Sir,

It is observed that in spite of clear advice given from time to time regarding the procedure to be followed for processing State Legislation which requires reference to the Central Government the State Government have quite some times not kept the advice in view while sending legislative proposals to the Government of India with the result that serious difficulties have been experienced on occasions in timely and satisfactory processing of the State Government's Legislative proposals at the Centre. The procedure prescribed is, therefore, summarised once again as follows :-

(I) Prior approval of the Government of India

- (i) Legislation relateable to entries in the Concurrent List in the Seventh Schedule of the Constitution.
- (ii) bills attracting the provisions that have to be submitted to the President for his assent under Article 31 (3) the proviso to Article 31-A (1) and the proviso to Article 31-C respectively.
- (iii) bills on land reforms.

The Government of India should be :-

- (a) Consulted, whenever possible in regard to official bills before they are introduced in the State Legislature;
- (b) Supplied with copies or non-official bills, which are likely to go forward, at a convenient stage after their introduction in the State Legislature;
- (c) Informed, if time permits, of all important amendments to such non-official bills.
- (d) Informed about any difficulties encountered in the working of laws falling within the concurrent List of the Laws attracting the provisions of Articles 31 (2), 31-A (1) and 31-C of the Constitution, or of laws on land reforms;
- (e) Supplied with at least six copies of all bills, with the statement of objects and reasons therefore. (In case the proposed legislation is an amending bill, six up to date copies of the Principal Act, Notes on clauses of the proposed legislation and a comparative statement showing each relevant clause as it exists, and as it would read after the proposed amendment, may also please be forwarded;
- (f) Given before at least a fortnight from the date of receipt of the bills at the Centre for the examination by the Deptts. Of the central Government.

The procedure set out above, which is based on conventions need not be taken as restricting the discretion of the state Government to take independent action should they consider the need for such action so urgent that prior consultation is not possible. Although it is not obligatory to have prior consultation with the Central Government, yet prior concurrence of the Central Government would ensure that there are no complications subsequently when the bills are sent for obtaining the assent of the President.

When bills are referred for approval, the comments of the Government of India should invariably be awaited before the bills are introduced in the State Legislature.

(II) Previous sanction of the President for introduction of legislation is State Legislature imposing restrictions on the freedom of trade and commerce under the proviso to article 304 (b) of the Constitution.

Proposals for legislation to be introduced in the State Legislatures should be addressed to the Ministry of Industrial Development (Department of Internal Trade) and not either to the Ministry of Home Affairs or to any other Ministry even though the letter may be concerned with particular commodities or callings or trades or professions on which restrictions are sought to be imposed. Such proposals should be sent at least three weeks before the session of the State Legislature is Scheduled to commence. The draft bill should be accompanied by the documents referred to in paragraph 1 (1) above.

### (III) Constitution and assent of the President.

bill reserved for the consideration of the President would be transmitted to this Ministry, allowing a reasonable time of not less than a fortnight from the date of receipt of the bills at the Centre for the examination of their provisions. The extent of repugnancy to existing Central Laws on the subject enumerated in the Concurrent List should be clearly explained in the forwarding letter in the case of legislation attracting the provisions of Article 254 (2) of the Constitution. Similarly, in the case of legislation which is reserved for the consideration of the President for some other reason, the specific ground on which it is so reserved should be clearly brought out in the State Government's forwarding letter and the relevant provisions of the Constitution should be specifically quoted. The following documents should be forwarded along with such legislative proposals :-

- (i) Three authentic copies of the bill, printed on parchment paper, each endorsed by the Governor reserving the bill for the consideration of the president and leaving sufficient space below the Governor's signature for appropriate endorsement by the President.
- (ii) Six other copies of the bills as passed by the State Legislature.
- (iii) Six copies of the bill as introduced with the statement of objects and reasons thereof.
- (iv) The report of the Select Committee of the State Legislature, if any, along with three copies of the bill as approved by that Committee.
- (v) In case the legislation is an amending bill six up-to-date copies of the Principal Act, Notes on clauses of the proposed legislation and a comparative statement showing each relevant clause as it exists and as it would read after the proposed amendment, may also be sent.
- (vi) Ordinances requiring the previous instructions of the President under the proviso to article 213 (1) of the constitution.

All legislative proposals, which are to be enacted by means of an Ordinance and which require the previous instruction of the President under the proviso to Article 213 (1) of the Constitution should be forwarded to this Ministry, allowing sufficient time, say fortnight. For their examination. Six copies of the draft Ordinance, accompanied with other relevant documents mentioned above, should be forwarded. The forwarding letter should explain the necessity for the promulgation of the Ordinance, the object, should to achieved by the proposed legislation and the specific ground on which it is considered necessary to obtain the President's instructions for the promulgation of the Ordinance. The relevant Articles of the Constitution which render such approval necessary should also be quoted.

2. It is requested that the procedure mentioned above may please be brought to the notice of all concerned, so that it is properly followed to ensure smooth and satisfactory examination of the State Government's legislative proposals. A certificate in the enclosed proforma duly signed by the officers concerned may please be sent invariably with every such proposal to ensure that the various documents required in connection with the examination of the proposal at the Centre have correctly been attached.

3. It is requested that receipt of this letter may please be acknowledged.

Yours faithfully,  
Sd./-  
(B. SHUKLA)  
Deputy Secretary to the  
Govt. of India.

**No. 17/163/72-Judl.**  
**GOVERNMENT OF INDIA/BHARAT SARKAR**  
**MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA**

New, Delhi 110001, the 23<sup>rd</sup> March, 1973  
2 Chaitra, 1984.

To,

The Chief Secretaries of All State Governments  
(Except Jammu & Kashmir).

Subject.- Procedure to be followed in processing State Legislation regarding references to Central Governments.

Sir,

I am directed to invite to reference to this Ministry's letter No. 17/23/72-Judl, dated the 3<sup>rd</sup> August, 1972 (copy enclosed for ready reference) with which we had forwarded in a consolidated form of the procedure to be followed by them in processing State Legislation requiring reference to the Central Government.

2. Among other things it has been laid down that in the case of bill reserved for the consideration of the President, three authentic copies of bills printed on parchment paper are to be sent by the State Government. It has clearly been stated therein that each bill should be endorsed by the Governor reserving the bill for the consideration of the President, leaving sufficient space below the Governor's signature for appropriate endorsement by the President. It had, however, been observed that sometimes the bills reserved for the President's assent by the Governors have no space or inadequate space for recording the President's assent. It had been noticed further that some times even the remarks of Governors of States reserving the bills for the consideration of the President have to sign in the left over margins. The State Governments are requested to instruct again the concerned authorities to ensure that enough space is left while the bills are got printed in the order that the Governor's directions and the President's orders can be recorded at appropriate places in the bills.

3. In para 1 (II) of the letter dated the 3<sup>rd</sup> August, 1972, it had been stated that legislative proposals relating to previous sanction of the President for introduction of bills in the State Legislature under the proviso to Art. 304 (b) of the Constitution should be addressed to the Ministry of Industrial (Department of Internal Trade). It has since been that hereinafter such proposals should be referred to this Ministry of Home Affairs. Accordingly the State Government may please be addressed such proposals to this Ministry accompanied by the documents referred to in para 1 (1) of the letter dated the 3<sup>rd</sup> August, 1972 and the necessary certificate mentioned in para 2 thereof.

4. Another point that we would like to bring to the notice of the State Governments is that, as the State Governments are aware, the bills that are received by this Ministry for prior approval of the Central Government are examined here in consultation with the concerned Ministries/Departments of the Government of India. While conveying approval to the State Governments, certain observations/suggestions in regard to the provisions of the bills are also made for consideration of the State Governments. However, when the bills are subsequently referred to the Central Government as passed by the State Legislatures for obtaining assent of the President, the State Government sometimes do not indicate in their forwarding letter whether the certain observations/suggestions made earlier by the Central Government had been taken into consideration in finalizing the bill and if so, the decision of State Government thereon. These results in avoidable back references to the State Governments and therefore causes unnecessary delay in obtaining President's assent to the bills.

In the circumstances, it is necessary that in every case whenever a bill is sent for the assent of the President the State Government may please clarify in the forwarding letter whether the proposals had been sent earlier for the approval of the Central Government prior to its introduction in the State Legislature and if so, which of the suggestions/observations.

The State Governments are requested to take similar action in respect of other legislative proposals e.g. when a bill is sent for replacing an ordinance for which previous instructions of the President had been obtained earlier.

5. It is requested that the procedure mentioned above may please to be brought to the notice of all concerned so that it is strictly followed to ensure proper examination at the Centre of all the legislative proposals from the State Governments.

6. Kindly acknowledge receipt of the letter.

Yours faithfully,

Sd./-

(K.P. SINGH)

Deputy Secretary to the Govt. of India.

T.S. MURTY  
Joint Secretary

D.D. No. 23/41/80-Judl.  
Government of India  
Ministry of Home Affairs.

New Delhi, 110001, July 22, 1980.

Subject.-Procedure to be followed in processing State Legislations requiring reference to Central Government.

Dear Shri Dube,

Will you please refer to Ministry of Home Affairs letter No. 17/23/72-Judl., dated the 3<sup>rd</sup> August, 1972 on the above subject, addressed to you which was recirculated again vide our letter No. 23/61/79-Judl., dated the 30<sup>th</sup> Jan. 1980 (Copy enclosed).

The State Government were requested that prior approval of the Govt. of India to legislations relatable to entries in the Concurrent List in the Seventh Schedule of the Constitution should be obtained whenever possible before they are introduced in the State Legislature. In this context some procedures were set out in para I of our letter dated 3<sup>rd</sup> August, 1972 referred to above. It was stated therein that the procedure set out need not be taken as restricting the discretion of the State Government to take independent action should they consider the need for such action so urgent that prior consultation is not possible. Although it is not obligatory to have prior consultation with the Central Government, yet prior concurrence of the Central Government will ensure that there are no complications subsequently when the bills are sent for obtaining the assent of the President.

While this procedure is followed in the majority of the case received from various states, the State Governments also sometimes send us bills which have not been cleared in advance but are passed by the State Legislature straight away, for the assent of the President. It is mostly such cases that we have been experiencing difficulties and delay in processing.

Ministry of Home Affairs is the Co-ordinating Ministry for the processing of State bills, which are reserved by the Governor for the consideration of the President under Article 200 of the Constitution. As and when such bills are received, they are examined in consultation with Ministries/Depts. Administratively concerned with the subject matter of the bill and the Ministry of Law on legal and constitutional aspects. When a bill is passed by the State Legislature and reserved by the Governor for consideration of the President, under Article 201 of the Constitution the President shall declare either that he assents to the bill or that he withholds assent therefrom. There is a proviso to the said Article that President may return the bill for consideration of the State Legislature. Objections to even a single clause in a bill may, therefore, need withholding of assent; as in such cases there is no provision in the Constitution for a conditional or modified assent. At the same time since the bill has already been passed, no amendment is possible by the State Government before according assent to the bill by the President. However, sometimes the State Government agree to amend the bill by a subsequent amending legislation or agree to promulgate an amending ordinance to modify the bill (to meet the objections of the Central Government) almost simultaneously with the accord of Presidential assent so that both could be given effect to almost simultaneously. This is however, an arrangement evolved in practice so that the bill itself is assented to (and is thus saved from the embarrassment of being withheld) and at the same time the Central Government's objections are not through an amending legislation (or an amending ordinance) which is given effect to immediately after the assent to the bill. Lot is intended to deal with exceptional cases and cannot be a routine step. Further the process consumes a lot of time and it has been observed that some individual cases have been inordinarily delayed and attracted the notice of parliament.

In view of the above, we would once again emphasize that prior administrative approval before introduction of a bill in the State Legislature, should be taken wherever possible, so that delay in obtaining the assent of the President at a later stage is avoided. I would also suggest that when a bill is once referred to the Government of India for approval, our comments should invariably be awaited before they are introduced in the State Legislature unless it is really unavoidable. The intention is that any amendment/modification suggested could then be considered by the State Government and incorporated in the bill, as necessary, at this stage itself.

We shall be grateful if the above observations are suitably brought to the notice of all the concerned Departments and organizations under your control dealing with State Legislative proposals requiring reference to the Central Government.

With regards

Yours sincerely,  
Sd./-  
(T.S. MURTY)

To,  
Chief Secretaries,  
of all State Governments.

**GOVERNMENT OF MADHYA PRADESH  
LAW & LEGISLATIVE AFFAIRS DEPARTMENT  
VINDHYACHAL BHAWAN, BHOPAL**

No. 160/PS/Law/95

Dated 11<sup>th</sup> December, 1995

To,

All Principal Secretaries,  
All Secretaries,  
All Head of Departments,  
All Collectors,  
All Government Pleaders/ All A. G. PS.

Subject.-Filing of appeals within time limit and other matters.

The High Court Gwalior Bench in the order dated 13-4-94 in **State of M. P. Vs. Pothiram Second Appeal No. 12/94** expressed its deep anguish and concern that many of the appeals which are being filed by the State are barred by limitation. On receipt a copy of this order the matter was examined and circular No. 1-11-22/94/9/1 dated 9-8-1994 was issued by the Chief Secretary to all the Departments concerned to see that the appeals are filed in time. A copy of that circular is enclosed herewith. It was emphasized that connective steps be taken to remove the bottlenecks causing delay in filing the appeals.

(2) Now more comprehensive instructions are being issued consistent with the rules in the Law Department Manual in order to ensure smooth working of the system.

**Civil Litigation :-**

(1) On receipt of notice under Section 80 C.P.C., the officer-in-charge should be appointed. The O. I. C. shall forthwith make a careful enquiry into the case and within 15 days of the receipt thereof submit to the Collector a detailed report containing (a) – a clear chronological statement of facts and circumstances of the case, in narrative form, with reference to documentary evidence on both sides and indication of the oral evidence on either side. (b) – a separate statement answering serially all points raised in the notice. (c) – copies of all documents relating to the case. It should be examined at this stage whether the grievance of the plaintiff is genuine and whether it can be redressed without driving him to litigation. An attempt should be made to settle the dispute so as to avoid generation of litigation. Order 27 Rule 5B C. P. C. requires the court to assist the parties in the first instance in arriving at a settlement and therefore the officer-in-charge should be ready with the terms of settlement. Prior concurrence of the authorities concerned should be taken.

(2) On receipt of the summons it shall be made over to the O. I. C. He will submit a report to the Government alongwith (a) copy of the plaint, (b) a draft of the proposed written statement, (c) a list of all relevant documents. The O.I.C. will contact the G.P./A.G.P. and render him all possible assistance in preparing the case. The concerned department will send the file to the Law Department. Necessary instructions will be issued by the Law Department for defending the case. During the trial the O.I.C. shall be responsible for production of all evidence. As soon as the suit is decided the O.I.C. will report the result to the Government. A copy of the judgment should be obtained and sent with the report. The G.P.G./A.G.P. should maintain a complete brief in which copies of the pleadings documents and depositions should be kept. Application for certified copy should be made on the same date on which the judgment is delivered or decree is passed.

(3) **Civil Appeals.**-When the suit has been decided wholly or in part adversely to Government, the O.I.C. of the suit should at once consider the advisability of filing an appeal. In case he finds that an appeal should be filed he should send a report to the Government. The report should be accompanied by certified copy of the judgment and decree and a draft of the proposed memorandum of appeal which shall be drawn by the G.P./A.G.P. The report must reach the concerned department of the Government within 15 days of the date of decree. The department



must send the file to Law Department for opinion whether the case is fit for filing appeal and it so, issue necessary instructions to the office of A.G./Addl. A.G. for filing appeal. The Law Department should not take more than 15 days. A copy of the order should be sent to O.I.C. who will make a available the entire record to the A.G./Addl. A.G., who in turn must file appeal as quickly as possible within 15 days. The files must be handled by the officers themselves and they should see that the time limit is adhered to so that the appeal does not get barred by limitation. Article 116 of the Limitation Act, 1963 provides limitation of 90 days from the date of decree. Out of these not more than 15 days should be taken by O.I.C./Collector, 15 days by the Department and 15 days by the office of the Advocate General 30 days should be kept in reserve. If there is a risk of appeal becoming barred by time, the O.I.C. may after consultation with the G.P./A.G.P., file appeal and immediately report the action taken to the concerned department of the Government.

(4) **Appeals to Supreme Court.**-Whenever there is decision by the High Court against the Government the A.G./Addl. A.G. shall intimate the Act to Law Department alongwith his opinion whether an appeal should be preferred to the Supreme Court. If an appeal is to be preferred to the Supreme Court he shall prepare a brief of the case and the tentative grounds of appeal for the use of the Standing Council at Delhi. The Law Department will issue instructions by the Standing Counsel for filing appeal. The office of A.G. should see that the record along with the certified copy of the judgment and decree is sent to the Standing Counsel will in time.

(5) The officer- in-charge shall comply with orders and decrees of the Court after obtaining the necessary orders from the Government well in time so that there are no order of attachment or contempt proceedings against the Government or its officers.

(6) **Criminal appeals.**-It shall be the duty of PP/APP to maintain complete brief of the Criminal Case he is conducting. He shall report immediately to the District magistrate the result of every criminal case. A copy of the report shall be sent to Superintendent of Police. He shall obtain certified copy of the Judgment. In an appeal is to be filed he shall within 7 days of the judgment submit a detailed report on the case, together with his opinions to advisability of filing an appeal or revision and a draft of the grounds therefore, to the D.M. The D.M. should send the proposal alongwith the records to the Law Department within 15 days. The case should be processed by the Law Department within 15 days and if a decision to file appeal is taken the record along with the certified copy of the judgment should be sent to the office of the A.G./Addl. A.G. He should file appeal as early as possible within limitation. There should be no delay at any level and appeals must be filed within limitation.

(7) **Cases before the State Administrative Tribunal and High Court.**-The O.I.C. should file the return in time after it is prepared in consultation with the A.G./Addl. A.G. If the Judgement is against the department it should be complied within time (except where an appeal has been filed and stay has been obtained) so that there is no occasion for the parties to move the Court/Tribunal to draw up contempt proceedings. Copies of the judgement and orders should be obtained by officer-in-charge and submitted to the Secretary of the Department concerned Officer-in-charge once appointed will continue until the case is finally decided. All departments must maintain in registers showing the receipt of the proposals for filing appeal and their further movement.

Approved by the Chief Secretary.

Yours faithfully,

Sd./-  
(S.P. KHARE)  
Principal Secretary  
Govt. of Madhya Pradesh  
Law & Legilative Affairs Department  
Bhopal.

**GOVERNMENT OF MADHYA PRADESH  
LAW & LEGISLATIVE AFFAIRS DEPARTMENT  
VINDHYACHAL BHAWAN, BHOPAL**

No. 160/PS/Law/95

Dated 11<sup>th</sup> December, 1995

To,

All Principal Secretaries,  
All Secretaries,  
All Head of Departments,  
All Collectors,  
All Government Pleaders / All A.G. PS.

**Subject.**-Filing of appeals within time limit and other matters.

The High Court Gwalior Bench in the order dated 13-4-94 in **State of M.P. Vs. Pothiram Second Appeal No. 12/94** expressed its deep anguish and concern that many of the appeals which are being filed by the State are barred by limitation. On receipt a copy of this order the matter was examined and circular No. 1-11-22/94/9/1 dated 9-8-1994 was issued by the Chief Secretary to all the Departments concerned to see that the appeals are filed in time. A copy of that circular is enclosed herewith. It was emphasized that connective steps be taken to remove the bottlenecks causing delay in filing the appeals.

(2) Now more comprehensive instructions are being issued consistent with the rules in the Law Department Manual in order to ensure smooth working of system.

**Civil Litigation :-**

(1) On receipt of notice under Section 80 C.P.C. the officer-in-charge should be appointed. The O.I.C. shall forthwith make a careful enquiry into the case and within 15 days of the receipt thereof submit to the Collector a detailed report containing (a) – a clear chronological statement of facts and circumstances of the case, in narrative form, with reference to documentary evidence on both sides and indication of the oral evidence on either side. (b) – a separate statement answering serially all points raised in the notice. (c) – copies of all documents relating to the case. It should be examined at this stage whether the grievance of the plaintiff is genuine and whether it can be redressed without driving him to litigate. An attempt should be made to settle the dispute so as to avoid generation of litigation. Order 27 Rule 5B C.P.C. requires the court to assist the parties in the first instance in arriving at a settlement and therefore the officer-in charge should be ready with the terms of settlement. Prior concurrence of the authorities concerned should be taken.

(2) On receipt of the summons it shall be made over to the O.I.C. He will submit a report to the Government alongwith (a) a copy of the plaint (b) a draft of the proposed written statement (c) a list of all relevant documents. The O.I.C. will contact the G.P./ A.G.P. and render him all possible assistance in preparing the case. The concerned department will send the file to the Law Department. Necessary instructions will be issued by the Law Department for defending the case. During the trial the O.I.C. shall be responsible for production of all evidence. As soon as the suit is decided the O.I.C. will report the result to the Government. A copy of the judgement should be obtained and sent with the report. The G.P./A.G.P. should maintain to complete brief in which copies of the pleadings documents and depositions should be kept. Application for certified copy should be made on the same date on which the judgement is delivered or decree is passed.

(3) **Civil Appeals.**-When the suit has been decided wholly or in part adversely to Government, the O.I.C. of the suit should at once consider the advisability of filing an appeal. In case he finds that an appeal should be filed he should send a report to the Government. The report should be accompanied by certified copy of the judgment and decree and a draft of the proposed memorandum of appeal which shall be drawn by the G.P. /A. G.P. The report must reach the concerned department of the Government within 15 days of the date of decree. The Department

Must send the file to Law Department for opinion whether the case is fit for filing appeal and if so, issue necessary instructions to the office of A.G./Addl. A.G. for filing appeal. The Law Department should not take more than 15 days. A copy of the order should be sent to O.I.C. who will make available the entire record to the A.G. /Addl. A.G., who in turn must file appeal as quickly as possible within 15 days. The files must be handled by the officers themselves and they should see that the time limit is adhered to so that the appeal does not get barred by limitation. Article 116 of the Limitation Act, 1963 provides limitation of 90 days from the date of decree. Out of these not more than 15 days should be taken by O.I.C./Collector, 15 days by the Department and 15 days by the office of the Advocate General. 30 days should be kept in reserve. If there is a risk of appeal becoming barred by time, the O.I.C. may after consultation with the G.P./A.G.P., file appeal and immediately report the action taken to the concerned department of the Government.

(4) **Appeals to Supreme Court.**-Whenever there is decision by the High Court against the Government the A.G./ Addl. A G. shall intimate the Act to Law Department alongwith his opinion whether an appeal should be preferred to the Supreme Court. If an appeal is to be prepared to the Supreme Court he shall prepare a brief of the case and the tentative grounds of appeal for the use of the Standing Counsel at Delhi. The Law Department will issue instructions to the Standing Counsel for filing appeal. The office of A. G. should see that the record alongwith the certified copy of the Judgement and decree is sent to the standing Counsel will in time.

(5) The officer-in-charge shall comply with orders and decrees of the Court after obtaining the necessary orders from the Government will in time so that there are no orders of attachment or contempt proceedings against the Government or its officers.

(6) **Criminal appeals.**-It shall be the duty of PP/APP to mentain complete brief of the Criminal Case he is conducting. He shall report immediately to the District Magistrate the result of every criminal case. A copy of the report shall be sent to Superintendent Police. He shall obtain certified copy of the Judgement. If an appeal is to be filed he shall within 7 days of the judgement submit a detailed report on the case, together with his opinion as to advisability of filing an appeal or revision and a draft of the grounds therefore to the D.M. The D.M. should send the proposal alongwith the records to the Law Department within 15 days. The case should be processed by the Law Department within 15 days and if a decision to file appeal is taken the record alongwith the certified copy of the judgement should be sent to the office of the A.G./ Addl. A. G. He should file appeal as early as possible within limitation. There should be no delay at any level and appeals must be filed within limitation.

(7) **Cases before the state Administrative Tribunal and the High Court.**-The O.I.C. should file the return in time after it is prepared in consultation with the A.G./ Addl. A. G. If the Judgment is against the department it should be complied with in time (except where an appeal has been filed and stay has been obtained) so that there is no occasion for the parties to move the Court/ Tribunal to draw up contempt proceedings. Copies of the judgment and orders should be obtained by officer-in-charge and submitted to the Secretary of the Department concerned Officer-in-charge once appointed will continue until the case is finally decided. All departments must maintain in registers showing the receipt of the proposals for filing appeal and their further movement.

Approved by the Chief Secretary.

Yours faithfully,

S.d/-  
(S.P. KHARE)  
Principal Secretary  
Govt. of Madhya Pradesh  
Law & Legislative Affairs Department  
Bhopal

M.P. SINGH  
 Additional Secretary  
 Tel : 3383674  
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D.O. No. 23/12/98-Judl.  
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Ministry of Home Affairs  
 Government of India  
 North Block-New Delhi-110001

Jaisalmer House, Mansingh Road  
 New Delhi-110011

January, 15, 1999

Dear Shri Sharma,

It has been observed that some of the State Governments have enacted laws without obtaining the assent of the President even though where the subject matter of these Legislations were relatable to the entries under the Concurrent List of the Seventh Schedule to the Constitution of India.

2. In this connection the following points are brought to the notice of the State Governments:-

- (a) Under first proviso to Article 31-A of the Constitution, where a law as envisaged in clause (1) thereof is made by the Legislature of a State, the provisions of that Article do not apply thereto unless such law reserved for the consideration of the President, receives his assent.
- (b) Under Article 31-C, the provisions of that Article do not apply thereto unless such law reserved for the consideration of the President, receives his assent.
- (c) Article 201 provides that when a bill is reserved by a Governor for the consideration of the President, the President may either assent to the bill or withhold his assent from it.
- (d) Article 254 of the Constitution Mandates that where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to any law made by Parliament, then the law so made by the Legislature of such State shall, to the extent of the repugnancy, be void. However, if such law is reserved for the consideration of the President and receives his assent, then, it prevails in that State.
- (e) Proviso to Article 304 requires that no bill imposing reasonable restrictions on the freedom of trade, commerce etc. With or within that State shall be moved or introduced in the Legislature of a State without the sanction of the President.

3. The State Governments are requested to ensure that strict compliance of the provisions of Articles 31-A, 31-C and 201, 254 (2) and 304 of the Constitution is mandatory and if these provisions are not complied with, the legislations enacted by the States will not stand legal scrutiny, if challenged in the courts of law.

4. In view of the above the State Governments are requested to obtain the assent of the President on the State Legislations, the provisions of which fall under the Concurrent List in the Seventh Schedule to the Constitution, before enacting the same.

With kind regards,

Yours sincerely,

Sd./-  
 (M.P. SINGH)

Shri K.S. Sharma,  
 Chief Secretary,  
 Government of Madhya Pradesh,  
 Bhopal.

No. ....  
 GOVERNMENT OF MADHYA PRADESH  
 LAW AND LEGISLATIVE AFFAIRS DEPARTMENT BHOPAL

Bhopal, dated 20<sup>th</sup>/27<sup>th</sup> March 2002

To,

1. Smt. Kamakshi Singh Mehlwal,  
 Advocate,  
 35 Lawyer's Chamber's  
 Supreme Court,  
 New Delhi-1.
2. Smt. Vibha Datta Makhija,  
 Advocate,  
 Supreme Court,  
 F.F.B.-10. Green Park Main,  
 New Delhi.

Subject.-Engement of standing counsel for the Steno of Madhya Pradesh to conduct the Cases before the Supreme Court of India, Other Courts, Tribunals & Forum, New Delhi.

The State Government is pleased to engage Smt. Kamakshi Singh Mehlwal, Advocate & Smt. Vibha Datta Makhija, Advocate Supreme Court, New Delhi, as its standing counsel in addition to the two counsels already engaged. For conduction of the cases on behalf of the State of Madhya Pradesh before the supreme Court of India, New Delhi, from 1-4-2002 on the following terms :-

- (1) The monthly retinership fee on behalf of the State of M.P. would be Rs. 8000/- (Rupees eight thousand).
- (2) The fees for conducting cases before Supreme Court would be Rs. 450.00 (Rupees For Hundred & Fifty) per case per effective hearing, but in no case the fees would exceed Rs. 1000.00 (Rs. One Thousand per day).
- (3) The drafting fees would be Rs. 750.00 (Rs. Seven Hundred Fifty only) per case but for the cases of similar nature the maximum fees would be Rupees 2000.00 (Rupees Two Thousand). The drafting fees would be paid on the basis of verification of officer-in-charge of the case.
- (4) All the cases in which Smt. Kamakshi Singh Mehlwal, Adivocate & Smt. Vibha Datta Makhija, Advocate Supreem Court were engaged by any private party against the State Government, before the date of taking over charge, they may countinue to handle them.
- (5) The period of retainership Agreement would be until further orders.
- (6) The Retainer will be entitled to reimbursement of cyclostyling, photocopy, trunk calls, telegrams and Photocopies, Fax charges as per vouchers. The cyclostyling charges would only be admissible @ Rs. 15.00 (Rupees Fifteen only) per set of.... Pages and typing charges @ Rs. 8.00 (Rupees eight only) per set of 8 pages.
- (7) The Retainer will be entitled to reimbursenment of Court Fees and Affidavit Char..... as and when incurred.
- (8) The State of Madhya Pradesh will deposit with him a sum of Rs. 15,000/- (Rupees Fifteen Thousand only) to cover the initial filing fee, Security Deposit, Printing photocopies and Fax

Charges and charges for stenciling and cyclostyng work. The Security Deposit, printing charges and filing fees would be payable in advance by the States of Madhya Pradesh.

- (9) The Retainer will at the end of every ..... furnish an account of expenses incurred on behalf of the State of Madhya Pradesh. The account shall be supported by necessary vouchers.
  - (10) The Retainer will also be entitled to the pleader fees, if any, awarded to the State of Madhya Pradesh. Cost awarded shall go to the State of Madhya Pradesh.
  - (11) The vakalatnama on behalf of the State of Madhya Pradesh in Civil & Criminal cases of State Departments as per distribution order will be filed by Smt. Kamakshi Singh Mehlwal, Advocate and Smt. Vibha Datta Makhija Advocate, Supreme Court, New Delhi.
2. Since now there would be four standing counsels for the State of M.P. the distribution of the work between them shall be distributed as early.
  3. The expenditure on this account will be debited to Grant 29-2014-Administration of Justice-(114)-Legal Advisors and Counsels (3572)-Mufussil Establishment-10 Payment of Professional and special services-008-Fees for conducting suit in Supreme Court.
  4. This sanction has been endorsed by the Finance Department to Accountant General M.P. Gwalior vide Endt. No..... /654/BPL/, dated 28-2-2002.

By order and the name of the  
Government of Madhya Pradesh,

Sd./-  
(G.S. SOLANKI)  
Addl. Secretary  
Govt. of Madhya Pradesh  
Law & Legislative Affairs Department.  
Bhopal, dated 20<sup>th</sup>/27<sup>th</sup> March 2002

Endt. No. 1(A)7/2002/XXI-B(II)

Copy forwarded to,

- (1) Copy with two space copies forwarded to the Secretary to Government of Madhya Pradesh, Finance Department, Bhopal for sending the same to the Accountant General, M.P. Gwalior.
- (2) Registrar General/Registrar (Judicial), Supreme Court of India, New Delhi.
- (3) Registrar General, High Court of M.P. Jabalpur.
- (4) Registrar General, High Court Court of M.P. Bench Indore/Gwalior.
- (5) Advocete General, Madhya Pradesh, Jabalpur.
- (6) Shri Satish K. Agnihotri, Standing counsel Supreme Court, New Delhi.
- (7) Shri. B.S. Banthia, Standind counsel Supreme Court, New Delhi.
- (8) Establishment/Budget/Criminal/Civil/Petition Section Law & Legislative Aff. Department, Bhopal.
- (9) Secretary, Government of M.P. .... Madhya Pradesh.

For information & necessary action.

Sd./-  
(J.K. VAIDYA)  
Deputy Secretary  
Govt. of Madhya Pradesh  
Law & Legislative Affairs Department

**GOVERNMENT OF MADHYA PRADESH  
LAW AND LEGISLATIVE AFFAIRS DEPARTMENT, BHOPAL**

Bhopal, dated 5<sup>th</sup> March 2002

To,

Shri Chandra Dhari Singh,  
Advocate,  
38, Todarmal Road, Bengali Market,  
New Delhi- 110 001.

**Subject.-**Engement of standing counsel for the Steno of Madhya Pradesh to conduct the Cases before the Supreme Court of India, Other Courts, Tribunals & Forum, New Delhi.

The State Government is pleased to engage Shri. C.D. Singh, Advocate Supreme Court, New Delhi, as its standing counsel in place of Smt. Kamakshi Singh Mehlwai, Advocate in addition to the three counsels already engaged for conduction of the cases on behalf of the State of Madhya Pradesh before the Supreme Court of India. New Delhi from 7-3-2005 on the following terms.

- (1) The monthly retinership fee on behalf of the State of M.P. would be Rs. 8000/- (Rupees eight thousand).
- (2) The fees for conducting cases before Supreme Court would be Rs. 450.00 (Rupees Four Hundred & Fifty) per case per effective hearing, but in no case the fees would exceed Rs. 1000.00 (Rs. One Thousand per day).
- (3) The drafting fees would be Rs. 750.00 (Rs. Seven Hundred & Fifty only) per case but for the cases of similar nature the maximum fees would be Rs. 2000.00 (Rupees Two Thousand) only- The drafting fees would be paid on the basis of verification of officer-in-charge of the case.
- (4) All the cases in which Smt. C.D. Singh, Advocate Supreme Court were engaged by any private party against the State Government, before the date of taking over charge, he may countinue to handle them.
- (5) The period of retainership Agreement would be until further orders.
- (6) The Retainer will be entitled to reimbursement of cyclostyling, photocopy, trunk calls, telegrams and Photocopies, Fax charges as per vouchers. The cyclostyling charges, typing charges, translation charges and other charges shall be admissible according to order dated 26-05-2004 (copy enclosed)
- (7) The Retainer will be entitled to reimbursement of Court Fees and Affidavit Charges as and when incurred.
- (8) The State of Madhya Pradesh will deposit with him a sum of Rs. 15,000/- (Rupees Fifteen Thousand) only to cover the initial filing fee, Security Deposit, Printing photocopies and Fax charges and charges for stenciling and cyclostyling work. The Security Deposit, printing charges and filing fees would be payable in advance by the States of Madhya Pradesh.
- (9) The Retainer will at the end of every month furnish an account of expenses incurred on behalf of the State of Madhya Pradesh. The account shall be supported by necessary vouchers.
- (10) The Retainer will also be entitled to the pleader fees, if any, awarded to the State of Madhya Pradesh. Cost awarded shall go to the State of Madhya Pradesh.

11. the vakalatnama on behalf of the State of Madhya Pradesh in Civil & Criminal cases of State Department of State as per distribution order.

2. Since now there would be four standing counsels for the State of M.P. the distribution of the work between them shall be distributed as early.

3. The expenditure on this account will be debited to Grant 29-2014-Administration of Justice-(114)-Legal Advisors and Councils (3572)-Mufussil Establishment-10 Payment of Professional and special services-008-Fees for conducting suit in Supreme Court

By order and the name of the  
Government of Madhya Pradesh

Sd./-  
(SATYENDRA KUMAR SINGH)  
Additional Secretary  
Govt. of Madhya Pradesh  
Law & Legislative Affairs Department.

Endt. No. 1(A)7/2005/XXI-B(II)

Bhopal, dated 5<sup>th</sup> March 2002

Copy forwarded to,

1. The Accountant General M.P. Gwalior.
2. The Registrar General/Registrar (Judicial), Supreme Court of India, New Delhi.
3. Registrar General, High Court of M.P. Jabalpur.
4. Registrar General, High Court of M.P. Bench Indore/Gwalior.
5. Advocate General, Madhya Pradesh Jabalpur.
6. Smt. Kamakshi Singh Mehlwal, Advocate, 35, Lawyer's Chambers, Supreme Court, New Delhi, for information and handing over the files and records of the cases of State of M.P. to Shri C.D. Singh, Advocate, Supreme Court.
7. Shri Satish K. Agniotri, Standing counsel Supreme Court, New Delhi.
8. Shri B.S. Banthia, Standing counsel Supreme Court, New Delhi.
9. Smt. Vibha Datta Makhija, Advocate, Supreme Court, F.F.B-10, Green Park Main, New Delhi.
10. The establishment/Budget/Criminal/Civil/Petition Section, M.P. Law & Legislative Aff. Department, Bhopal.
11. The Secretary, Government of M.P. ....Madhya Pradesh, Bhopal

For information & necessary action.

Sd./-  
(V.K.JAIN)  
Under Secretary  
Govt. of Madhya Pradesh  
Law & Legislative Affairs Department.



## LAW DEPARTMENT MANUAL

## मध्यप्रदेश शासन, विधि विभाग

## ज्ञापन

क्रमांक 1161112-212-76/21/क (आप.)

भोपाल, दिनांक 7 अप्रैल, 76

प्रति,

समस्त जिला दण्डाधिकारी, मध्यप्रदेश,

**विषय.-** उच्च न्यायालय में अपील या पुनरीक्षण के प्रस्ताव के साथ न्यायालय के अभिलेख (डिपॉजिट) की नकल भिजवाने के संबंध में.

जिला दण्डाधिकारियों की ओर से जो अपील/पुनरीक्षण के प्रस्ताव भेजे जाते हैं उनके साथ न्यायालयीन अभिलेख एवं अन्य सामग्री समय पर नहीं भेजी जाती. यह आवश्यक है कि जिलों में जितने प्रकरणों में उच्च न्यायालय में अपील/पुनरीक्षण की कार्यवाही करना प्रस्तावित हो उनके अभिलेख तुरन्त जिलाध्यक्ष के कार्यालय से शासकीय अधिवक्ता के कार्यालय में पहुंचना चाहिये ताकि पैरवी में किसी तरह की असुविधा न हो पाये.

**आर. एल. सांगाणी**

**अवर सचिव.**

क्रमांक 12-147-/76/21/क (आप.)

भोपाल, दिनांक 9-9-1976

प्रति,

(1) समस्त जिला दण्डाधिकारी, मध्यप्रदेश.

(2) समस्त कारागार अधीक्षक, मध्यप्रदेश.

**विषय.-** अपीलान्त अभियुक्त की मृत्यु के संबंध में जानकारी देने बाबत.

आपसे निवेदन है कि अपीलान्त अभियुक्त की, जिसकी अपील उच्च न्यायालय में लम्बित हो, मृत्यु होने पर तत्संबंधी मृत्यु की सूचना अतिरिक्त रजिस्ट्रार, उच्च न्यायालय, (मुख्य खण्डपीठ या खण्डपीठों) को (जहां पर मामला विचाराधीन हो) तत्काल भेजी जावे. इस सूचना की प्रतिलिपि महाधिवक्ता, मध्यप्रदेश, जबलपुर, शासकीय अधिवक्ता, इन्दौर, ग्वालियर को भी भेजी जावे.

हस्ता./-

**(एल.एन.व्यास)**

**उपसचिव.**

## मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

## ज्ञापन

क्रमांक 12773/12/239/76/21/क (आप.)

भोपाल, दिनांक 7 दिसम्बर, 76

प्रति,

- (1) समस्त जिला दण्डाधिकारी,
- (2) समस्त पुलिस अधीक्षक,  
(उच्च न्यायालय, खण्डपीठ, ग्वालियर से सम्बन्धित जिले)

**विषय.-** शासकीय प्रकरणों में माननीय उच्च न्यायालय में पक्ष समर्थन करने बाबद.

श्री एम.एन. पेंढारकर, पेनल लायर, उच्च न्यायालय, खण्डपीठ, ग्वालियर के पत्र दिनांक 28-9-76 की प्रतिलिपि संलग्न कर आपको निर्देशित किया जाता है कि कृपया अपने जिले में ऐसी व्यवस्था करें कि भविष्य में इस तरह की शिकायत की पुनरावृत्ति न हो एवं उच्च न्यायालय के समक्ष शासन के हितों का पूरा-पूरा प्रतिरक्षण हो सके. इस संबंध में आपके द्वारा लोक अभियोजकों तथा सहायक लोक अभियोजकों को जो भी आदेश जारी किये जाएं एवं इस सम्बन्ध में जो भी कार्यवाही की जाए उससे इस विभाग को त्वरित सूचित किया जाए.

हस्ता./-  
(कु. प्रभा शर्मा)  
अवर सचिव.

मध्यप्रदेश शासन, सामान्य प्रशासन विभाग

क्रमांक 31/मुक/78

ज्ञापन

भोपाल 462004  
तारीख, 16 जनवरी 1978  
26 पौष 1899

प्रति,

समस्त जिला दण्डाधिकारी,  
समस्त शासकीय अभिभाषक, मध्यप्रदेश.

नई दण्ड प्रक्रिया संहिता, 1973 की धारा 378 (3) के अनुसार न्यायालय द्वारा प्रदत्त दोषमुक्ति के निर्णय के विरुद्ध अपीलें अनुमति आवेदन सहित प्रस्तुत करना आवश्यक है, जिसके लिए अवधि अधिनियम के अनुच्छेद 114 के अनुसार अवधि 90 दिन होती है। इसी प्रकार धारा 377 के अनुसार सजा वृद्धि के लिए भी अपील प्रस्तुत करना आवश्यक है, जिसकी अवधि अनुच्छेद 115 के अनुसार 60 दिन होती है। इसके पूर्व भूतपूर्व मुख्य सचिव श्री ओ.पी. नरोना के तारीख 5 अप्रैल 1967 के अर्द्ध-शासकीय पत्र (क्रमांक 226/सीएस/67), भूतपूर्व मुख्य सचिव, श्री रमा प्रसन्न नायक के तारीख 30 दिसम्बर 1969 के अर्द्धशासकीय पत्र (क्रमांक 12676/सीआर-554/1 (2) एवं भूतपूर्व अपर मुख्य सचिव के तारीख 18 मार्च 1975 के ज्ञापन क्रमांक 3577/1404/1 (4) की ओर आपका ध्यान आकर्षित करते हुए मुझे यह कहते हुए खेद है कि कुछ जिला दण्डाधिकारियों द्वारा उक्त आदेशों का पालन नहीं किया जा रहा है। जबकि इन पत्रों द्वारा यह स्पष्ट निर्देश दिये गये थे कि बिना किसी देरी के अपील के प्रस्ताव विधि विभाग को भेजे जाया करें तथा प्रस्ताव के साथ दो प्रमाणित प्रतिलिपियां अभिलेख एवं अन्य कागजात साथ में भेजे जाएं। प्रस्ताव भेजने के लिए यदि आवश्यक हो तो न्यायलयों से निर्णय की प्रतिलिपि प्राप्त करने के लिये आप स्वयं जिला एवं सत्र न्यायाधीश से सम्पर्क स्थापित करें, यदि प्रस्ताव निर्देशित समय में न भेजे जाएं तो इसकी व्यक्तिगत जिम्मेदारी आपके ऊपर ही होगी। उक्त स्पष्ट आदेशों के बावजूद यह देखने में आया है कि न तो इनका पालन किया जा रहा है और न ऐसे प्रकरणों की महत्वता को देखा जा रहा है, जिसका नतीजा यह है कि प्रतिमाह चार-पांच प्रकरण अवधि समाप्त होने पर विधि विभाग में प्राप्त होते हैं और अनेक प्रकरण ऐसे होते हैं जिनमें अवधि समाप्त होने होने में एक से लेकर सात दिन तक ही रह जाते हैं, जिसके कारण प्रकरण का परीक्षण करने तथा शासन आदेश प्राप्त करने में काफी कठिनाई होती है और विशेष वाहक द्वारा अपील प्रस्तुत करने के लिए प्रस्ताव संबन्धित शासकीय अधिवक्ता को भेजना पड़ता है। इस तरह शासन पर विशेष वाहक के जाने और आने का अनावश्यक भार पड़ता है। अतः मैं आशा करता हूं कि भविष्य में पूर्ण प्रस्ताव समयावधि का ध्यान रखते हुए विधि विभाग की अवधि समाप्त होने के 45 दिन पूर्व भेजे जाया करें। कृपया ऐसी व्यवस्था भी अपने जिले में करें कि नियमानुसार निर्णय होने के एक सप्ताह के अन्दर-अन्दर आपको यह जानकारी शासकीय अभिभाषक एवं पुलिस अधीक्षक से प्राप्त हो जाए कि किन प्रकरणों में शासन के विरुद्ध निर्णय हुआ है और उनमें अपील की जानी है। यदि यह अधिकारी उक्त आदेशों का पालन नहीं करते हैं तो इसकी जानकारी तुरन्त ही सम्बन्धित विभाग को भेजी जाया करे ताकि त्रुटिकर्ता के विरुद्ध आवश्यक कार्रवाई की जा सके।

हस्ता./-

(कृष्णलाल पसरीचा)  
मुख्य सचिव.

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

क्रमांक 473821-76/78/21/क (आप.)

भोपाल, दिनांक 28 जनवरी, 78

प्रति,

समस्त जिला दण्डाधिकारीगण एवं शासकीय व अतिरिक्त शासकीय अभिभाषकगण.

**विषय:-** प्रकरणों में अपील या पुनरीक्षण करने के सम्बन्ध में.

राज्य विधि मंत्रीजी द्वारा हाल ही में विधि एवं विधायी कार्य विभाग के आकस्मिक निरीक्षण के दौरान, अपील इत्यादि के संबंध में प्राप्त प्रस्तावों के सूक्ष्म परीक्षण के फलस्वरूप, यह पाया है कि कतिपय जिला दण्डाधिकारीगण, शासकीय या अतिरिक्त शासकीय अभिभावकगण विधि विभाग नियमावली के नियम 86-बी व 91 का पालन नहीं करते, जिसके कारण कार्य में कठिनाई आती है. नियम 86-बी के अनुसार किसी भी आपराधिक प्रकरण में शासन के विरुद्ध निर्णय होने पर, शासकीय अभिभाषक या अतिरिक्त शासकीय अभिभाषक को, जो प्रकरण के चार्ज में हो, उन्हें आदेश या निर्णय के 7 दिन के अन्दर, जिला दण्डाधिकारी को एक विस्तृत रिपोर्ट जिसमें केस की संक्षेपिका, साक्ष्य का विश्लेषण, पुनरीक्षण करने या न करने का मत तथा उसके आधार बताये गये हों, भेजना चाहिये.

2. जिला दण्डाधिकारी, यह रिपोर्ट अपने मत के साथ विधि विभाग को भेजेंगे व यह भी बतायेंगे कि न्यायालय ने कहां व क्या त्रुटि की है. इस प्रस्ताव के साथ निम्न कागजात भी भेजे जाया करें :-

- (1) निर्णय की प्रमाणित प्रतिलिपियां दो.
- (2) न्यायालय का अभिलेख.
- (3) शासकीय अभिभाषक का मत मय अपील या रिवीजन के आधार के व पुलिस अधीक्षक का मत.
- (4) जिला दण्डाधिकारी की अपनी टीप, जिसमें यह स्पष्ट उल्लेख रहे कि :-
  - (i) निर्णय में क्या त्रुटि है और किन धाराओं में निर्णय के विरुद्ध अपील की जाना है ?
  - (ii) अपील दोषमुक्ति के विरुद्ध या सजावृद्धि के विरुद्ध की जाना है ?
- (5) महत्वपूर्ण केसेस के संबंध में, गवाहों में, गवाहों के बयानों की प्रतिलिपियां भी भेजी जाएं.

हस्ता./-

(एल. एन. व्यास)

उपसचिव.

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

क्रमांक 675812-278/80-21 (आप.)

भोपाल, दिनांक 29 फरवरी, 80

**परिपत्र**

प्रति,

समस्त जिला दण्डाधिकारी, मध्यप्रदेश शासन.

**विषय.-** अभिलेख की आवश्यक प्रतियां भेजने के संबंध में.

उक्त विषय में महाधिवक्ता, जबलपुर द्वारा सूचित किया गया है कि नयायालयीन अभिलेख तथा उसके आवश्यक कागजों की प्रतियां तैयार कराकर नहीं भेजी जा रही हैं जिसके फलस्वरूप शासकीय अधिवक्ता महाधिवक्ता को शासन की ओर से पक्ष समर्थन किये जाने में

कठिनाई उठाना पडती है. इस संबन्ध में आपको विधि विभाग द्वारा समय-समय पर निर्देश दिये जा चुके हैं. परन्तु फिर भी कुछ जिला दण्डाधिकारी द्वारा मध्यप्रदेश विधि विभागीय नियमावली के नियम 105 का दृढ़तापूर्वक पालन नहीं किया जा रहा है.

अतः आपसे अनुरोध है कि संबंधित अधिकारियों एवं लिपिकों को निर्देश देवे कि समयावधि का ध्यान रखते हुए आवश्यक अभिलेख की प्रतियां तैयार कराकर संबंधित शासकीय अधिवक्ता अथवा महाधिवक्ता या महाधिवक्ता को भेजें.

आशा करता हूं कि भविष्य में शासकीय अधिवक्ता अथवा महाधिवक्ता को इस संबंध में शिकायत करने का अवसर न आने देवेंगे.

हस्ता./-  
(सी. के. टन्डन)  
उपसचिव.

#### मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

क्रमांक 12504-121382/80/21/क (आप.)

भोपाल, दिनांक सितम्बर, 80

प्रति,

1. समस्त जिला दण्डाधिकारीगण, मध्यप्रदेश.
2. समस्त लोक अभियोजकगण.

**विषय.-** अपील अथवा निगरानी के प्रस्ताव के साथ निर्णय या आदेश की प्रमाणित प्रतिलिपि (Certified Copy) भेजने बाबत.

उक्त विषय में श्री शंकरलाल शासकीय अधिवक्ता, मध्यप्रदेश, जबलपुर के अर्द्धशासकीय पत्र दिनांक 23-9-80 की प्रतिलिपि संलग्न कर आदेशानुसार अनुरोध है कि अपील अथवा निगरानी के प्रस्ताव के साथ निर्णय/आदेश की प्रमाणित प्रतिलिपि (Certified Copy) अवश्य भेजी जाया करें.

हस्ता./-  
(के. एस. श्रीवास्तव)  
अवर सचिव.

## मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

क्रमांक 26764/21-मत

भोपाल, दिनांक 3, जून 1978

प्रति,

शासन के समस्त विभाग,  
शासन के समस्त विभागाध्यक्ष,  
समस्त जिलाध्यक्ष.

**विषय.-** गृह निर्माण अग्रिम संबंधी प्रकरण, विधि और विधायी कार्य विभाग को भेजने की प्रक्रिया.

प्रायः देखने में यह आया है कि प्रशासकीय विभाग तथा विभागाध्यक्ष, गृह निर्माण अग्रिम संबंधी नस्ती विधि और विधायी कार्य विभाग को स्वत्व परीक्षणार्थ भेजते समय मध्यप्रदेश विधि विभाग नियमावली एवं मध्यप्रदेश वित्तीय संहिता भाग-2 के परिच्छेद-9 के नियमों का पालन नहीं करते. इसके अतिरिक्त जिलाध्यक्षों द्वारा भी प्रकरण सीधे ही इस विभाग को भेजे जाते हैं. जो कि विधि विभाग नियमावली के नियम 66 (II) के अनुसार उचित नहीं हैं.

अतः प्रकरण के निपटारे में अनावश्यक रूप से विलंब होता है और शासकीय कर्मचारियों को गृह निर्माण अग्रिम प्राप्त करने में भी कठिनाई उठाना पडती है.

अतः गृह निर्माण अग्रिम संबंधी प्रकरण में स्वत्व परीक्षण के लिये निम्न जानकारी का समावेश होना अत्यन्त आवश्यक है :-

1. जिलाध्यक्ष का प्रमाण-पत्र जिसमें प्लाट/भवन के संबंध में गत 12 वर्षों की स्थिति का स्पष्ट उल्लेख हो.
2. उप-पंजीयक का प्रमाण-पत्र, जिसमें भूमि गत 12 वर्षों से ऋण भार आदि से मुक्त हो तथा संपत्ति का पूर्ण विवरण अर्थात् प्लाट/भवन का क्रमांक तथा पंजीयन दस्तावेज आदि हो.
3. सेल डीड की प्रमाणित प्रति यदि कोई हो.

अतः समस्त प्रशासकीय विभाग, विभागाध्यक्षों से आशा की जाती है कि वे उपरोक्त जानकारी पूर्ण होने पर ही प्रकरण स्वत्व संबंधी परीक्षण हेतु इस विभाग को अंकित करें जिससे ऋण प्राप्त करने वाले कर्मचारी अनावश्यक कठिनाई से बच सकें. और इस विभाग के समय का भी अपव्यय न हो.

हस्ता./-

(एम.डी. भट्ट)

सचिव,

मध्यप्रदेश शासन,

विधि और विधायी कार्य विभाग.

मध्यप्रदेश शासन, सामान्य प्रशासन विभाग

क्रमांक 464/3720/एक (1)

भोपाल, दिनांक 16 फरवरी, 1979

प्रति,

शासन के समस्त विभाग.

**विषय.-** फौजीदारी (अपराधिक) प्रकरणों को न्यायालय से वापिस लेने बाबत.

सामान्य प्रशासन विभाग के पृष्ठांकन क्रमांक 4686/3679/एक (1), दिनांक 14 दिसम्बर, 1967 के द्वारा यह निर्देश जारी किये गये थे कि अपराधिक प्रकरणों को शासन द्वारा न्यायालय से वापिस लेने के मामले समन्वय के मामले होंगे. इसी विषय पर गृह विभाग ने अपने ज्ञापन क्रमांक 919/2 बी (1), दिनांक 14 फरवरी 1974 द्वारा निर्देश जारी किये थे कि अपराधिक प्रकरणों को स्थगित करने या वापिस लेने संबंधी कार्यवाही गृह विभाग द्वारा की जाएगी तथा इसके लिये सभी विभाग/जिला दण्डाधिकारी अपराधिक प्रकरणों की वापिसी तथा स्थगन के प्रस्ताव गृह विभाग को मुख्य मंत्री जी के आदेश प्राप्त करने हेतु भेजें. आदेश होने पर संबंधित प्रकरण में विधि विभाग द्वारा आदेश जारी किये जायेंगे.

2. अब उपर्युक्त आदेश को अविकसित करते हुए राज्य शासन द्वारा यह निर्देश जारी किये जाते हैं कि भविष्य में अपराधिक प्रकरणों की.....करवाने या न्यायालय से वापिस लेने संबंधी विभागों के प्रस्ताव सर्वप्रथम गृह विभाग में भेजे जावें. गृह विभाग उनका परीक्षण कर समन्वय में मुख्यमंत्री जी के आदेश प्राप्त करेगा और तत्पश्चात् विधि विभाग द्वारा आदेश प्रसारित किये जाएंगे.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,  
हस्ता./-

**(जे.एल. अजमानी)**

उपसचिव,

मध्यप्रदेश शासन,

सामान्य प्रशासन विभाग.

क्रमांक 465/3720/एक (1)

भोपाल, दिनांक 16 फरवरी, 1979

प्रतिलिपि :-

शासन के समस्त सचिव/विशेष सचिव/उप सचिव/अवर सचिव/मुख्यमंत्री जी के निजी सचिव/निजी सचिव, समस्त मंत्री/ राज्य मंत्री.

समस्त आयुक्त,  
समस्त विभागाध्यक्ष,  
समस्त कलेक्टर.

हस्ता./-

**(जे.एल. अजमानी)**

उपसचिव,

मध्यप्रदेश शासन,

सामान्य प्रशासन विभाग.

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

क्रमांक 12773-11534/79/21/क (आप.)

भोपाल, दिनांक 30 सितम्बर 80

प्रति,

1. समस्त जिला दण्डाधिकारी, म.प्र.
2. पुलिस महानिरीक्षक, भोपाल.
3. राज्य सतर्कता आयोग विशेष पुलिस स्थापना, भोपाल.

**विषय.-** विधि विभाग का जापन क्रमांक 21627/21-क (आप.) दिनांक 24-8-79 निरस्त किया जाता है।

विधि विभाग नियमावली के नियम 91 के अनुसार आपराधिक मामलों में अपील या निगरानी सम्बन्धी प्रस्ताव साधारणतया जिला दण्डाधिकारी द्वारा विधि विभाग को भेजे जाने चाहिए लेकिन कभी-कभी ये प्रस्ताव राज्य सतर्कता आयोग/विशेष पुलिस स्थापना या अन्य विभागों द्वारा सीधे विधि विभाग को भेज दिये जाते हैं। ऐसी स्थिति में एक ही मामले के अपील के प्रस्ताव का परीक्षण दो बार करना पड़ता है और ऐसा होने पर कभी-कभी एक ही मामले में दो अपील प्रस्तुत होने की संभावना बनी रहती है। अतः यह आवश्यक है कि आपराधिक मामलों में अपील प्रस्तुत है या निगरानी संबंधी प्रस्ताव राज्य सतर्कता आयोग या अन्य विभाग जिला दण्डाधिकारी के माध्यम से मामले के अभिलेख के साथ समयावधि में विधि विभाग को भिजवाये ताकि प्रस्ताव के अनुसार अपील समयावधि में प्रस्तुत की जा सके और एक ही मामले के प्रस्ताव को दो बार परीक्षण करने का अवसर न आवे। बिना अभिलेख के सीधे प्राप्त प्रस्ताव का समुचित परीक्षण करना संभव नहीं है।

राज्य सतर्कता आयोग द्वारा अपील निगरानी के प्रस्ताव सीधे इस विभाग को कभी-कभी इस कारण से भेजे जाते हैं कि जिला दण्डाधिकारी के माध्यम से भेजने में समयावधि समाप्त न हो जावे। इस संदर्भ में यह आवश्यक प्रतीत होता है कि निर्णय होते ही, लोक अभियोजक अथवा अशासकीय अभिभाषक जैसी भी परिस्थिति हो, तुरन्त प्रमाणित प्रति के लिए न्यायालय में आवेदन-पत्र देकर लोक अभियोजक अथवा अशासकीय अभिभाषक/जिला दण्डाधिकारी ही न्यायालय द्वारा प्रदान की गई प्रतिलिपि प्राप्त होते ही **राज्य सतर्कता आयोग को भेज दे. राज्य सतर्कता अयोग (अपील) निगरानी करना है या नहीं यह निर्णय यथा संभव शीघ्रता से लेवे और** अपना प्रस्ताव जिला दण्डाधिकारी को अद्ध शासकीय पत्र के साथ भेजे और जिला दण्डाधिकारी तत्काल अभिलेख निर्णय की दो प्रमाणित प्रतिलिपियों के साथ प्रस्ताव विधि विभागको भेजें। इस संबन्ध में राज्य सतर्कता आयोग को जिला दण्डाधिकारी के साथ आवश्यक सम्पर्क बनाये रखना चाहिये ताकि अपील प्रस्ताव अभिलेख के साथ समयावधि में विधि विभाग में प्राप्त हो सके।

यदि जिला दण्डाधिकारी प्रस्ताव भेजने से इन्कार करते हैं या यदि जिला दण्डाधिकारी के माध्यम से प्रस्ताव विधि विभाग में भेजने में अनाश्यक विलंब होने की संभावना हो तो राज्य सतर्कता आयोग पुलिस महानिरीक्षक के माध्यम से प्रस्ताव विधि विभाग नियमावली के नियम 92 के अनुसार विधि विभाग को भिजवा सकते हैं।

हस्ता./-  
(सी.के. टंडन)  
उपसचिव,



मध्यप्रदेश शासन, सामान्य प्रशासन विभाग

क्र. 3937/1/(4) 81

भोपाल, दिनांक 21 जुलाई, 81

प्रति,

शासन के समस्त विभाग,  
समस्त आयुक्त,  
समस्त विभागाध्यक्ष,  
समस्त जिलाध्यक्ष, मध्यप्रदेश.

**विषय.-** न्यायालयों की मानहानि के मामलों में शासकीय अधिकारियों की ओर से पक्ष समर्थन.

न्यायालयों को मानहानि के मामलों में शासकीय अधिकारियों की ओर से पक्ष समर्थन करने के सम्बन्ध में इस विभाग के जापन क्र. 2828/187/1/(4) 77 दिनांक 9-6-77 में यह निर्देश पारित किए गए थे कि न्यायालयों के आदेशों की अवहेलना किए जाने की दशा में शासन ऐसी अवहेलना करने वाले अधिकारी का प्रतिपरीक्षण नहीं करेगा.

2. शासन ने इस मुद्दे पर सहानुभूतिपूर्वक पुनर्विचार कर निर्णय दिया है कि :-

- (1) पक्ष समर्थन करने के लिए अधिकारी / कर्मचारी को अधिवक्ताओं की फीस के लिए रूपये 1,000.00 (रू. एक हजार) अथवा वास्तविक व्यय जो भी कम हो दिया जावे. यदि इससे अधिक खर्च हुआ तो संबंधित कर्मचारी/अधिकारी उसे स्वयं वहन करेगा.
- (2) साधारण भ्रमण के टी. ए. (यात्रा भत्ता), डी. ए. दैनिक भत्ता की सुविधा दी जाये.

3. न्यायालय द्वारा मानहानि के आरोप में दोषमुक्ति पाये जाने पर या आरोप समाप्त किये जाने पर सम्बन्धित अधिकारी/कर्मचारी को उसके द्वारा अपने बचाव में व्यय की गई समुचित राशि की पूर्ति शासन द्वारा की जावेगी. जिसमें से उपरोक्त कंडिका 2 (1) में अंकित राशि यदि पूर्व में दी गई है का समायोजन किया जावेगा. किंतु यदि अधिकारी/कर्मचारी न्यायालय द्वारा दोषी पाया जाता है तो कंडिका 2(1) के अन्तर्गत या अन्य दी गई सहायता की पूरी राशि वसूल की जावेगी. वसूली की जाने वाली ऐसी राशि में यात्रा भत्ता की राशि सम्मिलित नहीं की जावेगी.

हस्ता./-  
(बी. जे. हीरजी)  
सचिव,

**विधि और विधायी कार्य विभाग, भोपाल**

अद्ध शासकीय पत्र क्र. 12-290/81-21-क (आप.)

प्रति,

समस्त जिला दण्डाधिकारी.

**विषय.-** अपील प्रस्ताव के साथ प्रमाणित प्रतिलिपि भेजने के संबंध में.

आपका ध्यान इस विभाग के जापन क्रमांक 6-1082/78/10247/21-क (आप.), दिनांक 17-9-78 तथा जापन क्रमांक 27144/21- क (आप.) दिनांक 7-11-79 की ओर आकर्षित किया जाता है.

यह बात देखने में आ रही है कि कई प्रकरणों में उच्च न्यायालय राज्य द्वारा दोषमुक्ति के विरुद्ध प्रस्तुत अपील करने के लिये अनुमति नहीं देते हुये संक्षेपतः अपील इस आधार पर खारिज कर रही है कि अपील जापन के साथ साक्ष्य अधिनियम की धारा 76 के अनुसार प्रश्नाधीन निर्णय की प्रमाणित प्रतिलिपि संलग्न नहीं रहती है.

अपील जापन के साथ साक्ष्य अधिनियम की धारा 76 के अन्तर्गत विधिवत और सक्षम अधिकारी द्वारा प्रदत्त सत्य प्रतिलिपि ही प्रमाणित प्रतिलिपि की कोटि में आती है. अन्य प्रतियां प्रमाणित प्रतियां नहीं मानी जाती जैसा कि **स्टेट आफ यू.पी. बनाम सी.टोविन [1958, ए. आई. आर. सुप्रीम कोर्ट 414) तथा स्टेट आफ एम.पी.बनाम मुरलीधर (दांडिक अपील क्रमांक571/76, दिनांक 28-2-75)** में अभिनिर्धारित किया गया है.

प्रमाणित प्रतिलिपि के अभाव में अपील गुणदोष के आधार पर निर्णीत नहीं होती है बल्कि तकनीकी आधार पर खारिज हो जाती है. अपीलें तथा पुनरीक्षण प्रस्ताव तथा जमानत आदेश, सुपुर्दनामा आदेश, संपत्ति निराकरण आदेश रद्द करने हेतु प्रस्ताव भेजते समय इस बात की जांच (चेक) कर लिया जाए कि जो प्रतिलिपि भेजी जा रही है वह सक्षम प्राधिकारी द्वारा विधिवत प्रमाणित सत्यप्रतिलिपि है. प्रतिलिपि पर मुख्य प्रतिलिपिकार की सील और हस्ताक्षर होना यह स्थापित करता है कि वह प्रमाणित है. यदि त्रुटिवश वैसी सील और हस्ताक्षर नहीं हो तो प्रतिलिपि शाखा की सील और हस्ताक्षर प्राप्त करने के उपरांत ही अपील प्रस्ताव भेजे जावें ताकि तकनीकी आधार पर अपील खारिज नहीं हो. यह अपेक्षा की जाती है कि भविष्य में इस ओर कड़ाई से ध्यान दिया जायेगा.

हस्ता./-

(एस.एन. जौहरी)

सचिव,

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

क्र. 12/793/83/21/क (आप.)

भोपाल, दिनांक 12 दिसम्बर, 83

प्रति,

समस्त लोक अभियोजक, मध्यप्रदेश.

**विषय.-** प्रकरणों में अपील एवं पुनरीक्षण प्रस्तुत करने के संबंध में.

विभिन्न प्रकरणों में शासन की ओर प्रस्तुत की जाने वाली अपीलों एवं रिवीजनों के संबंध में प्रायः यह देखा गया है कि सम्बन्धित शासकीय या अति. शासकीय अभिभाषक विधि विभाग नियमावली के नियम 86-बी तथा 19 का पालन नहीं करते जिसके अनुसार किसी

भी आपराधिक प्रकरण में शासन के विरुद्ध निर्णय होने पर शासकीय अभिभाषक या अतिरिक्त शासकीय अभिभाषक को, जो प्रकरण के चार्ज में हो, उन्हें आदेश या निर्णय के 7 दिन के अन्दर, जिला दण्डाधिकारी को एक विस्तृत रिपोर्ट जिसमें केस की संक्षेपिका, साक्ष्य का विश्लेषण, पुनरीक्षण करने या न करने का मत तथा उसके आधार बताये गये हों, भेजना चाहिये

इस प्रस्ताव के साथ निम्नलिखित कागजात भी भेजे जाया करें :-

- (1) निर्णय की प्रमाणित प्रतिलिपियां दो
- (2) न्यायालय का अभिलेख
- (3) आपका मत, अपील या रिवीजन के आधार व पुलिस अधीक्षक का मत.

आशा है कि उपरोक्त निर्देशों का आप सख्ती से पालन करेंगे ताकि इस विभाग को प्रकरण का परीक्षण करने के लिये पर्याप्त समय मिल सके और समयाधि के भीतर समुचित कार्यवाही की जा सके.

हस्ता./-

(आर.डी. शुक्ला)

विशेष सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

क्र. 3069/3478/6-725/21/क (आप.)

भोपाल, दिनांक 2-5-86

प्रति,

समस्त जिला दण्डाधिकारी, मध्यप्रदेश.

**विषय.-** जिल एवं सत्र न्यायालय के समक्ष अपील पुनरीक्षण प्रस्तुत करने की स्वीकृति बाबत.

अधीनस्थ न्यायालय के निर्णय के विरुद्ध जिला एवं सत्र न्यायालय के समक्ष अपील/निगरानी प्रस्तुत करने की स्वीकृति हेतु कई जिलों से प्रस्ताव इस विभाग में प्राप्त होते हैं. विधि विभाग नियमावली के नियम 81 एवं 82 के अनुसार उक्त कार्य हेतु जिला दण्डाधिकारी स्वयं सक्षम हैं. अतः समस्त जिला दण्डाधिकारियों से अनुरोध है कि जिला एवं सत्र न्यायालय के समक्ष अपील निगरानी प्रस्तुत करने हेतु प्रस्ताव इस विभाग को भेजने की आवश्यकता नहीं है.

हस्ता./-

(आई.सी. दुबे)

उपसचिव,

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

क्र. 12-1465/80/7473/21/क (आप.)

भोपाल, दिनांक 14-7-1987

प्रति,

1. समस्त जिला दण्डाधिकारीगण, मध्यप्रदेश.
2. पुलिस महानिरीक्षक, भोपाल.
3. सचिव, लोक आयुक्त कार्यालय, मध्यप्रदेश, भोपाल.

**संदर्भ.-** विधि विभाग का ज्ञापन क्रमांक 31098/12773/11534/21-क (आप.), दिनांक 30-9-80.

1. विधि विभाग नियमाली के नियम 91 के अनुसार आपराधिक मामलों में अपील या निगरानी संबंधी प्रस्ताव साधारणतया जिला दण्डाधिकारी द्वारा विधि विभाग को भेजे जाने चाहिए लेकिन कभी-कभी ये प्रस्ताव लोक आयुक्त कार्यालय या अन्य विभागों द्वारा सीधे विधि विभाग को भेज दिये जाते हैं. ऐसी स्थिति में एक ही मामले के अपील के प्रस्ताव का पीरक्षण दो बार करना पड़ता है और ऐसा होने पर कभी-कभी एक ही मामले में दो अपील प्रस्तुत होने की संभावना बनी रहती है. अतः यह आवश्यक है कि आपराधिक मामलों में अपील प्रस्तुति या निगरानी सम्बन्धी प्रस्ताव लोक आयुक्त कार्यकाल या अन्य विभाग जिला दण्डाधिकारी के माध्यम से मामले के अभिलेख के साथ समयावधि में विधि विभाग को भिजवायें ताकि प्रस्ताव के अनुसार अपील समयावधि में प्रस्तुत की जा सके और एक ही मामले के प्रस्ताव को दो बार परीक्षण करने का अवसर न आवे. बिना अभिलेख के सीधे प्रस्ताव का समुचित परीक्षण करना सम्भव नहीं है.

2. लोक आयुक्त कार्यालय द्वारा अपील/निगरानी के प्रस्ताव सीधे इस विभाग को कभी-कभी इस कारण से भेजे जाते हैं कि जिला दण्डाधिकारी के माध्यम से भेजने में समयावधि समाप्त न हो जावे. इस संदर्भ में यह आवश्यक प्रतीत होता है कि निर्णय होते ही, लोक अभियोजक अथवा अशासकीय अभिभाषक जैसी भी परिस्थिति हो, तुरंत प्रमाणित प्रति के लिए न्यायालय में आवेदन-पत्र दें लोक अभियोजक अथवा अशासकीय अभिभाषक/जिला दण्डाधिकारी ही न्यायालय द्वारा प्रदान ही गई प्रतिलिपि प्राप्त होते ही लोक आयुक्त कार्यालय को भेज दें. लोक आयुक्त कार्यालय (अपील) निगरानी करना है या नहीं वह निर्णय तथा सम्भव शीघ्रता से लेवे और अपना प्रस्ताव जिला दण्डाधिकारी को अर्द्ध शासकीय पत्र के साथ भेजें और जिला दण्डाधिकारी तत्काल अभिलेख, निर्णय की दो प्रमाणित प्रतिलिपियों के साथ प्रस्ताव विधि विभाग को भेजें तथा इसकी सूचना लोक आयुक्त कार्यालय को भी भेजें. इस सम्बन्ध में लोक आयुक्त कार्यालय को जिला दण्डाधिकारी के साथ आवश्यक संपर्क बनाये रखना चाहिए ताकि अपील प्रस्ताव अभिलेख के साथ समयावधि में विधि विभाग में प्राप्त हो सके.

3. यदि जिलादण्डाधिकारी प्रस्ताव भेजने से इंकार करते हैं या जिला दंडाधिकारी के माध्यम से प्रस्ताव विधि विभाग में भेजने में अनावश्यक विलम्ब होने की सम्भावना हो तो लोक आयुक्त कार्यालय पुलिस महानिरीक्षक के माध्यम से प्रस्ताव विधि विभाग नियमावली के नियम 92 के अनुसार विधि विभाग को भिजवा सकते हैं.

हस्ता./-

(एस.सी. गुप्ता)

उपसचिव,

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

भोपाल, दिनांक 19 दिसम्बर 1990

क्र. 12 (बी)-2-79-इक्कीस-ब.-एडमिनिस्ट्रेटर्स जनरल एक्ट. 1963 (1963 का 45) की धारा की उपधारा (1) द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए तथा इस विभाग की अधिसूचना क्र. 12 (बी)-2-79बी-इक्कीस, दिनांक 16 अगस्त 1989 को अतिष्ठित करते हुए, राज्य सरकार, एतद्वारा, विधि परामर्शी तथा प्रमुख सचिव, मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग (जैसी भी स्थिति हो) को मध्यप्रदेश राज्य के लिये महाप्रशासक नियुक्त करती है.

भोपाल, दिनांक 19 दिसम्बर 1990

पृ.क्र. 12 (बी)-2-79-इक्की-ब.-भारत के संविधान के अनुच्छेद 348 के खण्ड (3) के अनुसरण में इस विभाग की अधिसूचना क्र. 12 (बी)-2-79-इक्कीस-ब, दिनांक 19 दिसम्बर 1990 का अंग्रेजी अनुवाद राज्यपाल के प्राधिकार से एतद्वारा प्रकाशित किया जाता है.

Bhopal, the 19<sup>th</sup> December 1990

No. 12 (B)-2-79-XXI-B.-In exercise of the powers conferred by sub-section (1) of Section 3 of the Administrators General Act, 1963 (No. 45 of 1963) and in supersession of this Department Notification No. 12 (b)-2-79-B-XXI, dated the 16<sup>th</sup> August 1979, the State Government hereby appoints the Legal Remembrancer and Principal Secretary/Secretary to Government of Madhya Pradesh Law and Legislative Affairs Department (as the case may be) as the Administrator General for the State of Madhya Pradesh.

By order and in the name of the Governor of  
Madhya Pradesh,  
D.N.DIXIT, Addi.Secy.

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

क्रमांक डी. 1711/21-मत,

भोपाल, दिनांक 15-2-1991

प्रति,

समस्त सचिव,  
मध्यप्रदेश शासन,  
भोपाल.

**विषय.-** भवन निर्माण अग्रिम संबंधी प्रकरण विधि विभाग भेजने की प्रक्रिया.

गृह निर्माण अग्रिम के प्रकरणों का परीक्षण करते समय यह देखने में आया है कि आवेदकों द्वारा कलेक्टर एवं उप पंजीयक के प्रमाण-पत्र प्राप्त कर अपने प्रशासकीय विभाग को आवेदन प्रस्तुत किये जाते हैं तथापि वहां से उन्हें अग्रसारित करने में इतना विलंब कर दिया जाता है कि विधि विभाग द्वारा उनका परीक्षण करते समय कलेक्टर एवं पंजीयक के प्रमाण-पत्र अधिकांश प्रकरणों में एक वर्ष से अधिक पुराने हो जाते हैं, इससे आवेदकों को अनावश्यक कठिनाई का सामना करना पड़ता है. लगभग आधे प्रकरण इसी आपत्ति के आधार पर विधि विभाग से वापस भेजे जाते हैं. कई प्रकरणों में यह भी देखा गया है कि कलेक्टर द्वारा नवीन प्रमाण-पत्र देने से इंकार किया गया है क्योंकि प्रमाण-पत्र पूर्व में ही दे दिया गया है.

2. उपरोक्त कठिनाईयों के कारण अनेक आवेदक विधि विभाग के अधिकारियों से संपर्क कर अपने प्रकरणों का निराकरण कराने का प्रयास करते हैं.

3. अतः भविष्य में सभी अग्रेशन अधिकारी आवेदक से निम्न प्रारूप में प्रमाण-पत्र प्राप्त कर अग्रिम के आवेदन के साथ संलग्न करने का कष्ट करें :-

“ मैं घोषणा करता हूं कि मेरे द्वारा प्रस्तुत गृह निर्माण के आवेदन के साथ संलग्न कलेक्टर और उप पंजीयक के प्रमाण-पत्रों में बतलायी गई स्थिति में यदि अग्रिम स्वीकृति के पूर्व कोई परिवर्तन होता है तो उसकी सूचना तुरंत मैं शासन को दूंगा अन्यथा सूचना का अभाव मेरे द्वारा दुर्व्यपदेशन का प्रमाण होगा.”

हस्ता./-

**(व्ही. एस. चराटे)**

उपसचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

क्रमांक डी. 1711/21-मत,

भोपाल, दिनांक 15-2-1991

प्रतिलिपि :-

- (1) सचिव, मध्यप्रदेश विधान सभा सचिवालय, भोपाल.
- (2) न्यायिक शाखा, विधि और विधायी कार्य विभाग की ओर आवश्यक कार्यवाही हेतु अग्रेषित.

हस्ता./-

**(व्ही. एस. चराटे)**

उपसचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

क्रमांक डी. 11743/894/21-मत,

भोपाल, दिनांक 27-10-1993

प्रति,

शासन के समस्त विभाग,

समस्त विभागाध्यक्ष,

मध्यप्रदेश.

**विषय.-** विधिक बिन्दु पर विधि विभाग की राय लिए जाने के संबंध में.

शासन के ध्यान में यह बात लाई गई है कि विभागाध्यक्षों द्वारा अपने प्रशासनिक विभाग को सूचित किए बिना सीधे विधि विभाग की राय प्राप्त की जाती है जबकि म.प्र. कार्यपालक शासन के कार्य नियम के भाग-5 नियम 13 के अन्तर्गत जारी किए गई अनुदेश क्र. 46 के अनुसार प्रशासनिक विभाग द्वारा ही उनके समक्ष लंबित प्रकरण में उपस्थित विधिक बिन्दु पर विधि विभाग की राय प्राप्त की जा सकती है.

शासन द्वारा विभिन्न विषयों पर नीतिगत और प्रशासनिक निर्णय संबंधित विभाग के माध्यम से लिए जाते हैं. यदि निर्णय लेने में कोई विधिक बिन्दु उपस्थित होता है तो उस पर विधि राय, संबंधित प्रशासनिक विभाग द्वारा ही प्राप्त की जानी चाहिए. विभागाध्यक्ष, प्रशासनिक विभाग के अधीन कार्य करते हैं अतः औचित्य की दृष्टि से भी विभागाध्यक्षों को अपने प्रशासनिक विभाग की जानकारी में लए बिना किसी भी प्रकरण में सीधे विधि विभाग से मत प्राप्त करना उचित नहीं है.

अतएव विभागाध्यक्षों से अनुरोध है कि भविष्य में उनके समक्ष विचाराधीन प्रकरण में किसी विधि बिन्दु पर विधि विभाग की राय अपेक्षित हो तो कृपया विधिक बिन्दु और उससे संबंधित समस्त तथ्यों को स्पष्ट करते हुए प्रकरण अपने प्रशासनिक विभाग के माध्यम से विधि विभाग को प्रेषित करें. इस परिपत्र द्वारा जारी किए गए निर्देशों की सीमा तक वर्तमान विधि विभाग नियमावली का नियम 65 संशोधित माना जाएगा

हस्ता./-

**(एन. के. जैन)**

सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

पृष्ठांकन क्रमांक डी. 11743/894/21-मत,

भोपाल, दिनांक 27-10-1993

प्रतिलिपि :-

मुख्य सचिव, मध्यप्रदेश शासन को उनके अर्द्धशासकीय पत्र क्रमांक 269 / मु. स. / 93 / सामान्य प्रशासन, दिनांक 5-8-1993 के संदर्भ में सूचनार्थ.

हस्ता./-

**(एन. के. जैन)**

सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

फा. क्रमांक 3 (अ)/212/94/903/21-क (सि.)

भोपाल, दिनांक 6-5-94

प्रति,

1. समस्त सचिव,  
मध्यप्रदेश शासन,
2. समस्त जिलाध्यक्ष,  
मध्यप्रदेश.

**विषय.-** जिला न्यायालय एवं व्यवहार न्यायालय में प्रस्तुत व्यवहार बाद में अपील आदि में शासन के प्रतिरक्षण हेतु कार्यवाही.

जिला न्यायालय एवं व्यवहार न्यायालय में प्रस्तुत व्यवहार वाद अथवा अधीनस्थ न्यायालय के निर्णय के विरुद्ध जिला न्यायालय के समक्ष प्रस्तुत अपील में प्रतिरक्षण आदेश प्रसारणार्थ कई प्रशासकीय विभागों से प्रकरण इस विभाग में प्राप्त होते हैं.

विधि विभाग नियमावली के नियम 151 के अनुसार उक्त कार्य हेतु प्रशासकीय विभाग के प्रभारी अधिकारी को जिला कलेक्टर से संपर्क करना चाहिए एवं नियम 25 के अनुसार जिला कलेक्टर, शासकीय अभिभाषक या अतिरिक्त शासकीय अभिभाषक को ऐसे प्रकरणों को सौंपे जाने के आदेश देने में सक्षम है. इस हेतु प्रकरण विधि विभाग को भेजने की आवश्यकता नहीं है. नियम 152 के अन्तर्गत प्रभारी अधिकारी को शासन को रिपोर्ट भेजना चाहिये तथा संबंधित विभाग द्वारा नियम 153 के अंतर्गत विधि विभाग से आदेश लेना चाहिये. नियम 151, 152, 153 की फोटोप्रति इस पत्र के संलग्न मार्गदर्शन हेतु भेजी जा रही हैं, उनके अनुरूप कार्यवाही की जाये.

शासन के विरुद्ध निर्णीत प्रकरणों में यदि प्रशासकीय विभाग अपील किया जाना उचित समझता है तो विधि विभाग नियमावली के नियम 170 के अनुसार, प्रशासकीय विभाग के प्रमुख के माध्यम से ऐसी अपील की अनुशंसा के कारण देते हुये, प्रतिवेदन, निर्णय, जयपत्र जिसके विरुद्ध अपील, प्रस्तावित है कि प्रति तथा प्रस्तावित अपील में के साथ इस विभाग को यदि अपील जिला न्यायालय में की जना हैं, तो जयपत्र के पारित होने के 15 दिवस के भीतर और यदि उच्च न्यायालय में अपील की जाना है, तो एक माह की अवधि के भीतर प्रेषित किया जाना चाहिए, ताकि इस विभाग द्वारा नियम 171 के अधीन आदेश प्रसारित किये जा सकें.

राज्य शासन के पक्ष में निर्णीत प्रकरण के विरुद्ध अपील प्रस्तुत होने पर नियम 173 के अधीन प्रभारी अधिकारी कार्यवाही हेतु सक्षम है व सामान्यतः विधि विभाग से निर्देश अपेक्षित नहीं है, केवल उच्च न्यायालय में प्रस्तुत अपील का नोटिस माहधिवक्ता को नियम 173 (3) के अनुसार विधि विभाग के द्वारा भेजा जावेगा.

संलग्न :- संबंधित नियमों की प्रति.

हस्ता./-

**(प्रभा खरे)**

उपसचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.



मध्यप्रदेश शासन  
सामान्य प्रशासन विभाग  
मंत्रालय

वल्लभ भवन, भोपाल-462004

क्रमांक एफ-11-22-94-9-एफ

भोपाल, दिनांक 9 अगस्त 1994

प्रति,

समस्त प्रमुख सचिव/सचिव

समस्त विभागाध्यक्ष,

मध्यप्रदेश शासन, भोपाल.

**विषय.-** शासन के समस्त विभागों द्वारा समय-सीमा में अपील/पुनरीक्षण इत्यादि न्यायालयों में प्रस्तुत की जाने के संबंध में.

राज्य शासन के ध्यान में यह बात आई है कि कुछ न्यायालय प्रकरणों में शासन के विरुद्ध निर्णय हो जाने के बाद संबंधित प्रशासकीय विभाग द्वारा निर्धारित समय-सीमा में अपील/पुनरीक्षण हेतु कार्यवाही नहीं की गई. अपील या पुनरीक्षण के लिए समय अवधि निर्धारित है और कुछ उदाहरण ऐसे देखने में आये हैं जहां कार्यालय में प्रस्तावों पर बहुत मंद गति से एवं साधारण प्रकरण की तरह कार्यवाही की गई, जिससे अपील अवधि बाह्य हो गयी. इस प्रकार की ढीलीढाली कार्यवाही सर्वदा अनुचित और आपत्तिजनक है.

2. शासन की स्पष्ट नीति है कि जब कभी कोई अपील/पुनरीक्षण प्रस्तुत करने का प्रस्ताव किसी विभाग से प्राप्त हो तो निर्धारित समय-सीमा का ध्यान रखकर त्वरित गति से कार्यवाही सुनिश्चित करने की जिम्मेदारी सचिव की हैं.

3. भविष्य में ऐसे प्रकरणों में विलंब रोकने के लिए यह प्रक्रिया अपनाई जावे कि जब कभी कोई विभाग अपील/पुनरीक्षण प्रस्तुत करने का निर्णय ले तो विभाग का स्पष्ट मत देकर प्रकरण को विधि विभाग को भेजा जाये. विधि विभाग यदि प्रशासकीय विभाग के प्रस्ताव को स्वीकार योग्य पाये तो प्रकरण दोबारा संबंधित विभाग को भेजने की बजाए विधि विभाग स्वयं ही अपील/पुनरीक्षण दायर करने के आदेश प्रसारित कर दे. ऐसे प्रकरण जिन्हें विधि विभाग अपील/पुनरीक्षण योग्य नहीं पाये तो फाइल संबंधित विभाग को तुरंत विधि विभाग के मत सहित वापिस की जाये और संबंधित प्रशासकीय विभाग यदि फिर भी अपील/पुनरीक्षण प्रस्तुत करने के पक्ष में प्रशासकीय निर्णय लेता है तो तत्काल बिना समय खोये प्रकरण विधि विभाग को अंकित किया जावें.

4. अपीले इत्यादि न्यायालयों में निर्धारित समय में प्रस्तुत करने का उत्तरदायित्व संबंधित प्रशासकीय विभाग को ही है. ऐसे मामलों में समय पर कार्यवाही करने के उदाहरण को शासन द्वारा गंभीर दुराचरण माना जाकर विलंब के लिए जिम्मेदार अधिकारी एवं कर्मचारी के विरुद्ध कार्यवाही की जायेगी. समस्त कलेक्टर/जिला दंडाधिकारियों को भी यह सुनिश्चित कर लेना चाहिए कि अपील/पुनरीक्षण इत्यादि के प्रस्ताव आवश्यक अभिलेखों सहित संबंधित प्रशासकीय विभाग के सचिव के नाम से भेजे जाएं ताकि समय पर प्राप्त होने में किंचित भी विलंब न हो.

5. मैंने यह भी देखा है कि नस्ती के निपटारे के बाद केवल एक कर्मचारी/अधिकारी से दूसरे कर्मचारी/अधिकारी के पास पहुंचने में या एक विभाग से दूसरे विभाग तक पहुंचने में कई दिन लग जाते हैं जो समझ के बाहर हैं. कार्यालयों में ऐसा विलम्ब होना मात्र शिथिलता एवं अक्षमता का प्रतीक है. कार्यालयीन कार्य में चुस्ती लाना प्रत्येक कर्मचारी/अधिकारी की जिम्मेदारी है. कार्यालयीन प्रमुखों का दायित्व है कि वह देखें कि रूटीन प्रक्रिया जैसे नस्तियों में डिस्पैच आदि में अनावश्यक समय बर्बाद न हो.

6. इन निर्देशों का कड़ाई से पालन सुनिश्चित किया जावे.

हस्ता./-

(एन. एस. सेठी)

मुख्य सचिव.

## मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

प्रेषक :- एन. के. जैन,

विधि सचिव.

प्रति,

सचिव,

मध्यप्रदेश शासन,

.....

भोपाल.

भोपाल दिनांक 27 मार्च, 1995

**विषय.-** राज्यपाल महोदय की अनुमति/राष्ट्रपति के विचारार्थ रक्षित किए जाने वाले पारित विधेयकों के संबंध में प्रक्रिया.

महोदय,

कृपया उपरोक्त विषयक राज्यपाल के सचिव के अद्ध-शासकीय पत्र क्रमांक 542/GS/95 दिनांक 10-2-95 (प्रति संलग्न है) का अवलोकन करें जो स्वयं में स्पष्ट है.

तदनुसार आपसे अनुरोध है कि विधेयक विधान सभा द्वारा पारित होने के बाद राज्यपाल महोदय की अनुमति प्राप्त करने अथवा राष्ट्रपति महोदय के विचारार्थ रक्षित करने संबंधी नस्ती राज्यपाल महोदय को प्रस्तुत करने के पूर्व कृपया यह सुनिश्चित करलें कि नस्ती में उक्त संदर्भित पत्र में उल्लिखित दस्तावेज रख दिए गए हैं.

भवदीय

हस्ता./-

(एन. के. जैन)

सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

राज्यपाल का सचिवालय, मध्यप्रदेश

के. एम. आचार्य,  
राज्यपाल के सचिव

अद्ध -शा. पत्र क्र. 524/जी-एस/95  
राजभवन, भोपाल, दिनांक फरवरी 10, 1995

प्रिय श्री जैन,

विधेयकों के विधान सभा द्वारा पारित होने के बाद आपके विभाग द्वारा उन्हें प्रशासकीय विभाग के माध्यम से यथास्थिति राज्यपाल महोदय की अनुमति या राष्ट्रपति जी के विचारार्थ रक्षित करने हेतु भेजा जाता है. ऐसी नस्त्रियों में वर्तमान में निम्नलिखित दस्तावेज नहीं रखे जा रहे हैं जिसके कारण उनमें यहां आगामी कार्रवाई करने में कठिनाई होती है :-

1. विधेयक के उद्देश्यों एवं कारणों के विवरण की प्रति.
2. मंत्रि-परिषद् को प्रस्तुत संक्षेपिका और उस पर मंत्रि-परिषद् के आदेश की प्रति.
3. संशोधन विधेयक होने की दशा में मूल अधिनियम और पारित विधेयक के प्रावधानों का तुलनात्मक विवरण.
4. राष्ट्रपति जी या राज्यपाल महोदय द्वारा विधेयक विधान सभा में प्रस्तुत करने की अनुमति एवं सशर्त अनुमति दी जाने की दशा में शर्तों के पालन संबंधी जानकारी.

2. विधेयकों संबंधी मामलों में हमें कार्रवाई करने में सुविधा हो, इस दृष्टि से निवेदन है कि भविष्य में इस प्रकार के प्रकरण भेजते समय कृपया उपर्युक्त दस्तावेज भी नस्ती में आवश्यक रूप से भिजवाने का कष्ट करें. यदि स्वयं विधि विभाग के लिए उक्त दस्तावेज नस्ती पर रखना संभव न हो, तो प्रकरण प्रशासकीय विभाग को भेजने के लिये जो टीप विधि विभाग अभिलिखित करता है, उसमें ऐसी कार्रवाई करने का परामर्श कृपया प्रशासकीय विभाग को **अनिवार्यतः** देने की प्रथा स्थापित कराने का कष्ट करें.

3. कृपया की गई कार्रवाई से अवगत कराने का कष्ट करें.

शुभकामनाएं,

भवदीय

हस्ता./-

(के. एम. आचार्य)

श्री एन. के. जैन,  
सचिव,  
मध्यप्रदेश शासन,  
विधि एवं विधायी कार्य विभाग,  
विन्ध्याचल भवन,  
भोपाल.

मध्यप्रदेश शासन  
**विधि और विधायी कार्य विभाग**  
 विंध्याचल भवन, भोपाल-462004

क्रमांक 3547/21-क (सि.)

भोपाल, दिनांक 25-4-95

प्रति,

शासन के समस्त विभाग,  
 समस्त विभागाध्यक्ष/जिलाध्यक्ष,  
 समस्त शासकीय/अतिरिक्त शासकीय अधिवक्तागण,  
 मध्यप्रदेश.

**विषय.-** दीवानी मामलों में शासन के विरुद्ध निर्णय या आदेश के विरुद्ध अविलम्ब अपील किये जाने बाबत, महोदय,

प्रायः यह देखने में आया है कि शासन के विरुद्ध विभिन्न न्यायालयों में दीवानी मामलों में निर्णय या आदेश होने की स्थिति में अपील हेतु प्रकरण, संबंधित प्रशासकीय विभाग की भूमिका और प्रायः त्रुटि या उपेक्षा में कारण या/एवं मामलों में पैरवी कर रहे शासकीय अधिवक्ता/अतिरिक्त शासकीय अधिवक्ता के द्वारा उपेक्षा बरते जाने या त्रुटि के कारण, ऐसे निर्णय या आदेश के विरुद्ध अपील योग्य होते हुए भी इस विभाग को विलंब से प्राप्त होते हैं जिसके परिणामस्वरूप विधिक परीक्षण व प्रशासनिक स्तर पर निर्णय लिये जाने के उपरांत अपीलीय न्यायालय के समक्ष अपील विलंब से प्रस्तुत की जाती है. कहने की आवश्यकता नहीं है कि विलंब के कारण इसी आधार पर अपील निरस्त होने की प्रत्येक संभावना रहती है. इस विलंब के परिहार के लिये निर्देशित किया जाता है कि :-

(1) जिला स्तर तक के न्यायालयों में शासन के विरुद्ध दीवानी मामलों में निर्णय या आदेश होते ही उस मामले में संचालन करने वाले शासकीय/अतिरिक्त शासकीय अधिवक्ता का व्यक्तिगत कर्तव्य होगा कि वह तुरंत निर्णय या आदेश की प्रमाणित प्रतिलिपि हेतु आवेदन प्रस्तुत करें (जिसके लिए कि कोई प्रतिलिपि शुल्क भी देय नहीं है) और प्रमाणित प्रतिलिपि यथाशीघ्र प्राप्त कर वह प्रति अपने अभिमत सहित मामले के प्रभारी अधिकारी प्रशासकीय विभाग को दी जाना या पहुंचाई जाना सुनिश्चित करें. साथ ही वह इसकी सूचना स्वयं के अभिमत की एक प्रति के साथ उसी समय इस विभाग को प्रेषित करें.

(2) जिला न्यायालय के मूल (Original) या अपीलीय मामलों में शासन के विरुद्ध निर्णय/आदेश की दशा में उपरोक्तानुसार निर्णय/आदेश की प्रति यथासंभव शीघ्र प्राप्त कर जिलाध्यक्ष के माध्यम से प्रशासनिक विभाग को प्रभारी/अधिकारी को, अपने मत सहित प्रेषित किया जाना संबंधित शासकीय/अतिरिक्त शासकीय अधिवक्ता सुनिश्चित करेंगे. साथ ही वह अपने मत की प्रति सहित निर्णय/आदेश की सूचना इस विवरण के साथ विधि विभाग को प्रेषित करेंगे :-

- (1) निर्णय/आदेश का दिनांक
- (2) प्रतिलिपि हेतु आवेदन प्रस्तुत किये जाने का दिनांक
- (3) प्रतिलिपि प्राप्त के लिए तलब किये जाने का दिनांक
- (4) प्रतिलिपि प्राप्त किये जाने का दिनांक

ऐसे मामलों में जिलाध्यक्ष एवं प्रभारी अधिकारी प्रशासनिक विभाग का संयुक्त दायित्व होगा कि वे शासकीय/अतिरिक्त शासकीय अधिवक्ता से शीघ्र परामर्श कर अपील प्रस्तुति के बारे में प्रस्ताव प्रशासकीय विभाग के माध्यम से विधि विभाग को प्रेषित किया जाना सुनिश्चित करते हुए प्रशासकीय विभाग को भेजे गये प्रस्ताव की एक प्रति उसी समय विधि विभाग को भेजें.

(3) न्यायाधीश (वर्ग एक एवं दो) के व्यवहार न्यायालय के निर्णय या आदेश के लिए जिलाध्यक्ष स्वयं ही निर्णय लेने व निर्देश देने के लिए सक्षम हैं. अतः संबंधित जिलाध्यक्ष ऐसे शासन के विरुद्ध निर्णय या आदेश की प्रति तथा संबंधित शासकीय/अतिरिक्त शासकीय अधिवक्ता का अभिमत प्राप्त होने पर प्रशासकीय विभाग से आवश्यकतानुसार परामर्श कर अपील के औचित्य बाबत शीघ्र निर्णय कर सभी दस्तावेजों सहित अपील प्रस्तुत किये जाने का निर्देश जारी किये जाने, प्रभारी अधिकारी नियुक्त किये जाने और शासकीय/अतिरिक्त शासकीय अधिवक्ता को निर्देशित किये जाने की कार्यवाही करेंगे और तत्समय ही सूचना इस विभाग को प्रेषित करेंगे. ऐसे मामलों में अपील प्रस्तुति में विलंब होने की दशा में दायित्व निर्धारण कर शासकीय अधिवक्ता या अतिरिक्त शासकीय अधिवक्ता की उपेक्षा या त्रुटि पाई जाने पर उसे गंभीरता से लिया जावेगा, कदाचरण समझा जावेगा और इस आधार पर इस रूप में नियुक्ति को निरस्त किया जा सकता है. जिलाध्यक्ष कार्यकाल में विलंब की दशा में संबंधित दोषी शासकीय/अतिरिक्त शासकीय अधिवक्ता या अधिकारी/कर्मचारी दोषी है उसका उत्तरदायित्व निर्धारण करे और उसके विरुद्ध आवश्यक उचित कार्यवाही करे और इस विभाग को सूचित करे.

अपील प्रस्ताव में विलंब के परिहार के लिए यह प्रक्रिया आदेशित की जा रही है और इसके बावजूद किसी स्थिति पर विलंब की दशा में संबंधित दोषी शासकीय/अतिरिक्त शासकीय अधिवक्ता या अधिकारी/कर्मचारी के दोष या उपेक्षा को गंभीरता से बरता जावेगा.

हस्ता./-

(एन. के. जैन)

प्रमुख सचिव, विधि

मध्यप्रदेश शासन.

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

क्रमांक फा. 15-140/95/21-क (या.)

भोपाल, दिनांक 26-8-95

प्रति,

शासन के समस्त सचिव,  
मध्यप्रदेश, भोपाल.

**विषय.-** एस.एल.पी. की प्रस्तुति के पूर्व एल.पी.ए./अपील प्रस्तुत किये जाने बाबत् उच्चतम न्यायालय के निर्देश.

माननीय उच्चतम न्यायालय ने उन मामलों में विशेष अनुमति याचिका (एस.एल.पी) प्रस्तुत किये जाने को सर्वथा अनुचित करार दिया है जिनमें एल.पी.ए या अन्य वैकल्पिक उपचार यथा अपील आदि, उपलब्ध है. अतः माननीय उच्च न्यायालय के किसी भी ऐसे निर्णय जिसमें एकल न्यायाधीश द्वारा आदेश/निर्णय पारित किया गया है तथा इस कारण एल.पी.ए. का उपचार उपलब्ध है तथा ऐसे प्रत्येक निर्णय/आदेश जिसके बाबत् अन्य वैकल्पिक उपचार उपलब्ध है, के विरुद्ध विशेष अनुमति याचिका के स्थान पर एल.पी.ए. अथवा अन्य वैकल्पिक कार्यवाही की जानी आवश्यक है.

अतः कृपया यह सुनिश्चित किया जावे कि उच्च न्यायालय अथवा राज्य प्रशासनिक अधिकरण द्वारा पारित जिस आदेश/निर्णय के विरुद्ध एस.एल.पी., एल.पी.ए. अपील आदि प्रस्तुत की जानी है, ऐसे प्रकरण न्यायालय द्वारा पारित आदेश/निर्णय के दिनांक से 15 दिन के अंदर विधि विभाग को भेजे जाएं.

हस्ता./-

**(एस. एल. बंसल)**

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

क्रमांक फा. 147/95/21-क (याचिका)

भोपाल, दिनांक 12-9-1995

प्रति,

शासन के समस्त सचिव,  
मध्यप्रदेश शासन,  
भोपाल.

**विषय.-** विशेष अनुमति याचिकाएं दायर करने हेतु न्यायालय के निर्णय/आदेश की अतिरिक्त प्रति भेजने बाबत.

प्रायः यह देखने में आया है कि संबंधित विभागों द्वारा उच्च न्यायालय/राज्य प्रशासनिक अधिकरण के निर्णय/आदेश के विरुद्ध उच्चतम न्यायालय में विशेष अनुमति याचिका प्रस्तुत करने अथवा मत हेतु जो प्रकरण भेजे जाते हैं उनके साथ उच्च न्यायालय/राज्य प्रशासनिक अधिकरण के निर्णय/आदेश की केवल एक प्रति उपलब्ध कराई जाती है जो विशेष अनुमति याचिका दायर करने के निर्देश के साथ स्टैंडिंग कौंसिल को भेजी जाती है।

अतः कृपया उच्च न्यायालय/राज्य प्रशासनिक अधिकरण के निर्णय आदेश के विरुद्ध विशेष अनुमति दायर करने अथवा मत हेतु जो प्रस्ताव भेजे जाते हैं उनके साथ निर्णय/आदेश की कम से कम एक अतिरिक्त प्रति भेजी जाए.

हस्ता./-

**(एस.एल. बंसल)**

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

क्रमांक 5-150/95/21-क (याचिका)

भोपाल, दिनांक 15-9-1995

प्रति,

शासन के समस्त सचिव,  
मध्यप्रदेश शासन,  
भोपाल.

**विषय.-** प्रतिरक्षण आदेश जारी करने हेतु याचिका की दो प्रतियां उपलब्ध कराने बाबत.

**संदर्भ.-** इस विभाग का ज्ञापन क्रमांक 5-147/95/21-क (या.), दिनांक 12-9-95.

प्रायः यह देखा गया है कि म.प्र. उच्च न्यायालय अथवा म.प्र. राज्य प्रशासनिक अधिकरण के समक्ष दायर याचिकाओं में राज्य शासन की ओर से शासकीय अधिवक्ताओं को प्रतिरक्षण करने हेतु आदेश जारी करने के लिये जो प्रकरण संबंधित विभागों द्वारा भेजे जाते हैं, उनमें याचिका की केवल एक प्रति उपलब्ध कराई जाती है.

2. अतः कृपया ऐसे प्रकरणों के साथ याचिका की कम से कम दो प्रतियां उपलब्ध कराई जाएं. अन्यथा याचिका की अतिरिक्त प्रति के अभाव में प्रतिरक्षण आदेश जारी करना संभव नहीं होगा.

हस्ता./-

**(एस.एल. बंसल)**

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.



**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

क्रमांक 13627/5-167/95/21-क (या.)

भोपाल, दिनांक 19-10-1995

प्रति,

शासन के समस्त सचिव,  
मध्यप्रदेश शासन,  
भोपाल.

**विषय.-** आय. ए. क्रमांक 6/95 कर्नाटक सरकार विरुद्ध टी.आर. धनंजय एवं अन्य.

विषयांकित प्रकरण में उच्चतम न्यायालय द्वारा पारित आदेश दिनांक 14-9-95 की प्रतिलिपि संलग्न कर भेजी जाती हैं.

कृपया यह सुनिश्चित करें कि विभिन्न न्यायालयों तथा अधिकरणों के निर्णयों तथा आदेशों का पालन शीघ्र से शीघ्र तथा निश्चित अवधि में अवश्य किया जावे. इसके लिये प्रत्येक विभाग में किसी अधिकारी को यह कार्य सौंपा जावे जिससे कि न्यायालयों की अवमानना के प्रकरण न उत्पन्न हों.

हस्ता./-

**(एस.पी. खरे)**

प्रमुख सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

- (1) न्यायिक शाखा - I
- (2) न्यायिक शाखा - II
- (3) स्थापना शाखा

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

फा. क्रमांक 3 (डी.)3/92/5493/21-क (सि.)

भोपाल, दिनांक 10-11-95

प्रति,

1. समस्त सचिव,  
मध्यप्रदेश शासन.
2. समस्त विभागाध्यक्ष,
3. समस्त आयुक्त,  
मध्यप्रदेश.
4. समस्त जिलाध्यक्ष.

**विषय.-** प्रकरणों में मध्यप्रदेश शासन की ओर से प्रभारी अधिकारी के नियुक्ति संबंधी आदेश जारी करने बाबत.

विधि और विधायी कार्य विभाग द्वारा शासन की ओर से प्रभारी अधिकारी की नियुक्ति के लिए आदेश का प्रारूप तैयार किया गया है, जो संलग्न है. भविष्य में इस प्रारूप में प्रभारी अधिकारी की नियुक्ति के आदेश प्रसारित करने का कष्ट करें.

संलग्न :- प्रारूप पत्र.

हस्ता./-

(डी.पी. वर्मा)

उपसचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

पृ. क्रमांक 3 (डी.) 3/92/5439/21-क (सि.)

भोपाल दिनांक 10-11-95

प्रतिलिपि :- संलग्न प्रपत्र सहित

1. महाधिवक्ता, मध्यप्रदेश जबलपुर, अतिरिक्त महाधिवक्ता इन्दौर/ग्वालियर.
2. प्रमुख सचिव, मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग, भोपाल न्यायिक शाखा एक-दो/आपराधिक शाखा याचिका शाखा/स्थापना शाखा.

हस्ता./-

(डी.पी. वर्मा)

उपसचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

क्रमांक फा. 5/186/95/21-क (याचिका)/12012

भोपाल, दिनांक 16-11-95

प्रति,

शासन के समस्त सचिव,  
मध्यप्रदेश शासन, भोपाल.

**विषय.-** विशेष अनुमति याचिका प्रस्तुत करने हेतु भेजे जाने वाले प्रस्ताव समयावधि में भेजे जाने बाबत.

कृपया उपरोक्त विषय में इस विभाग द्वारा पूर्व में जारी ज्ञापन 2557/95 (या.), दिनांक 25 मार्च, 1995 का अवलोकन करें.

2. प्रायः यह देखा गया है कि उच्च न्यायालय अथवा राज्य प्रशासनिक अधिकरण के निर्णय के विरुद्ध उच्चतम न्यायालय के समक्ष विशेष अनुमति याचिका प्रस्तुत करने हेतु विभागों से जो प्रस्ताव विधि विभाग को प्राप्त होते हैं वे अवधि बाह्य होते हैं. अवधि बाह्य प्रकरणों में विशेष अनुमति याचिका दायर करते समय विलंब का कारण भी स्पष्ट किया जाना अनिवार्य है. विलंब हेतु पर्याप्त कारण न होने पर प्रायः विशेष अनुमति याचिकाएं उच्चतम न्यायालय द्वारा निरस्त कर दी जाती हैं. अतः उच्चतम न्यायालय के समक्ष विशेष अनुमति याचिका प्रस्तुत करने हेतु प्राप्त होने वाले प्रकरण लिमिटेशन एक्ट, 1963 के Art. 133 के अनुसार समयावधि में विधि विभाग को भेजे जाएं. सुलभ संदर्भ हेतु Art. 133 निम्नानुसार है :-

Description of suit	Period of limitation	Time from which Period begins to run
113. To the Supreme Court for Special Leave to appeal,-		
(a) in a case involving death sentence ;	Sixty days	The date of the judgement, final order or sentence.
(b) in a case where leave to appeal was refused by the High Court.	Sixty days	The date of the order of refusal.
(c) In any other case	Ninty days	The date of the judgement or order.

3. साथ ही उच्चतम न्यायालय के समक्ष अन्य व्यक्तियों द्वारा जो विशेष अनुमति याचिकाएं अथवा याचिकाएं प्रस्तुत की जाती हैं और जिनमें मध्यप्रदेश शासन के अधिकारियों को जो नोटिस प्राप्त होते हैं उन पर भी कार्यवाही में प्रायः विलंब होता है. अतः ऐसे प्रकरण भी प्रतिरक्षण आदेश जारी करने हेतु यथा शीघ्र इस विभाग को भेजे जाएं.

कृपया उपरोक्त निर्देशों का कड़ाई से पालन करने हेतु अपने अधीनस्थों को निर्देश प्रदान करें.

हस्ता./-

**(एस.पी. खरे)**

प्रमुख सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

पृ. क्र. फा. 5/186/95/21-क (याचिका)/12012

भोपाल, दिनांक 16-11-95

प्रतिलिपि :-

- श्री सतीश के. अग्निहोत्री, अधिवक्ता, 119 लायर्स चेम्बर्स, उच्चतम न्यायालय, नई दिल्ली- 110001,
- श्री उमानाथ सिंह, अधिवक्ता, उच्चतम न्यायालय, ए-27 गुलमोहर पार्क, नई दिल्ली-110049, की ओर सूचनार्थ अग्रेषित.

हस्ता./-

**(एस.एल. बंसल)**

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

क्रमांक 5/199/95/21-क(या.)

भोपाल, दिनांक 14 दिसंबर, 1995

प्रति,

महाधिवक्ता, म.प्र. जबलपुर,  
अपर महाधिवक्ता, म.प्र. इंदौर/ग्वालियर,  
शासकीय अधिवक्ता, प्रशासनिक अधिकरण भोपाल,  
समस्त शासकीय अधिवक्ता/ उप शासकीय अधिवक्ता,  
(जी. पी./ए. जी. पी. (म. प्र. के समस्त जिले).

**विषय.-** माननीय उच्च न्यायालय एवं प्रशासनिक अधिकरण द्वारा पारित आदेशों के यथासमय क्रियान्वयन बाबत.

माननीय मुख्यमंत्री महोदय द्वारा न्यायालयों/ अधिकरणों के आदेशों का संबंधित विभाग द्वारा यथासमय, निश्चित समय सीमा में, पालन न किए जाने पर अप्रसन्नता और क्षोभ प्रकट किया गया है क्योंकि न्यायालय के निर्देशों का पालन नहीं होने की स्थिति में राज्य शासन के वरिष्ठ अधिकारियों के विरुद्ध न्यायालय की अवमानना हेतु कार्यवाही संस्थित होती है जिससे शासन की छवि को आघात पहुंचता है. न्यायालयों के आदेशों का पालन न हो पाने का एक कारण प्रमुखतः यह बताया जाता है कि संबंधित शासकीय अधिवक्ता से यथासमय न्यायालय/अधिकरण के आदेश की जानकारी और उनसे अपेक्षित कार्यवाही के लिए परामर्श प्राप्त नहीं होता है. माननीय मुख्यमंत्री महोदय ने विधि विभाग को निर्देश दिए हैं कि विभिन्न विभागों द्वारा न्यायालयीन प्रकरणों में समुचित पैरवी तथा निर्णय/आदेश का पालन संबंधित विभाग द्वारा किया जाना सुनिश्चित किया जावे.

आपसे आग्रह है कि प्रत्येक रिट याचिका तथा अधिकरण के समक्ष प्रस्तुत प्रत्येक याचिका की एक प्रति तथा शासन की ओर प्रस्तुत किए गए उसके उत्तर की प्रति यथासंभव शीघ्र विभाग को भेजें. कृपया माननीय न्यायालय /अधिकरण द्वारा पारित निर्णय अथवा आदेश की प्रति विधि विभाग को अपने परामर्श सहित भेजते हुए संबंधित विभाग को भी यह परामर्श स्पष्ट लिखते हुए भेजें कि शासन के उस विभाग से क्या कार्यवाही और किस समय सीमा में अपेक्षित है. संबंधित शासकीय अधिवक्ता से विधि विभाग को निर्णय/आदेश की प्रति परामर्श सहित प्राप्त होने पर विधि विभाग भी संबंधित विभाग को आदेशित कार्यवाही निर्णय/आदेश के अनुक्रम में निर्दिष्ट समय सीमा में अथवा समय सीमा निर्दिष्ट न किए जाने पर उचित समय सीमा में किए जाने हेतु आग्रह करेगा. यह कहना व्यर्थ होगा कि संबंधित शासकीय अधिवक्ता से निर्णय/आदेश की प्रति और अपेक्षित कार्यवाही संबंधित परामर्श यथा समय न मिलने पर इस प्रक्रिया में विलंब होगा अथवा वह प्रक्रिया प्रारंभ ही नहीं हो जाएगी. अतः पूरा सहयोग प्रदान करने का कष्ट करें, जिससे कि न्यायालयों/अधिकरणों के आदेशों का पालन समय सीमा के अन्दर हो सके.

हस्ता./-

(एस.पी. खरे)

प्रमुख सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

मध्यप्रदेश शासन  
विधि और विधायी कार्य विभाग  
विन्ध्याचल भवन-462004

क्रमांक 12/122/92/21-क(आप.) सु.स./96

भोपाल, दिनांक 4 मार्च, 1996

प्रति,

समस्त संभागायुक्त,  
समस्त जिला दण्डाधिकारी,  
समस्त पुलिस अधीक्षक,  
मध्यप्रदेश.

शासन के ध्यान में लाया गया है कि माननीय सर्वोच्च न्यायालय व माननीय उच्च न्यायालय के निर्देशों का नियत समय-सीमा में या उचित समय में समुचित पालन मामलों में प्रभारी अधिकारीगण द्वारा नहीं किया जाता है. माननीय सर्वोच्च न्यायालय के समक्ष मध्यप्रदेश राज्य के स्टैन्डिंग कौन्सिल श्री उमानाथ सिंह का पत्र तथा माननीय सर्वोच्च न्यायालय द्वारा एस. एल. पी. (क्रिमी.) नं. 2850/92 राजाराम शर्मा एवं अन्य विरुद्ध मध्यप्रदेश शासन एवं अन्य में पारित आदेश दिनांकित 11 जनवरी, 1996 की प्रतियां संलग्न हैं जिनके अवलोकन से स्पष्ट है कि इस प्रकरण में माननीय सर्वोच्च न्यायालय ने दिनांक 11 जनवरी, 1996 को राज्य के अभिभाषक को यह निर्देश दिया था कि निश्चित किया जावे कि संबंधित न्यायालय ने जमानतदारों को जमानत की राशि जमा करने का आदेश देने के पूर्व जमानतदारों की पहचान निश्चित करने के लिये कोई प्रारम्भिक जांच की थी या नहीं तथा इस बाबत विवरण शपथ-पत्र के रूप में तीन सप्ताह के अन्दर प्रस्तुत किया जावे. माननीय सर्वोच्च न्यायालय के इस निर्देश का पालन तीन वर्षों तक नहीं किया गया और आदेशित हलफनामा प्रस्तुत नहीं किया गया. माननीय सर्वोच्च न्यायालय ने राज्य शासन के गृह विभाग के काम काज पर तीखी टिप्पणी की है और अपील स्वीकार करते हुए और प्रश्नाधीन आदेश अपास्त करते हुए आदेशित किया है कि जमानतदारों द्वारा वास्तव में जमानत दी जाने और उनकी पहचान निश्चित किये जाने बाबत जांच कर आगे कार्यवाही की जाए.

2. राज्य शासन इस खेदजनक स्थिति पर खिन्नता और अप्रसन्नता व्यक्त करता है और निर्देशित किया जाता है कि किसी भी प्रकरण में माननीय सर्वोच्च न्यायालय/माननीय उच्च न्यायालय के निर्देश का विहित अवधि में अथवा कोई अवधि नियत नहीं की गई हो तो उचित अवधि में समुचित पालन सुनिश्चित किया जावे. किसी असावधानी या त्रुटि के लिए संबंधित प्रभारी अधिकारी के विरुद्ध यथायोग्य कड़ी कार्यवाही राज्य शासन द्वारा की जावेगी तथा संबंधित जिला दण्डाधिकारी/ पुलिस अधीक्षक भी ऐसी त्रुटि के परिहार हेतु कार्यवाही न किये जाने के लिये उत्तरदायी मान्य किये जावेंगे यदि उनकी ओर से यह नहीं दर्शाया जा सका कि उन्होंने माननीय न्यायालय के निर्देश का पालन सुनिश्चित करने के लिये अपने स्तर पर संभव प्रत्येक कार्यवाही की.

हस्ता./-

(शरद चन्द्र बेहार)

मुख्य सचिव,

मध्यप्रदेश शासन.

## मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

क्रमांक 5-42/96/21-क (याचिका)

भोपाल, दिनांक 10 अप्रैल, 1996

प्रति,

शासन के समस्त विभाग,  
अध्यक्ष, राजस्व मण्डल, म. प्र. ग्वालियर,  
समस्त संभागीय आयुक्त,  
समस्त विभागाध्यक्ष,  
समस्त जिलाध्यक्ष,  
मध्यप्रदेश.

**विषय.-** माननीय उच्चतम न्यायालय द्वारा पारित निर्देशों के पालन के संबंध में.

माननीय उच्चतम न्यायालय द्वारा इस संबंध में अप्रसन्नता व्यक्त की गई है कि उनके आदेशों का पालन कतिपय विभागों द्वारा नहीं किया जाता है. कृपया ऐसे प्रकरणों की सूची प्रस्तुत करें, जिनमें माननीय उच्चतम न्यायालय के निर्देशों का पालन नहीं किया गया है तथा भविष्य में यह सुनिश्चित किया जावे कि माननीय उच्चतम न्यायालय के आदेश का यथासंभवन पालन किया जावे.

हस्ता./-

(ए. पी. श्रीवास्तव)

प्रमुख सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

क्रमांक 17(ई)/110/95/21-ब (दो)

भोपाल, दिनांक 6 अगस्त, 1996

प्रति,

समस्त जिला दण्डाधिकारी, मध्यप्रदेश.

पुलिस महानिरीक्षक, भोपाल.

सचिव, लोक आयुक्त कार्यालय, मध्यप्रदेश, भोपाल.

**विषय.-** मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग के परिपत्र क्रमांक 12-1465/80/7473/21-क (आप.) भोपाल दिनांक 14-7-87 में संशोधन.

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग के उपरोक्त परिपत्र के चरण 3 में शब्द पुलिस महानिरीक्षक के स्थान पर शब्द महानिदेशक, विशेष पुलिस स्थापना अंकित करने का प्रस्ताव उप लोकायुक्त, मध्यप्रदेश द्वारा किया गया है. तदनुसार उस प्रस्ताव पर विचार किया गया. विधि विभाग द्वारा यह प्रस्ताव स्वीकार किया जाता है और विधि विभाग द्वारा प्रचलित उपरोक्त परिपत्र के पैराग्राफ क्रमांक 3 में शब्द "पुलिस महानिरीक्षक" के स्थान पर शब्द "महानिदेशक, विशेष पुलिस स्थापना" अंकित किया जाता है. सभी संबंधित अवगत हों.

हस्ता./-

**(शशि मोहन श्रीवास्तव)**

उपसचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

क्रमांक एफ.5/17/96/21-क (या.)

भोपाल, दिनांक 23-12-96

प्रति,

महाधिवक्ता, म. प्र., जबलपुर,  
अति. महाधिवक्ता, इंदौर, ग्वालियर,  
समस्त शासकीय अभिभाषक,  
समस्त अति. शासकीय अभिभाषक,  
मध्यप्रदेश.

**विषय.-** शासन के विरुद्ध दायर प्रकरणों में लोक अधिकारियों को अनावश्यक व नाम से पक्षकार बनाया जाना.

**संदर्भ.-** विधि एवं विधायी कार्य विभाग का जापन क्र. 12516/21-क (या.) भोपाल, दिनांक 3 नवम्बर, 1995.

प्रायः यह देखा गया है कि न्यायालय में शासन के विरुद्ध दायर होने वाले प्रकरणों में विभिन्न अधिकारियों को उनके नाम से प्रतिवादी/अनावेदक/प्रतिपक्षी बनाया जाता है जो त्रुटिपूर्ण है. धारा 80 व्यवहार प्रक्रिया संहिता के अनुसार राज्य शासन के खिलाफ या लोक अधिकारी के विरुद्ध ऐसे कार्य के बाबत, जिसके बारे में यह प्रकटतः अभिप्रेत है कि वह ऐसे लोक अधिकारी द्वारा अपनी पदेन हैसियत से किया गया है, यदि याचिका प्रस्तुत किये जाने की स्थिति में वाद याचिका में, राज्य शासन के उक्त सचिव या जिले के कलेक्टर के विरुद्ध संस्थित किया जाना चाहिये.

2. अतः न्यायालय में राज्य शासन के विरुद्ध प्रकरण प्रस्तुत होने पर कृपया सर्वप्रथम यह सुनिश्चित करें कि विधिक प्रावधान के विपरीत यदि किसी व्यक्ति या अधिकारी को नाम से प्रतिवादी/अनावेदक/प्रतिपक्षी बनाया गया है तो उसका नाम विलोपित किये जाने अथवा वाद पत्र/याचिका में तदनुसार आवश्यक सुधार/संशोधन आदेशित किये जाने का निवेदन किया जाय.

हस्ता./-

**(एस. पी. खरे)**

प्रमुख सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

पृ. क्र. एफ. 5/17/96/21-क (या.)

भोपाल, दिनांक 23-12-96

प्रतिलिपि :-

मुख्य सचिव के स्टाफ ऑफिसर की ओर टीप दिनांक 20-12-95 के संदर्भ में सूचनार्थ अग्रेषित.

हस्ता./-

**(ए. पी. श्रीवास्तव)**

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.



**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

क्रमांक 12/122/92/21-क (आप.)

भोपाल, दिनांक

प्रति,

समस्त जिला दंडाधिकारी,  
मध्यप्रदेश.

**विषय.-** आपराधिक प्रकरणों में अपील/रिवीजन के प्रस्ताव समयावधि में भेजने के संबंध में.

राज्य शासन के ध्यान में यह बात लायी गई है कि आप. प्रकरणों में लोक अभियोजक/अति. लोक अभियोजक द्वारा अपील अभिमत प्रस्ताव जिला दंडाधिकारी कार्यालय में यथा समय प्राप्त हो जाने के पश्चात् शासन को यथाशीघ्र नहीं भेजे जाते हैं जिसके फलस्वरूप इस विभाग द्वारा समयावधि में प्रकरणों का निराकरण नहीं हो पाता तथा विलंब होने के कारण शासन द्वारा की गई अपील अनुमति की प्रार्थना भी अस्वीकार की जाती है.

अतः भविष्य में अपील प्रस्ताव / अभिमत लोक अभियोजक/अति. लोक अभियोजक द्वारा प्राप्त होते ही शीघ्र अपील प्रस्ताव अपने अभिमत सहित अविलंब इस विभाग को भेजा जाना सुनिश्चित करें तथा यदि किसी प्रकरण में प्रस्ताव ऐसा अभिमत/प्रस्ताव अपेक्षित/उचित समय में न आये तो जिला दंडाधिकारी स्वयं ऐसा अभिमत/प्रस्ताव विधि विभाग को भेज सकते हैं.

वि. पु. स्थापना (लोकायुक्त कार्यालय, भोपाल) के द्वारा संस्थित प्रकरण में विशेष पुलिस स्थापना से संबंधित अधिकारी अधीक्षक या उनसे उक्त पदाधिकारी ऐसा प्रस्ताव/ अभिमत सीधे विधि विभाग को भेज सकते हैं व ऐसे सभी प्रकरणों में योग्य कार्यवाही विधि विभाग द्वारा की जावेगी.

हस्ता./-

(एस. एल. बंसल)

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

पृ. क्र. 12/122/92/21-क (आप.)

भोपाल, दिनांक

प्रतिलिपि :-

महानिदेशक, विशेष पुलिस स्थापना, लोक आयुक्त कार्यालय, भोपाल की ओर उनके अर्द्ध शास. पत्र क्र. 250/86/वि.पु.स्था./96, दिनांक 2-9-96 के संदर्भ में सूचनार्थ एवं आवश्यक कार्यवाही हेतु अग्रेषित.

हस्ता./-

(एस. एल. बंसल)

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

क्रमांक 12/122/92/8917/21-क (आप.)

भोपाल, दिनांक 15-11-1996

प्रति,

समस्त जिला दंडाधिकारी,

समस्त लोक अभियोजक/अतिरिक्त लोक अभियोजक, मध्यप्रदेश.

महाधिवक्ता, म. प्र. जबलपुर/अति. महाधिवक्ता इन्दौर /ग्वालियर.

**विषय.-** लोक अभियोजक तथा अतिरिक्त लोक अभियोजक द्वारा प्रकरणों से संबंधित ब्रीफ तैयार करने के संबंध में.

शासन के ध्यान में यह लाया गया है कि जिला दंडाधिकारी से किसी पत्र प्रकरण अथवा आपराधिक प्रकरण में दोषमुक्ति के निर्णय के विरुद्ध जो अपील प्रस्ताव प्राप्त होते हैं उसके साथ केवल प्रश्नाधीन निर्णय की प्रतिलिपि प्राप्त होती हैं और अन्य कोई दस्तावेज प्राप्त नहीं होता. पूर्व में स्थिति यह थी कि जिला दंडाधिकारी सत्र प्रकरण अथवा अन्य कोई आपराधिक प्रकरणों का मूल रिकार्ड जिला एवं सत्र न्यायाधीश के कार्यालय से मंगाकर विधि विभाग को प्रेषित किया जाता था और उसके आधार पर विधि विभाग द्वारा प्रकरण का परीक्षण किया जाता था. परन्तु उच्च न्यायालय ने अपने आदेश दिनांक 12-6-1995 के द्वारा यह प्रक्रिया समाप्त कर दी है और जिला मजिस्ट्रेट द्वारा अब कोई भी मूल रिकार्ड नहीं मंगाया जा सकता. ऐसी स्थिति में यह आवश्यक है कि लोक अभियोजक तथा अतिरिक्त लोक अभियोजक प्रकरणों का संचालन करने के समय अपना पूरा ब्रीफ तैयार करें. इस ब्रीफ में वे सभी दस्तावेज उपलब्ध हों जो न्यायालय की नस्ती में रहते हैं.

इसमें चालान के साथ प्रस्तुत किए गये दस्तावेजों की नकलें जिन पर एकजीबिट्स पड़े हों, न्यायालय में हुए गवाहों के बयानों की नकलें, लोक अभियोजन द्वारा विधिवत बिन्दुओं पर जो तैयारी की गई है उसके नोट्स दोषमुक्ति की स्थिति में अपील के आधार तथा निर्णय की प्रमाणित प्रतिलिपि का भी समावेश होना चाहिए. महाधिवक्ता को शासन द्वारा जब अपील के निर्देश भेजे जाएंगे तो उसके साथ यह ब्रीफ भी प्रेषित किया जाएगा. महाधिवक्ता कार्यालय में कार्यरत शासकीय अधिवक्ता इस ब्रीफ के आधार पर उच्च न्यायालय के समक्ष तर्क कर सकेंगे. महाधिवक्ता के कार्यालय में जो कार्यवाही होती है उसकी नकलें भी इस ब्रीफ के साथ लगाई जाएं. जिससे कि उच्च न्यायालय के निर्णय के विरुद्ध यदि उच्चतम न्यायालय में अपील करना हो तो यह संपूर्ण ब्रीफ शासनके स्टैंडिंग कौंसिल को दिल्ली भेजा जा सके.

अतः निवेदन है कि उपरोक्त निर्देशों के अनुसार सभी लोक अभियोजक तथा अतिरिक्त लोक अभियोजक तथा शासकीय अधिवक्तागण पूरा रिकार्ड निर्मित करें जिससे कि न्यायालय के समक्ष पैरवी करने में कठिनाई न हो. हाल ही में उच्च न्यायालय के समक्ष आपराधिक अपील क्रमांक 1600/96 में यह स्थिति उत्पन्न हुई कि शासकीय अधिवक्ता ने यह व्यक्त किया कि ब्रीफ के अभाव में वे न्यायालय की सहायता नहीं कर सकते. माननीय उच्च न्यायालय ने अपने आदेश दिनांक 4-7-1996 में इस संबंध में प्रतिकूल टिप्पणी की है. ऐसी स्थिति पुनः उत्पन्न न हो.

लोक अभियोजक तथा अतिरिक्त लोक अभियोजक के कार्यकाल का नवीनीकरण करते समय यह विशेष रूप से ध्यान में रखा जाएगा कि उन्होंने उपरोक्त निर्देशों का पालन कर पूरी ब्रीफ तैयार करके विधि विभाग को भेजी है अथवा नहीं. इन निर्देशों का पालन न करने पर लोक अभियोजक अथवा अतिरिक्त लोक अभियोजक अथवा शासकीय अधिवक्ता के कार्यकाल का नवीनीकरण नहीं किया जाएगा. कृपया इस पत्र की अभिस्वीकृति भेजें और यह सुनिश्चित करें कि उपरोक्त निर्देशों का पालन शीघ्रतः प्रारम्भ हो.

हस्ता./-

**(एन. के. बरैया)**

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

क्रमांक 12/122/92/1322/21-क (आप.)

भोपाल, दिनांक 5-2-97

प्रति,

समस्त जिला मजिस्ट्रेट,  
मध्यप्रदेश.

**विषय.-** आपराधिक प्रकरणों में अपील/पुनरीक्षण प्रस्ताव में पूर्ण जानकारी भेजने बाबत.

इस विभाग द्वारा समय-समय पर जारी निर्देशों के उपरान्त भी यह देखने में आया है कि दोषमुक्ति निर्णय के विरुद्ध या कम सजा दिये जाने पर सजा वृद्धि हेतु या आदेशों के विरुद्ध पुनरीक्षण प्रस्तुति हेतु जो प्रस्ताव इस विभाग को भेजे जाते हैं वे मूल नहीं होते. इस कारण अपील प्रस्ताव पर अध्ययन किया जाना संभव नहीं होता.

2. भविष्य में जो भी अपील/पुनरीक्षण का प्रस्ताव भेजा जावे उसके लिए निम्न बिन्दुओं का ध्यान रखा जाकर ही प्रस्ताव प्रेषित किया जावे :-

1. निर्णय/आदेश की पूर्ण प्रमाणित प्रति भेजी जावे.
2. निर्णय/आदेश की मूल सत्य प्रति ही भेजी जावे.
3. सत्य प्रतिलिपि पर प्रधान प्रतिलिपिकार या नकल विभाग के प्रभारी के हस्ताक्षर हो.
4. निर्णय/आदेश की स्वच्छ प्रति भेजी जावे.
5. प्रस्ताव के साथ समस्त नकलें भेजी जावें.
6. अपील/पुनरीक्षण आधार भेजे जावें.
7. निर्णय/आदेश तिथि के 15 दिवस के अन्दर ही (नकल की अवधि को छोड़कर) प्रस्ताव भेजे जावें.

3. उक्त बिन्दुओं पर प्रस्ताव में त्रुटि होने के कारण अनावश्यक रूप से पत्राचार करना पड़ता है जिस कारण अवधि व्यतीत हो जाती है. अतः भविष्य में प्रस्ताव भेजते समय उक्त बिन्दुओं का पालनकरते हुये ही प्रस्ताव प्रेषित किये जावे.

4. यह भी देखने में आया है कि मजिस्ट्रेट द्वारा पारित आदेश के विरुद्ध वे अपील/पुनरीक्षण प्रस्ताव, जिसके विरुद्ध अपील/पुनरीक्षण सत्र न्यायालय में प्रस्तुत होना है, इस विभाग को प्रेषित कर दिए जाते हैं जो कि त्रुटिपूर्ण है. विधि विभाग नियमावली के नियम 25 व 151 के अनुसार जिला मजिस्ट्रेट उनके स्तर पर ही निर्णय लेकर अपील/पुनरीक्षण सत्र न्यायालय के समक्ष प्रस्तुत कर सकते हैं.

5. उक्त संबंध में इस विभाग द्वारा पूर्व में जारी पत्र क्रमांक 3 (अ)/212/94/903/21-क (सि.) भोपाल, दिनांक 3-5-94 का भी अवलोकन किया जावे. अतः भविष्य में इस प्रकार के प्रस्ताव इस विभाग को प्रेषित नहीं किये जावे.

हस्ता./-

**(एच. आर. आगवण)**

उपसचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

क्रमांक 6/909/95/2748/21-क (आप.)

भोपाल, दिनांक 18-3-97

12-122/92

प्रति,

समस्त जिला मजिस्ट्रेट,  
मध्यप्रदेश.

विषय.- आपराधिक प्रकरणों में अपील/रिवीजन के प्रस्ताव समयावधि में भेजने के संबंध में.

राज्य शासन के ध्यान में यह बात लाई गई है कि कई आपराधिक प्रकरणों में अपील प्रस्ताव जिला दंडाधिकारियों द्वारा विधि विभाग को अवधि समाप्त हो जाने के पश्चात् या बहुत कम अवधि शेष रहने पर प्रेषित किये जाते हैं. इस कारण अवधि बाह्य अपील प्रस्तुत होने पर उन्हें उस आधार पर माननीय उच्च न्यायालय द्वारा निरस्त कर दिया जाता है.

2. कई प्रकरण में यह भी देखा गया है कि अवधि बाह्य प्रस्तुत अपील में महाधिवक्ता/अतिरिक्त महाधिवक्ता/शासकीय अधिवक्ता द्वारा निर्देश दिये जाने के उपरान्त भी प्रभारी अधिकारी उनके समक्ष उपस्थित नहीं होते इस कारण देरी को क्षमा किये जाने हेतु आवेदन पत्र, शपथ पत्र सहित प्रस्तुत नहीं हो पाता और माननीय उच्च न्यायालय द्वारा अपील निरस्त कर दी जाती है.

3. अपील प्रस्ताव तत्काल इस विभाग को प्रेषित किये जावें इस संबंध में समय-समय पर सामान्य प्रशासन विभाग तथा इस विभाग द्वारा परिपत्र जारी किये गये हैं किन्तु इसका पालन नहीं किया जा रहा है और इसके उपरान्त भी अवधि बाह्य अपील प्रस्ताव प्राप्त हो रहे हैं तथा उनमें देरी का भी कोई कारण नहीं दर्शाया जाता है.

4. अपील/रिवीजन के प्रस्ताव बिना किसी देरी के विधि विभाग को भेजे जाने चाहिये तथा विधि विभाग द्वारा क्र. 160/पी.एल./लॉ/95 दिनांक 11-12-1995 तथा क्र. 12/122/92/21-क (आप.) भोपाल, दिनांक 23-12-96 द्वारा विस्तृत परिपत्र जारी किये गये हैं किन्तु उनका पालन नहीं किया जा रहा है.

5. हाल ही में माननीय उच्च न्यायालय के समक्ष विविध क्रिमिनल केस नं. 4132/95 के आदेश दिनांक 1-8-96 में यह स्थिति उत्पन्न हुई और अवधि बाह्य प्रस्तुत होने वाली अपीलों के संबंध में उनके द्वारा अप्रसन्नता व्यक्त की जाकर कहा गया है कि शासकीय मशीनरी को अपील प्रस्तुत करने में अत्यधिक सतर्क रहना चाहिये. आदेश के संबंधित अंश की प्रति एतद् संलग्न अवलोकनार्थ प्रेषित है.

6. 1 नवम्बर, 1996 से 15-1-97 तक इस विभाग में विभिन्न जिला दंडाधिकारियों से कुल 64 प्रस्ताव अवधि बाह्य प्राप्त हुये हैं जो कि उचित नहीं हैं.

7. अतः भविष्य में निर्णय की नकल मिलने के 15 दिवस के भीतर ही इस विभाग को अपील/रिवीजन प्रस्ताव भेजा जावे ताकि अवधि के अन्दर ही उसकी प्रस्तुती माननीय उच्च न्यायालय के समक्ष की जा सके. निर्देशों का पालन नहीं किये जाने पर मुख्य सचिव महोदय द्वारा जारी क्रमांक एफ 11-22/94/9/एक दिनांक 9 अगस्त, 1994 के अनुसार समय पर कार्यवाही न करने के लिये जिम्मेदार अधिकारी व कर्मचारी के विरुद्ध गम्भीर दुराचरण मानकर कार्यवाही की जा सकती है.

संलग्न :- उपरोक्तानुसार.

हस्ता./-

(एस.एल. बंसल)

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

पृ. क्र. 6/909/95/2748/21-क (आप.)

भोपाल, दिनांक 18-3-97

12-122/92

प्रतिलिपि :-

- (1) मुख्य सचिव के निज सचिव, मध्यप्रदेश शासन, मंत्रालय, भोपाल.
- (2) प्रमुख सचिव, मध्यप्रदेश शासन, गृह विभाग (मंत्रालय), भोपाल की ओर सूचनार्थ.

हस्ता./-

(एस.एल. बंसल)

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

**मध्यप्रदेश शासन**  
**सामान्य प्रशासन विभाग**  
**मंत्रालय**

क्रमांक एफ-15(6)/96/1/10

भोपाल, दिनांक 21-4-97

प्रति,

शासन के समस्त प्रमुख सचिव/सचिव,  
मध्यप्रदेश शासन,  
भोपाल.

**विषय.-** शासकीय कर्मचारी/अधिकारी के विरुद्ध अभियोजन की स्वीकृति.

कार्मिक, प्रशासनिक सुधार एवं प्रशिक्षण विभाग की अधिसूचना क्र. ए-1-1-88/उनन्चास/(1)/22 दिनांक 3 फरवरी, 1988 द्वारा मध्यप्रदेश शासन कार्य (आवंटन) नियम में संशोधन करते हुए दंड प्रक्रिया संहिता, 1973 की धारा 197 तथा भ्रष्टाचार निवारण अधिनियम, 1947 की धारा-6 के अधीन अभियोजन स्वीकृति का विषय विधि एवं विधायी कार्य विभाग को सौंपा गया है. इसी तारतम्य में ज्ञापन क्र. ए-1-88/उनन्चास/1, दिनांक 9 फरवरी, 1988 में यह व्यवस्था थी कि अभियोजन स्वीकृति का आदेश करने के पूर्व विधि एवं विधायी कार्य विभाग संबंधित शासकीय सेवक के प्रशासकीय विभाग का मत प्राप्त करेगा. अभियोजन स्वीकृति जारी होने में विलंब को देखते हुए इस विभाग के परिपत्र क्र. एफ-11(10)/96/1/10, दिनांक 31-5-96 द्वारा यह व्यवस्था की गई थी कि लोकायुक्त संगठन द्वारा शासकीय सेवकों के विरुद्ध प्रस्तुत प्रकरणों में अभियोजन स्वीकृति सीधे विधि एवं विधायी कार्य विभाग द्वारा दी जायेगी.

2. इस विषय पर शासन द्वारा पुनर्विचार कर अब यह निर्णय लिया है कि विधि विभाग द्वारा अभियोजन स्वीकृति जारी करने के पूर्व प्रशासकीय विभाग का अभिमत प्राप्त किया जायेगा. प्रक्रिया यह रहेगी कि समस्त अभिलेख सहित अभियोजन स्वीकृति के प्रकरण लोकायुक्त/ संगठन द्वारा विधि विभाग को भेजे जायेंगे जो उन्हें प्रशासकीय विभाग को भेजेंगे प्रशासकीय विभाग द्वारा अपने अभिमत सहित प्रकरण विधि विभाग को वापस किये जायेंगे, जो उस पर आगामी कार्यवाही करेंगे. विधि विभाग तथा प्रशासकीय विभाग में मतभेद होने की स्थिति में प्रकरण प्रशासकीय विभाग द्वारा मंत्रिपरिषद की उप समिति के समक्ष प्रस्तुत किया जायेगा.

3. अभियोजन स्वीकृति के प्रकरणों में प्रशासकीय विभाग द्वारा अपना अभिमत देने के लिए एक माह की समयवधि निर्धारित की जाती है. यदि इस अवधि में उनका अभिमत प्राप्त नहीं होता है तो विधि विभाग बिना उनके अभिमत के अभियोजन स्वीकृति जारी कर सकेगा.

4. यह आदेश तत्काल प्रभाव से लागू होंगे. जिन प्रकरणों में अभियोजन स्वीकृति जारी नहीं हुई है उनमें इस परिपत्र में निर्धारित प्रक्रिया का पालन किया जायेगा, किन्तु जिन प्रकरणों में अभियोजन स्वीकृति जारी हो चुकी है उन पर पुनर्विचार नहीं किया जायेगा.

हस्ता./-

(ए.व्ही. ग्वालियरकर)

उप सचिव,

मध्यप्रदेश शासन, सामान्य प्रशासन विभाग.

पृष्ठांकन क्रमांक एफ-15(6)/96/1/10

भोपाल, दिनांक 21-4-97

प्रतिलिपि :-

विशेष कर्तव्यस्थ अधिकारी, लोकायुक्त कार्यालय, मध्यप्रदेश भोपाल की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित.

हस्ता./-

(ए.व्ही. ग्वालियरकर)

उप सचिव,

मध्यप्रदेश शासन, सामान्य प्रशासन विभाग.

दूरभाष : 551364

**मध्यप्रदेश शासन**  
**सामान्य प्रशासन विभाग**  
**"मंत्रालय"**  
**वल्लभ भवन-462004**

क्रमांक एफ-15-6/96/1/10

भोपाल, दिनांक 11 नवम्बर 1997.

प्रति,

शासन के समस्त प्रमुख सचिव/सचिव,  
मध्यप्रदेश शासन, भोपाल.

**विषय.-**शासकीय कर्मचारी/अधिकारी के विरुद्ध अभियोजन की स्वीकृति.

सामान्य प्रशासन विभाग के समसंख्यक ज्ञापन दिनांक 21-4-97 में शासकीय कर्मचारी/अधिकारी के विरुद्ध अभियोजन स्वीकृति देने की प्रक्रिया स्पष्ट की गई है. उक्त ज्ञापन की कंडिका-3 में यह उल्लेख किया गया है कि अभियोजन के प्रकरणों में प्रशासकीय विभाग अपना अभिमत एक माह की समयावधि में विधि विभाग को उपलब्ध करायेगा. यदि इस अवधि में उनका अभिमत प्राप्त नहीं होता है तो विधि विभाग बिना उनके अभिमत के अभियोजन स्वीकृति जारी कर सकेगा.

इस विषय में लोक आयुक्त संगठन द्वारा शासन के ध्यान में लाया है कि शासन के उपरोक्त स्पष्ट निर्देशों के बाद भी कुछ प्रशासकीय विभागों द्वारा विधि विभाग को एक माह की समयावधि में अपने अभिमत नहीं भेजे जा रहे हैं और जो प्रकरण विधि विभाग द्वारा प्रशासकीय विभाग को समस्त अभिलेख के साथ उनके अभिमत के लिए भेजे जाते हैं. प्रशासकीय विभाग द्वारा उनकी पुनः छान-बीन प्रारंभ की जाती है तथा अधीनस्थ विभागाध्यक्ष/संभागीय/जिले कार्यालय से अभिमत प्राप्त किया जाता है. लोक आयुक्त द्वारा प्रकरणों में पूर्ण एवं विस्तृत छान-बीन के पश्चात् विभाग द्वारा पुनः छानबीन की कार्यवाही किया जाना उपयुक्त नहीं है.

अतः पुनः स्पष्ट किया जाता है कि शासन के उपरोक्त पूर्व निर्देशों के परिप्रेक्ष्य में विधि विभाग द्वारा प्रशासकीय विभाग को अभियोजन से संबंधित जो प्रकरण अभिमत के लिए भेजे जाते हैं उनमें विभाग स्तर पर ही सम्यक विचार होना चाहिए. विचारोपरांत प्रशासकीय विभाग द्वारा अपना स्पष्ट अभिमत देते हुए प्रकरण विधि विभाग को एक माह की समयावधि में वापस कर दिया जाना चाहिए जिससे कि अभियोजन के मामलों में किसी प्रकार का विलंब न हो, यदि प्रशासकीय विभाग के मत में लोक आयुक्त की छान-बीन में कोई तथ्य छूट गये हों या कोई कमी रह गई तो विभाग उसे अपने अभिमत में सम्मिलित कर सकता है किन्तु विभाग द्वारा नयी छान-बीन प्रारंभ नहीं की जानी चाहिए.

इन निर्देशों का कड़ाई से पालन सुनिश्चित किया जाये.

हस्ता./-

**(गोपाल शरण शुक्ल)**

अपर मुख्य सचिव,

मध्यप्रदेश शासन, सामान्य प्रशासन विभाग.

पृष्ठांकन क्रमांक एफ-15-6/96/1/10

भोपाल, दिनांक 11 नवम्बर 1997.

प्रतिलिपि :-

1. प्रमुख सचिव, मध्यप्रदेश शासन, विधि एवं विधायी कार्य विभाग, विन्ध्याचल भवन, भोपाल.
2. महानिदेशक, विशेष पुलिस स्थापना, लोक आयुक्त कार्यालय, भोपाल. की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित.

अपर मुख्य सचिव

मध्यप्रदेश शासन, सामान्य प्रशासन विभाग.

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

क्रमांक ...../21-क (सिविल)

भोपाल, दिनांक 8-2-99

प्रति,

समस्त प्रमुख सचिव/सचिव,  
समस्त विभागाध्यक्ष,  
समस्त आयुक्त,  
समस्त कलेक्टर,  
मध्यप्रदेश.

**विषय.-** राज्य शासन के विरुद्ध लंबित मामलों में राज्य शासन की ओर से जवाब पेश किये जाने हेतु.

श्री शेखर भार्गव, अतिरिक्त महाधिवक्ता, इन्दौर ने सूचित किया है कि राज्य शासन द्वारा उत्तर प्रस्तुत नहीं किये जाने के मामले प्रतिदिन उच्च न्यायालय के समक्ष प्रस्तुत किये जाते हैं. माननीय उच्च न्यायालय ने खुले न्यायालय में यह व्यक्त किया है कि जिन मामलों में राज्य शासन की ओर से उत्तर प्रस्तुत करने के लिये दो से अधिक बार समय लिया गया है, उन मामलों में आगामी सप्ताह से परिव्यय आरोपित किया जावेगा. अधिकांश मामलों में राज्य शासन द्वारा दो से अधिक अवसर उत्तर प्रस्तुत करने के लिये, लिये जा चुके हैं. इसलिये यह असंभव होगा कि परिव्यय आरोपित होने से बचा जा सके.

श्री आर.ए. रोमन, अतिरिक्त महाधिवक्ता, ग्वालियर ने भी सूचित किया है कि बार-बार सूचना देने के बावजूद मामलों में प्रभारी अधिकारी नियुक्त नहीं होते हैं और प्रभारी अधिकारियों द्वारा समय पर न्यायालय में उत्तर प्रस्तुत नहीं किये जाते हैं. कभी-कभी प्रभारी अधिकारी स्वयं शासकीय अधिवक्ता से संपर्क भी नहीं करते हैं और अन्य कर्मचारियों को उत्तर प्रस्तुत करवाने के लिये भेज देते हैं जो उचित नहीं है. उन्होंने याचिका क्रमांक624/98 में माननीय उच्च न्यायालय द्वारा उत्तर प्रस्तुत करने के लिये 300/- रु. परिव्यय लगाने के बावजूद उत्तर प्रस्तुत न करने के कारण 5000/- रु. परिव्यय आरोपित करने के तथ्य पर भी शासन का ध्यान आकृष्ट किया है. मुख्य सचिव ने इस प्रकरण में परिव्यय की राशि प्रभारी अधिकारी से वसूल करने के निर्देश दिए हैं.

अतः समस्त मामलों के प्रभारी अधिकारियों (officers-in-charge) को सूचित किया जाए कि उच्च न्यायालय में लंबित मामलों में उत्तर अविलंब प्रस्तुत किये जाएं. यदि उत्तर नियत समयावधि में प्रस्तुत नहीं करने के कारण न्यायालय द्वारा शासन पर कोई परिव्यय आरोपित किया जाता है तो वह त्रुटिकर्ता अधिकारी से वसूल किया जावेगा. न्यायालय अथवा शासकीय अधिवक्ता कार्यालय से किसी मामले की सूचना मिलने पर तत्काल प्रभारी अधिकारी नियुक्त किए जाएं. प्रभारी अधिकारी नियुक्त करने में विलंब होने की दशा में भी विलंबकर्ता अधिकारी/कर्मचारी से न्यायालय द्वारा आरोपित किया जाने वाला परिव्यय वसूल किया जाएगा.

कृपया इन निर्देशों का पालन कड़ाई से किया जाए.

हस्ता./-

**(शशि मोहन श्रीवास्तव)**

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

क्रमांक 2406/21-क(सि.)

भोपाल, दिनांक 8-2-99

प्रतिलिपि :-

मुख्य सचिव, के निजी सचिव की ओर प्रेषित कर अनुरोध है कि परिपत्र से माननीय मुख्य सचिव को अवगत कराने का कष्ट करें.

हस्ता./-

**(शशि मोहन श्रीवास्तव)**

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

एस.एस. सराफ  
प्रमुख सचिव

अर्द्ध शासकीय पत्र क्र. 2403/38/21-अ(प्रा.)

मध्यप्रदेश शासन,  
विधि एवं विधायी कार्य विभाग

भोपाल, दिनांक 16 मार्च, 1999

**विषय.-** विधानों पर राष्ट्रपति की अनुमति प्राप्त करने तथा समवर्ती सूची से संबंधित विधानों पर अधिनियमन के पूर्व राष्ट्रपति की अनुमति प्राप्त करने बाबत.

प्रिय श्री,

कृपया उपरोक्त विषयक भारत सरकार गृह मंत्रालय, नई दिल्ली के मुख्य सचिव महोदय को संबंधित अर्द्ध शासकीय पत्र क्र. 23/121/98-जु.डी., दिनांक 15 जनवरी, 1999 (प्रति संलग्न है) का अवलोकन करने का कष्ट करें.

भारत सरकार, गृह मंत्रालय, नई दिल्ली ने संविधान के अनुच्छेद 31-क, 31-ग, 201, 254 (2) एवं 304 के प्रावधानों का कड़ाई से पालन करने तथा संविधान की सप्तम अनसूची में विनिर्दिष्ट समवर्ती सूची में आने वाले विषयों से संबंधित विधान बनाने के पूर्व भारत सरकार की पूर्व सहमति प्राप्त कर राष्ट्रपति की अनुमति लेने का निवेदन किया है.

अतः कृपया भारत सरकार, गृह मंत्रालय, नई दिल्ली द्वारा जारी निर्देशों का कड़ाई से पालन सुनिश्चित करने का कष्ट करें.

भवदीय  
हस्ता./-

(एस.एस. सराफ)

प्रति,

श्री .....

प्रमुख सचिव/सचिव,

मध्यप्रदेश शासन,

.....

भोपाल,



मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

आदेश

भोपाल, दिनांक मई, 1999

फा. क्रमांक 1/सी/61/92/21-ब(दो).- दण्ड प्रक्रिया संहिता, 1973 (क्रमांक 2 सन् 1974) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, राज्य शासन, राज्य आर्थिक अपराध अन्वेषण ब्यूरो के प्रकरणों में राज्य शासन की ओर से पैरवी करने हेतु नियुक्त विशेष लोक अभियोजकों को दिनांक 1-5-99 से निम्नानुसार अभिभाषण शुल्क दिया जाना निश्चित करता है :-

2. सत्र न्यायालय में पैरवी करने पर फीस रूपये 400.00 (रूपये चार सौ) केवल प्रतिदिन तथा सत्र न्यायालय के अधीनस्थ न्यायालयों में पैरवी करने पर रूपये 200.00 (रूपये दो सौ) केवल प्रतिदिन की दर से न्यायालय के प्रमाण-पत्र के आधार पर देय होगी. यदि एक दिन में एक ही न्यायालय में एक से अधिक प्रकरणों में पैरवी की जाती है तो भी प्रतिदिन एक ही प्रकरण की दर से फीस देय होगी. उन्हें प्रकरणों के संबंध में की जाने वाली यात्रा के लिये राज्य के प्रथम श्रेणी अधिकारियों के समकक्ष यात्रा भत्ता देय होगा.

3. इस संबंध में होने वाला व्यय मांग संख्या 29-2014-न्याय प्रशासन (114) कानूनी सलाहकार और परामर्शदाता 10 व्यवसायिक एवं विशेष सेवाओं के लिये अदायगियां (3572) मुफस्सिल स्थापना के अंतर्गत विकलनीय होगा.

4. यह स्वीकृति आदेश वित्त विभाग के पृष्ठांकन क्रमांक .....दिनांक..... द्वारा महालेखाकार, म.प्र. ग्वालियर की ओर पृष्ठांकित किया गया.

5. संबंधित विशेष लोक अभियोजक अपने देयक भुगतान हेतु सचिव, मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग, विन्ध्याचल भवन, प्रथम तल, भोपाल को सीधे प्रस्तुत करेंगे.

6. इस विभाग का फीस संबंधित समसंख्यक आदेश दिनांक 13 जनवरी, 1993 एतद्द्वारा निरस्त किया जाता है.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,  
हस्ता./-

(प्रवीण शाह)

उप सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग  
आदेश

भोपाल, दिनांक 25-6-1999

फा. क्रमांक 1/सी/एक्टोसिट/21-ब(दो).-राज्य शासन, अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 की धारा 14 के अनुसार विनिर्दिष्ट विशेष न्यायालयों के लिये अधिनियम की धारा 15 के अंतर्गत नियुक्त विशेष लोक अभियोजक एवं अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) नियम, 1995 के नियम 7 (1) के अनुसार नियुक्त विशिष्ट ज्येष्ठ अधिवक्ता पैनल में सम्मिलित अधिवक्ताओं को दिनांक 1-5-99 से नियमानुसार शुल्क दिया जाना एतद्वारा नियत करता है :-

1. विशेष लोक अभियोजक (क) रुपये 150/- (रु. एक सौ पचास) प्रतिदिन एक घंटे से कम कार्य करने के लिये.  
(ख) रुपये 250/- (रु. दो सौ पचास) प्रतिदिन एक घंटे से अधिक कार्य करने के लिये.
2. विशिष्ट ज्येष्ठ अधिवक्ता (क) रुपये 100/- (रु. एक सौ) प्रतिदिन एक घंटे से कम कार्य करने के लिये.  
(ख) रुपये 200/- (रु. दो सौ) प्रतिदिन एक घंटे से अधिक कार्य करने के लिये.

2. इस विभाग के समसंख्यक आदेश दिनांक 31-7-97 में अंकित फीस से संबंधित अधिसूचना क्रमांक 17 (ई) 60/95/21-ब(दो), दिनांक 6-7-95 का उल्लेख एतद्वारा निरस्त किया जाता है. शेष शर्तें यथावत् रहेंगी.

3. यह स्वीकृति वित्त विभाग के पृष्ठांकन क्रमांक 544/एस.आर.-225/चार-ब-6/99, दिनांक 5-7-99 द्वारा महालेखाकार, म.प्र. ग्वालियर की ओर पृष्ठांकित की गयी है.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,  
हस्ता./-

(शशि मोहन श्रीवास्तव)

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

पृ. क्रमांक 1/सी/एक्टोसिट/21-ब (दो)

भोपाल, दिनांक 25 मई, 1999

प्रतिलिपि :-

1. सचिव, म.प्र. शासन, वित्त विभाग, भोपाल की ओर दो अतिरिक्त प्रतियों सहित भेजकर निवेदन है कि आदेश की एक प्रति महालेखाकार, म.प्र. ग्वालियर की ओर पृष्ठांकित करने का कष्ट करें.
2. उप नियंत्रक, शासन केन्द्रीय मुद्रणालय, अरेरा हिल्स, भोपाल की ओर म.प्र. राजपत्र में प्रकाशित करने हेतु.
3. जिला दंडाधिकारी (समस्त) मध्यप्रदेश
4. समस्त जिला एवं सत्र न्यायाधीश, मध्यप्रदेश
5. सचिव, आदिम जाति तथा अनुसूचित जाति कल्याण विभाग
6. प्रमुख सचिव, म.प्र. शासन, गृह (पुलिस) विभाग, भोपाल
7. बजट शाखा, विधि विभाग, भोपाल की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु अग्रेषित.

हस्ता./-

(प्रवीण शाह)

उप सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

## मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

फा. क्र. 3-बी-676/99/स-क(सि.)10849

भोपाल, दिनांक 28-9-1999

प्रति,

शासन के समस्त विभाग,  
समस्त विभागाध्यक्ष,  
समस्त कमिश्नर,  
समस्त कलेक्टर,  
मध्यप्रदेश.

**विषय.-** जिला कलेक्टर एवं पदेन उप सचिव को सिविल रिवीजन पेश करने के अधिकार प्रत्यायोजित करने के संबंध में.

वर्तमान में सिविल न्यायालय द्वारा दिये गये आदेशों के विरुद्ध रिवीजन पेश किये जाने के संबंध में विधि विभाग द्वारा मामले का परीक्षण कर कार्यवाही की जाती है. जिला कलेक्टर अब पदेन उप सचिव भी नामांकित हो चुके हैं, इसलिये सिविल न्यायालयों के आदेशों के विरुद्ध मान. उच्च न्यायालय के समक्ष रिवीजन पेश किये जाने के संबंध में निर्णय लेने एवं उस संबंध में आदेश जारी करने का अधिकार संबंधित जिले के कलेक्टर एवं पदेन उप सचिव को इस आदेश से सौंपा जाता है.

मान. उच्च न्यायालय के समक्ष पेश होने वाली प्रथम व द्वितीय सिविल अपील के प्रस्ताव वर्तमान में संबंधित प्रशासकीय विभाग के माध्यम से विधि विभाग को प्राप्त होते हैं और इस पर विधि विभाग द्वारा परीक्षण कर निर्णय लिया जाता है. चूंकि जिले के कलेक्टर को प्रभारी अधिकारी की नियुक्ति के अधिकार दिये जा चुके हैं और वे पदेन उप सचिव भी हैं, इसलिये जिले के कलेक्टर के प्रथम अपील व द्वितीय अपील जो मान. उच्च न्यायालय के समक्ष पेश की जाना हो, के प्रस्ताव प्रभारी अधिकारी की नियुक्ति करके सीधे विधि विभाग को भेजेंगे. ऐसे प्रस्ताव प्राप्त होने पर विधि विभाग पूर्ववत् कार्यवाही करेगा.

हस्ता./-

(जे.के. जैन)

उप सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग  
संशोधित परिपत्र

क्रमांक 17(ई)108/93/21-ब(दो)

भोपाल, दिनांक 28-9-1999

प्रति,

शासन के समस्त विभाग,  
अध्यक्ष, राजस्व, मंडल, ग्वालियर,  
समस्त विभागाध्यक्ष,  
समस्त जिलाध्यक्ष,  
मध्यप्रदेश.

**विषय.-** श्रम न्यायालय के प्रकरणों में नियुक्त होने वाले शासकीय अभिभाषकों को देय फीस के संबंध में.

उपरोक्त विषयक इस विभाग के समसंख्यक परिपत्र दिनांक 4-1-94 को निरस्त करते हुये. राज्य शासन, श्रम न्यायालयों में शासन की ओर से पक्ष समर्थन करने के लिये नियुक्त किये जाने वाले अभिभाषकों को इस परिपत्र के जारी होने के दिनांक से निम्नलिखित दरों पर अभिभाषक शुल्क दिया जाना निश्चित करता है :-

- (अ)1. (क) म.प्र. औद्योगिक संबंधी अधिनियम (1) वाद प्रश्न के निर्धारण तक रुपये 500.00/-  
(ख) औद्योगिक विवाद अधिनियम (2) वाद प्रश्न के निर्माण से अंतिम निर्णय तक रू. 500/-  
परन्तु किसी भी स्थिति में कुल रू. 1000/- प्रति प्रकरण से अधिक नहीं है.
2. (क) कर्मकार क्षतिपूर्ति अधिनियम प्रकरण के अंतिम निराकरण के पश्चात् कुल रू. 300/-  
(ख) राज्य कर्मचारी बीमा अधिनियम प्रति प्रकरण परंतु साक्ष्य से पूर्व किसी कारणवश प्रकरण  
(ग) मजदूरी भुगतान अधिनियम किसी अन्य अधिवक्ता को हस्तांतरित किया जाता है तो उस  
(घ) न्यूनतम वेतन अधिनियम स्थिति में आधी फीस अर्थात् रू. 150/- केवल ही देय होगी.
3. (क) विभिन्न श्रम कानूनों के अंतर्गत चलने प्रति प्रकरण रू. 100/- केवल प्रकरण के अंतिम निराकरण  
वाले फौजदारी प्रकरण उपरांत.  
(संक्षिप्त स्वरूप के विचारण)  
(ख) जिन आपराधिक प्रकरणों में साक्ष्य प्रति प्रकरण रू. 250/- केवल परन्तु साक्ष्य अंकित होने के  
अंकित की जावें. पूर्व किन्हीं कारणों से प्रकरण किसी अन्य अधिवक्ता को  
हस्तांतरित किया जाता है, उस स्थिति में साक्ष्य अंकित  
कराये जाने से पूर्व के अभिभाषक को रू. 100/- केवल तथा  
साक्ष्य अंकित कराने वाले अभिभाषक को रू. 150/- केवल  
देय होगी.
4. औद्योगिक विवाद अधिकरण के समक्ष प्रति प्रकरण रू. 1000/- केवल  
सभी प्रकार के प्रकरण अंतिम सुनवाई  
तक कार्य करने पर.
- (ब) श्रम न्यायालय द्वारा किसी प्रकरण में उपरोक्त फीस से कम फीस (अभिभाषक शुल्क) प्रमाणित की जाती है, उस स्थिति में वही फीस देय होगी जो कम हो.
- (स) श्रम न्यायालय तथा औद्योगिक न्यायालय द्वारा यदि समान विषय वाले मामलों को एक ही आदेश से अथवा एक ही समान अलग-अलग आदेशों से निराकृत किया जाये तो ऐसी स्थिति में शासकीय अधिवक्ता, परिपत्र में बताये अनुसार समान तथ्यों वाले दस अथवा दस से कम प्रकरणों के समूहों के लिये एक प्रकरण के लिये प्रभावशील शुल्क पाने का अधिकारी होगा.

- (द) प्रकरण रिमांड होने की दशा में शासकीय अधिवक्ता जिनके द्वारा पूर्व में उसी प्रकरण में पैरवी की है, द्वारा पैरवी की जावेगी तो उन्हें अलग से कोई शुल्क देय नहीं होगा.
- (ई) समान विषय वाले एक से अधिक प्रकरण एक ही शासकीय अधिवक्ता द्वारा प्रतिनिधित्व किये जावेंगे. एक से अधिक अधिवक्ता को नियुक्ति को आवश्यकता पर प्रशासकीय विभाग ऐसे समान विषय वाले प्रकरण में एक से अधिक अधिवक्ता को प्रतिनिधित्व करने की अनुमति कारण सहित दे सकता है.

हस्ता./-

(टी.पी. शर्मा)

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

फा. क्रमांक 3-(बी)/4283/978//99/21-क(सि.)

भोपाल, दिनांक 22-11-99

प्रति,

शासन के समस्त विभाग,  
अध्यक्ष, राजस्व, मंडल,  
समस्त संभागाध्यक्ष,  
समस्त जिलाध्यक्ष,  
मध्यप्रदेश.

**विषय.-** उपभोक्ता फोरम में शासन की ओर से प्रतिरक्षण करने हेतु नियुक्त शासकीय अधिवक्ताओं के देय फीस बावत.

राज्य शासन, जिला उपभोक्ता फोरम एवं राज्य उपभोक्ता विवाद प्रतितोषण आयोग के समक्ष चल रहे आवेदन/अपील में राज्य शासन की ओर से पक्ष समर्थन करने वाले अधिवक्ताओं के लिये निम्नलिखित दरों पर अधिवक्ता फीस दिया जाना निश्चित करता है :-

- (1) जिला उपभोक्ता फोरम के समक्ष प्रत्येक प्रकरण में अधिवक्ता शुल्क अधिकतम 1000/- रुपये.
- \* (2) राज्य उपभोक्ता विवाद प्रतितोषण आयोग के समक्ष प्रत्येक प्रकरण/अपील में अधिकतम अधिवक्ता फीस 2000/- रुपये.
- \* (3) (अ) प्रकरण/अपील आवेदक/अनावेदक, अपीलार्थी/प्रति अपीलार्थी की अनुपस्थिति में खारिज होने की दशा में,  
(ब) एक पक्षीय कार्यवाही किये जाने की दशा में,  
(स) पक्षकारों के बीच राजीनामा होने की दशा में,  
(द) मौखिक अथवा शपथ-पत्रों के रूप में, साक्ष्य लेकर गुणदोषों पर निराकरण से भिन्न निराकरण किये जाने की दशा में, उपरोक्त स्थितियों में अधिवक्ता फीस आधी देय होगी.

हस्ता./-

(जे.के. जैन)

उप सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

- \* फा. क्र. 3(बी)(978/99/6240/21-क(सि.))दिनांक 29-4-2000 स्थापित किया गया.
- \* Slop is missing in Mainscript.

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

आदेश

भोपाल, दिनांक 1-1-2001

फा. क्रमांक 1 (सी) एक्टोसिट/21-ब (दो).-इस विभाग के समसंख्यक आदेश दिनांक 25-6-99 के अनुक्रम में राज्य शासन, अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 की धारा 14 के अनुसार विनिर्दिष्ट विशेष न्यायालयों के लिये दिनांक 1-1-2001 से निम्नानुसार शुल्क दिया जाना नियत करता है :-

1. विशेष न्यायालयों में अकिंचन अभियुक्तों को पक्ष समर्थन हेतु शुल्क (यदि विशेष न्यायालय कोई सत्र अथवा अपर सत्र न्यायाधीश का ही न्यायालय है) अंतिम निराकरण तक.
 

रु. 200/- (रूपये दो सौ) प्रति प्रभावी तिथि, अधिकतम
रु. 1500/- (रूपये एक हजार पांच सौ) प्रति प्रकरण
2. यह स्वीकृति वित्त विभाग के पृष्ठांकन क्रमांक 24/R33/चार/ब-6/2001 दिनांक 19-1-2001 द्वारा महालेखाकार मध्यप्रदेश ग्वालियर की ओर पृष्ठांकित की गई है.

हस्ता./-

(शशि मोहन श्रीवास्तव)

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

पृ. क्रमांक 1/सी/एक्टोसिट/21-ब (दो)

भोपाल, दिनांक 1-1-2001

प्रतिलिपि :-

- (1) सचिव, मध्यप्रदेश शासन, वित्त विभाग, मंत्रालय, भोपाल की ओर दो अतिरिक्त प्रतियों सहित भेजकर अनुरोध है कि आदेश की एक प्रति महालेखाकार, मध्यप्रदेश ग्वालियर की ओर पृष्ठांकित करने का कष्ट करें.
- (2) उप नियंत्रक, शासन केन्द्रीय मुद्रणालय, अरेरा हिल्स, भोपाल की ओर मध्यप्रदेश राजपत्र में प्रकाशित करने हेतु.
- (3) जिला दण्डाधिकारी (समस्त) मध्यप्रदेश
- (4) समस्त जिला एवं सत्र न्यायाधीश, मध्यप्रदेश
- (5) सचिव, मध्यप्रदेश शासन, आदिम जाति तथा अनुसूचित जाति कल्याण विभाग, मंत्रालय, भोपाल
- (6) प्रमुख सचिव, मध्यप्रदेश शासन, गृह (पुलिस) विभाग, मंत्रालय, भोपाल
- (7) बजट शाखा, विधि विभाग, भोपाल की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु अग्रेषित.

हस्ता./-

(जे.के. वैद्य)

उप सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

## मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

डी. क्रमांक 4391/21-क(सि.)

भोपाल, दिनांक 22 जून, 2001

प्रति,

शासन के समस्त विभाग,  
समस्त विभागाध्यक्ष,  
समस्त कमिश्नर,  
समस्त कलेक्टर,  
मध्यप्रदेश.

**विषय.**-विभिन्न न्यायालयों/अधिकरणों के द्वारा पारित निर्णय/आदेशों के विरुद्ध विधि विभाग को भेज जाने वाले अपील प्रस्तावों के संबंध में मार्गदर्शन.

प्रायः यह देखा गया है कि विभिन्न विभागों/कलेक्टरों से विधि विभाग को जो अपील प्रस्ताव प्रेषित किये जाते हैं उनके साथ अधीनस्थ न्यायालयों/अधिकरणों के निर्णय/आदेशों की प्रति के साथ प्रस्तुत आवेदन/वाद पत्र, शासन द्वारा प्रस्तुत उत्तर/जवाबदावा, अपील मेमो तथा शासकीय अधिवक्ता का आधार सहित मत, सुसंगत दस्तावेज एवं विभागीय संक्षेपिका संलग्न कर नहीं भेजे जाते फलतः प्रकरण का सूक्ष्मता से एवं तार्किक रूप से परीक्षण करने में असुविधा होती है.

अतः अनुरोध है कि जब कभी भी विधि विभाग को अपील प्रस्ताव प्रेषित किये जाये, उस स्थिति में कलेक्टर/विभाग यह सुनिश्चित कर ले कि ऊपर वर्णित सभी दस्तावेज नस्ती/प्रस्ताव के साथ संलग्न कर भेजे जा रहे हैं या नहीं जिससे कि प्रकरण का परीक्षण करने में अनावश्यक विलंब न हो.

कृपया इसका पालन करने हेतु संबंधितों को निर्देश देवें.

हस्ता./-

(जे.के. वैद्य)

उप सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.



मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

क्रमांक 21ग्रा. न्या./बजट 1/02

भोपाल, दिनांक 30-9-02

प्रति,

कलेक्टर,  
जिला.....  
मध्यप्रदेश,

**विषय.**-ग्राम न्यायालय के सदस्यों को मानदेय दैनिक भत्ता स्वीकृत करने के संबंध में.

राज्य शासन एतद् द्वारा प्रदेश में स्थापित ग्राम न्यायालयों के सदस्यों तथा सचिवों को निम्नानुसार मानदेय तथा भत्ते स्वीकृत करता है :-

- |    |  |   |
|----|--|---|
| 1. | विधि के जानकार (सचिव को मानदेय/ दैनिक भत्ता. | रु. 125/- (रु. एक सौ पच्चीस) प्रति बैठक<br>रु. 25/- (रु. पच्चीस) प्रति बैठक |
| 2. | 6 सदस्यों को मानदेय/ दैनिक भत्ता             | रु. 75/- (रु. पचहत्तर) प्रति बैठक<br>रु. 25/- (रु. पच्चीस) प्रति बैठक       |

उपरोक्त व्यय मांग संख्या 29 ग्रा. न्या. 2014/114 (3572) मुफस्सिल स्थापना 01-013 मानदेय 03-003 यात्रा 49 दैनिक भत्ता के अंतर्गत वर्ष 2002-2003 में विकलनीय होगा.

यह स्वीकृति वित्त विभाग के पृष्ठांकन क्रमांक 1032/आर/1709/चार/नि दिनांक 23-9-2002 के द्वारा महालेखाकार, म.प्र. ग्वालियर को पृष्ठांकित की गई है.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,  
हस्ता./-

(डी. के. पालीवाल)

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

पृष्ठांकन क्रमांक 21/ग्रा. न्या./बजट 1/02/5609

भोपाल, दिनांक 30-9-02

प्रतिलिपि :-

दो अतिरिक्त प्रतियों के साथ, सचिव म.प्र. शासन, वित्त विभाग नियम शाखा, भोपाल की ओर भेजकर निवेदन है कि कृपया स्वीकृति की एक प्रति महालेखाकार, म.प्र., ग्वालियर की ओर पृष्ठांकित करने की कार्यवाही करें.

हस्ता./-

(डी.के. पालीवाल)

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

क्रमांक 21ग्रा. न्या./बजट 1/02/6137

भोपाल, दिनांक 30-9-02

प्रति,

कलेक्टर,

जिला.....

मध्यप्रदेश.

**विषय.-** ग्राम न्यायालय के सदस्यों को वास्तविक यात्रा व्यय तथा ग्राम न्यायालय सहायकों को मासिक मानदेय दिये जाने के संबंध में.

राज्य शासन, प्रदेश में स्थापित ग्राम न्यायालयों के सदस्यों को यात्रा व्यय (अपने निवास से बैठक के स्थान तक आने-जाने के लिए रेलवे का द्वितीय श्रेणी अथवा बस का वास्तविक किराया) तथा ग्राम न्यायालय के सहायक को रु. 200/- (दो सौ केवल) प्रतिमाह मानदेय एतद् द्वारा स्वीकृत करता है.

ग्राम न्यायालय के सदस्य अपने यात्रा देयक ग्राम न्यायालय की बैठक के पश्चात् शासन द्वारा निर्धारित समयावधि में संबंधित जिले के कलेक्टर को प्रस्तुत करेंगे, देयक का भुगतान परीक्षण उपरांत नियमानुसार किया जावेगा.

उपरोक्त व्यय मांग संख्या-29 ग्रा. न्या./2014/114/3572 मुफस्सिल स्थापना-01-013/ मानदेय-03-033-यात्रा-49-दैनिक भत्ता के अंतर्गत विकलनीय होगा.

यह स्वीकृति वित्त विभाग की अधिसूचना क्रमांक एफ-2/2नियम/4, दिनांक 30 सितंबर, 2002 के तारतम्य में महालेखाकार, म.प्र. ग्वालियर को पृष्ठांकित की जाती है.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,  
हस्ता./-

(डी. के. पालीवाल)

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

पृ. क्र. 21/ग्रा. न्या./बजट 1/02/6137

भोपाल, दिनांक 30-9-02

प्रतिलिपि :-

- (1) महालेखाकार, म.प्र., ग्वालियर की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित.
- (2) मुख्य कार्यपालन अधिकारी जनपद पंचायत, जिला  
म.प्र. की ओर सूचनार्थ प्रेषित
- (3) ग्राम न्यायालय, जनपद पंचायत जिला  
की ओर सूचनार्थ प्रेषित.

हस्ता./-

(डी.के. पालीवाल)

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

अधिसूचना

भोपाल, दिनांक 15 नवम्बर, 2002

फा. क्रमांक 1 (अ) 2/95/21-ब (दो).-राज्य शासन, एतद् द्वारा, उच्च न्यायालय के समक्ष शासन की ओर से पक्ष समर्थन करने वाले उन विधि अधिकारियों के लिये जो कि नीचे दी गई सारणी के कालम (2) में वर्णित हैं, उनके नाम के सम्मुख कालम (3) में दर्शायी गई वर्तमान रिटेनर फीस को पुनरीक्षित कर कालम (4) में मासिक पारिश्रमिक (रिटेनर फीस) के रूप में दिनांक एक दिसम्बर, 2002 से नियत करता है.

**सारणी**

क्र.	पदनाम	वर्तमान निश्चित मासिक पारिश्रमिक	पुनरीक्षित निश्चित वेतनमान
1	महाधिवक्ता	रूपये 21,000.00 (रूपये इक्कीस हजार केवल प्रतिमाह)	रूपये 26,000.00 (रूपये छब्बीस हजार केवल प्रतिमाह)
2	अति. महाधिवक्ता	रूपये 16,000.00 (रूपये सोलह हजार केवल प्रतिमाह)	रूपये 21,000.00 (रूपये इक्कीस हजार केवल प्रतिमाह)
3	उप महाधिवक्ता	रूपये 14,000.00 (रूपये चौदह हजार केवल प्रतिमाह)	रूपये 19,000.00 (रूपये उन्नीस हजार केवल प्रतिमाह)
4	शास. अधिवक्ता/ अति. शास. अधिवक्ता	रूपये 12,000.00 (रूपये बारह हजार केवल प्रतिमाह)	रूपये 17,000.00 (रूपये सत्रह हजार केवल प्रतिमाह)
5	उप शास. अधिवक्ता	रूपये 10,000.00 (रूपये दस हजार केवल प्रतिमाह)	रूपये 15,000.00 (रूपये पन्द्रह हजार केवल प्रतिमाह)

उक्त व्यय मांग संख्या 29-2014-न्याय प्रशासन (114) कानूनी सलाहकार और परिषद-(3428) महाधिवक्ता 01-वेतन-001-अधिकारियों का वेतन के अंतर्गत विकलनीय होगा.

वित्त विभाग के यू. ओ. क्र. 1145बी-6-02, दिनांक 8-11-02 द्वारा सहमति प्रदान की गयी है. अतः यह प्रशासकीय विभाग इस आदेश को वित्त विभाग द्वारा प्रदत्त शक्तियों के तहत महालेखाकार, ग्वालियर को पृष्ठांकित करता है.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,  
हस्ता./-

**(जी.एस. सोलंकी)**

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

पृ. क्र. 1 (अ) 2/95/21-ब (दो)

भोपाल, दिनांक 15 नवम्बर, 2002

प्रतिलिपि :-

1. प्रमुख सचिव, मध्यप्रदेश शासन, वित्त विभाग (बजट-6) भोपाल के संदर्भ में सूचनार्थ एवं आवश्यक कार्यवाही हेतु अग्रेषित.
2. महालेखाकार, म. प्र. लेखा एवं हकदारी ग्वालियर की ओर दो अतिरिक्त प्रतियों सहित आवश्यक कार्यवाही हेतु अग्रेषित.
3. उपनियंत्रक शासन, केन्द्रीय मुद्रणालय, अरेरा हिल्स, भोपाल की ओर राजपत्र में प्रकाशित करने हेतु.
4. महाधिवक्ता, मध्यप्रदेश, जबलपुर.
5. अतिरिक्त महाधिवक्ता कार्यालय, खण्डपीठ इन्दौर/ ग्वालियर.
6. समस्त शासकीय अधिवक्ता/अतिरिक्त शासकीय अधिवक्ता तथा उप शासकीय अधिवक्ता जबलपुर /इन्दौर /ग्वालियर की ओर सूचनार्थ.
7. शासकीय अधिवक्ता राज्य प्रशासनिकअधिकरण, भोपाल.
8. बजट शाखा/स्थापना शाखा/ आपराधिक शाखा/सिविल शाखा/याचिका शाखा, विधि और विधायी कार्य विभाग भोपाल. की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु अग्रेषित.

हस्ता./-

**(बी. एस. परमार)**

उपसचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

क्रमांक 21/ग्रा. न्या./बजट- 1/02

भोपाल, दिनांक .....

प्रति,

कलेक्टर,

जिला.....

मध्यप्रदेश.

**विषय.-** ग्राम न्यायालय के सदस्यों को वास्तविक यात्रा व्यय तथा ग्राम न्यायालय सहायकों को मासिक मानदेय दिये जाने के संबंध में.

राज्य शासन, प्रदेश में स्थापित ग्राम न्यायालयों के सदस्यों को यात्रा व्यय (अपने निवास से बैठक के स्थान तक आने-जाने के लिए रेलवे का द्वितीय श्रेणी अथवा बस का वास्तविक किराया) तथा ग्राम न्यायालय के सहायक को रु. 200/- (दो सौ रुपये केवल) प्रतिमाह मानदेय एतद् द्वारा स्वीकृत करती है.

ग्राम न्यायालय के सदस्य अपने यात्रा देयक ग्राम न्यायालय की बैठक के पश्चात् शासन द्वारा निर्धारित समयावधि में संबंधित जिले के कलेक्टर को प्रस्तुत करेंगे. देयक का भुगतान परीक्षण के उपरांत नियमानुसार किया जायेगा.

उपरोक्त व्यय मांग संख्या-29-ग्रा.न्या.-2014/114/3572 मुफस्सिल स्थापना-01-013/मानदेय-03-033-यात्रा-49-दैनिक भत्ता के अंतर्गत विकलनीय होगा.

यह स्वीकृति वित्त विभाग की अधिसूचना क्रमांक एफ 2/2नियम/4 दिनांक 30 सितंबर 2002 के तारतम्य में पत्र लेखाकार, म. प्र. ग्वालियर को पृष्ठांकित की जाती है.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,  
हस्ता./-

(डी. के. पालीवाल)

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

पृ. क्र. 21/ग्रा. न्या./बजट 1/02

भोपाल, दिनांक .....

प्रतिलिपि :-

- (1) महालेखाकार, म.प्र., ग्वालियर की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित.
- (2) मुख्य कार्यपालन अधिकारी, जनपद पंचायत .....जिला ..... म. प्र. की ओर सूचनार्थ प्रेषित.
- (3) ग्राम न्यायालय ..... जनपद पंचायत..... जिला की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु अग्रेषित.

हस्ता./-

(डी.के. पालीवाल)

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग  
आदेश

भोपाल, दिनांक 26 मई, 2004

फा. क्रमांक 1 (अ) 29/04/21-ब (दो).-राज्य शासन, मध्यप्रदेश शासन की ओर से उच्चतम न्यायालय, नई दिल्ली में पैरवी करने के लिये आदेश क्रमांक 1 (अ) 8/88/21-ब (दो) दिनांक 29-10-1988 एवं आदेश क्रमांक 1 (अ) 6/99/21-ब (दो), दिनांक 10-4-2000 एवं आदेश क्रमांक 1 (अ) 7/2002/21-ब (दो), दिनांक 27-3-2002 द्वारा नियुक्त स्टैंडिंग कौंसिल श्री सतीश के. अग्निहोत्री, स्थायी अधिवक्ता, श्री बी.एस. बाठिया, स्थायी अधिवक्ता, श्रीमती विभा दत्ता माखीजा, स्थायी अधिवक्ता, श्रीमती कामाक्षी सिंह मेहलवाल, स्थायी अधिवक्ता को आउट पाकेट में पूर्व में निर्धारित निम्न दरों के स्थान पर नवीन प्रस्तावित दरें निर्धारित करता है.

(उक्त दरे दिनांक 1-6-03 से प्रभावशील होगी)

पूर्व में प्रचलित दरें	प्रस्तावित नवीन दरें
1. साइक्लो स्टाईल चार्जस पर 15 पृष्ठ के सेट के लिये 15 रूपये	1 रूपया प्रति पृष्ठ
2. टाईपिंग के 8 पृष्ठ के सेट के लिये 8 रूपये	टंकण (मेनुअल) प्रति पृष्ठ 4 रूपये टंकण इलेक्ट्रानिक प्रति पृष्ठ 8 रूपये नोट :-स्टैंडिंग कांऊंसिल बिल/वाउचर में उल्लेख करेंगे कि टाईपिंग-कम्प्यूटर/इलेक्ट्रानिक/मेनुअल है.
3.	<b>नवीन मद</b> पेपर बुक का आकार/मोटाई को दृष्टिगत रखते हुए पेपर बुक जिल्द के वास्तविक व्यय हेतु किया गया चार्ज.
4.	हिन्दी से अंग्रेजी अनुवाद के लिये प्रति 1000 (एक हजार) शब्द के लिये 100 रूपये (एक पृष्ठ में औसतन 300 शब्द मान्य करते हुए प्रति पृष्ठ 30 रूपये). नोट :-स्टैंडिंग कांऊंसिल द्वारा वास्तविक व्यय को बिल में दर्शाया जाएगा.
5.	कार्यालयीन व्यय 1500 रूपये प्रतिमाह

इस संबंध में होने वाला व्यय मांग संख्या 29-2014-न्याय प्रशासन (3572) मुफस्सिल स्थापना एवं ग्राम न्यायालय-22-कार्यालय व्यय-008 अन्य आकस्मिक व्यय के अंतर्गत विकलनीय होगा.

वित्त विभाग के टीप क्रमांक सी.आर.-03/बी-6/चार/04, दिनांक 11-5-04 द्वारा सहमति प्रदान की गयी है. अतः यह प्रशासकीय विभाग इस आदेश को वित्त विभाग द्वारा प्रदत्त शक्तियों के तहत महालेखाकार, मध्यप्रदेश, ग्वालियर को पृष्ठांकित करता है.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,  
हस्ता./-

(जी. एस. सोलंकी)

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

भोपाल, दिनांक 26 मई, 2004

**फा. क्र. 17 (ई) 1-2004-इक्कीस-ब (दो).**-मध्यप्रदेश राजपत्र (असाधारण) दिनांक 19 जनवरी 2004 के राजपत्र में प्रकाशित सामान्य प्रशासन विभाग की अधिसूचना क्र. एफ. 11-48-2003-1-9, दिनांक 19 जनवरी 2004 की अनुसूची क्रमांक 53 एवं 54 को विखण्डित किये जाने के फलस्वरूप राज्य शासन द्वारा यह निर्णय लिया गया है कि जिला सरकार समाप्त हो जाने के कारण लिये गये निर्णय के अनुसार नोटरी एक्ट, 1952 के अन्तर्गत नोटरी एक्ट, 1952 के अन्तर्गत नोटरी की नियुक्ति, नवीनीकरण नोटरी के वार्षिक प्रतिवेदन, निरीक्षण, एवं नोटरी के विरुद्ध शिकायतों की जांच से संबंधित समस्त कार्यवाही मध्यप्रदेश शासन विधि और विधायी कार्य विभाग द्वारा किया जाना है.

राज्य शासन द्वारा की जाने वाली कार्यवाही हेतु विधिक प्रावधानों के अनुसरण में निम्नलिखित मार्गदर्शी सिद्धांत प्रसारित किये जाते हैं:-

1. दी नोटरीज रूल्स, 1956 के नियम-3 के अनुसार अर्हता रखने वाले व्यक्ति द्वारा नोटरी के पद पर नियुक्ति हेतु आवेदन-पत्र नियमों में निर्धारित प्रारूप में **सक्षम प्राधिकारी को प्रस्तुत किया जाएगा**. राज्य शासन द्वारा सभी जिला न्यायाधीशों को सक्षम प्राधिकारी अधिसूचित किया गया है.
2. सक्षम प्राधिकारी, द्वारा उक्त आवेदन पत्रों के संबंध में दी नोटरीज एक्ट, 1952 एवं दी नोटरीज रूल्स 1956 के अनुसार कार्यवाही की जाकर **राज्य शासन को प्रतिवेदन प्रस्तुत किया जाएगा**.
3. राज्य शासन द्वारा दी नोटरीज रूल्स, 1956 के नियम-8 के अनुसार **सक्षम प्राधिकारी द्वारा प्रस्तुत किये गये प्रतिवेदनों पर विचार करने के उपरान्त आवेदन-पत्र का निराकरण किया जाएगा जिसकी सूचना आवेदक को दी जाएगी**.
4. किसी आवेदक का आवेदन-पत्र स्वीकार किया जाता है तो उसके द्वारा नियम 9 में निर्धारित दर के अनुसार 1000/- रुपये (एक हजार रुपये) चालान द्वारा शासकीय कोषालय में शुल्क जमा करने पर नोटरी के रूप में व्यवसाय प्रमाण-पत्र प्रदान किया जाएगा. प्रमाण-पत्र 500/- रुपये के नानज्यूडिशियल स्टाम्प पर जारी होगा जो आवेदक द्वारा देय होगा. नोटरी का नाम, नियम में निर्धारित प्रारूप के अनुसार रजिस्टर में दर्ज किया जाएगा.
5. जब किसी व्यक्ति को नोटरी नियुक्त करने का निर्णय लिया जाए जो **सर्वप्रथम सक्षम प्राधिकारी के माध्यम से फीस जमा करने का चालान की प्रति और 500/- रुपये का स्टाम्प बुलाया जाए**.
6. प्रत्येक जिले के समक्ष अधिकारी प्रतिवर्ष 1 जनवरी को जिले में कार्यरत नोटरीज की सूची राज्य शासन, विधि और विधायी कार्य विभाग को भेजेंगे और उस सूची तथा विधि और विधायी कार्य विभाग द्वारा संधारित की गई पंजी के अनुसार दी नोटरीज एक्ट, 1952 की धारा 6 की अपेक्षा अनुसार प्रतिवर्ष राज्य में कार्यरत नोटरीज की सूची प्रकाशितकी जाएगी.
7. नोटरीज की नियुक्ति प्रथमतः 5 वर्ष के लिये होगी उक्त अवधि के पश्चात् नवीनीकरण 500 रुपये के शुल्क पर किया जाएगा नवीनीकरण शुल्क भी चालान द्वारा कोषालय में जमा किया जाएगा और चालान की प्रति आवेदन-पत्र के साथ लगाई जाएगी. नवीनीकरण प्रमाण-पत्र भी 500 रुपये के मूल्य के स्टाम्प पेपर पर जारी किया जाएगा जो आवेदक द्वारा देय है.
8. राज्य शासन द्वारा जिले के अंदर नोटरी के कार्यक्षेत्र का विस्तार भी किया जा सकेगा. इस हेतु 750 रुपये शुल्क निर्धारित है जो कोषालय में चालान द्वारा जमा किया जाएगा.
9. नोटरी के रूप में कार्य करने का प्रमाण-पत्र की द्वितीय प्रति के लिये 300 रुपये शुल्क निर्धारित किया गया जो चालान द्वारा शासकीय कोषालय में जमा किया जाएगा.

10. सक्षम प्राधिकारी द्वारा प्रतिवर्ष नोटरी के कार्य का निरीक्षण किया जाएगा और निरीक्षण प्रतिवेदन राज्य शासन को प्रेषित किया जाएगा. एक वर्ष में 2 बार निरीक्षण किया जा सकेगा.
11. नोटरी के विरुद्ध शिकायत की जांच राज्य शासन द्वारा स्वमेव आरंभ की जा सकेगी या इस संबंध में फार्म नं. 13 पर शिकायत के आधार पर जांच की जाएगी. शिकायत की जांच करने पर यदि सही पाई गई तो नोटरी प्रमाण-पत्र निरस्त किया जा सकेगा अथवा निलंबित किया जा सकेगा अथवा यथोचित दण्ड जैसे चेतावनी आदि भी दी जा सकेगी.
12. नोटरी का नाम नोटरी हेतु रजिस्टर में दर्ज किया जाएगा रजिस्टर का प्रारूप नियम में दिये गये प्रारूप अनुसार होगा.

यह मार्गदर्शी सिद्धांत केवल सुविधा के लिये प्रसारित किये जा रहे हैं वस्तुतः कार्यवाही नोटरी अधिनियम, 1952 एवं नोटरी नियम, 1956 अद्यतन संशोधित के अनुसार ही की जाना है. अतः अधिनियम और नियमों का अध्ययन करते समय नियमानुसार सभी आवश्यक कार्यवाही की जाय.

इस विभाग के आदेश दिनांक 22 अप्रैल 1999, 6 अक्टूबर 1999, 20 दिसम्बर 1999 निरस्त किये जाते हैं.

फा. क्र. 1 (बी) 2-2004-इक्कीस-ब (दो).-मध्यप्रदेश राजपत्र (असाधारण) दिनांक 19 जनवरी 2004 के राजपत्र में प्रकाशित सामान्य प्रशासन विभाग की अधिसूचना क्र. एफ. 11-48-2003-1-9, दिनांक 19 जनवरी 2004 की अनुसूची के क्रमांक 52 को विखण्डित किये जाने के फलस्वरूप राज्य शासन द्वारा यह निर्णय लिया गया है कि मध्यप्रदेश शासन कार्य नियमों के नियम एक के नियम-6 ख के अनुसार दण्ड प्रक्रिया संहिता, 1973 की धारा 24 तथा विधि विभाग के नियमावली के नियम 17 एवं 18 के अंतर्गत लोक अभियोजक और अतिरिक्त लोक अभियोजक शासकीय एवं अतिरिक्त शासकीय अभिभाषक की नियुक्ति तथा कार्यकाल में वृद्धि/शिकायत पर कार्यवाही एवं उपरोक्त विषय से संबंधित कार्य प्रशासकीय विभाग अर्थात् विधि और विधायी कार्य विभाग द्वारा की जावेगी.

उपरोक्त पदों पर नियुक्ति हेतु निम्नलिखित मार्गदर्शी सिद्धांतों को ध्यान में रखकर पैनल तैयार करें और उसके बाद ही प्रस्ताव मध्यप्रदेश शासन विधि और विधायी कार्य विभाग को आदेश हेतु भेजे जावें ताकि उनकी नियुक्ति आदेश/कार्यकाल में वृद्धि के आदेश जारी किये जा सकें:-

- (1) दण्ड प्रक्रिया संहिता की धारा 24 एवं विधि विभाग नियमावली के नियम 15 के अनुसार उक्त पदों पर नियुक्ति हेतु जिला न्यायाधीश को प्राप्त होने वाले आवेदन-पत्र तथा अधिवक्ता संघ से प्राप्त होने वाले आवेदन-पत्र में उल्लेखित नामों पर गुण-दोषों के आधार पर एक पद के लिये 4 नामों का पैनल जिला दण्डाधिकारी एवं सत्र न्यायाधीश के मध्य परामर्श के आधार पर तैयार किया जाकर पैनल प्रेषित किया जावे.
- (2) यदि कार्यरत शासकीय एवं अतिरिक्त शासकीय अभिभाषक की पुनर्नियुक्ति किया जाना उचित हो तो उनका नाम भी पैनल में सम्मिलित करें. जहां अतिरिक्त शासकीय अभिभाषक के एक से अधिक पद के लिये नाम भेजे जा रहे हों वहां एक अधिवक्ता का नाम अलग-अलग पदों के लिये सम्मिलित किया जा सकता है.
- (3) पैनल तैयार करते समय पैनल में सम्मिलित किये जाने वाले अधिवक्ताओं के कार्य व्यवहार, विधिक ज्ञान विशेषकर सिविल एवं सत्र प्रकरणों के संबंध में गंभीरता से विचार करना चाहिये.
- (4) कार्यरत शासकीय एवं अतिरिक्त शासकीय अभिभाषकों के कार्य का समीक्षा प्रतिवेदन प्रेषित किया जाना चाहिये जिसमें उनके कार्य, व्यवहार, न्यायालय में उपस्थिति, विधिक ज्ञान के बारे में भी उल्लेख किया जाना चाहिये.
- (5) समीक्षा प्रतिवेदन में जिला दण्डाधिकारी द्वारा यह उल्लेख करना भी आवश्यक है कि कार्यरत शासकीय/अतिरिक्त शासकीय अभिभाषक के विरुद्ध कोई शिकायत तो नहीं है और यदि शिकायत है तो उस शिकायत का विवरण और क्या शिकायत की जांच की जा रही है और यदि जांच पूर्ण हो गई है तो उसका निष्कर्ष भी दर्शाया जाना चाहिये.
- (6) पैनल में सम्मिलित किये जाने वाले अधिवक्ता के बारे में यह जानकारी भी स्पष्ट देना चाहिये कि उसके विरुद्ध कोई रिपोर्ट या आपराधिक प्रकरण तो दर्ज नहीं है या वह पूर्व में किसी आपराधिक प्रकरण में तो दंडित नहीं किया गया है.



- (7) पैनल में सम्मिलित सभी अधिवक्तागण के बायोडाटा भी संलग्न करना चाहिये जिसमें उनकी जन्मतिथि, व्यवसाय प्रारंभ करने की तिथि और उक्त जानकारी से संबंधित दस्तावेज भी संलग्न होना चाहिये क्योंकि दण्ड प्रक्रिया संहिता की धारा 24 के अनुसार लोक अभियोजक की नियुक्ति हेतु कम से कम 7 वर्ष का विधि व्यवसाय का अनुभव होना आवश्यक है और विधि विभाग नियमानवली के नियम 18 के अनुसार अधिवक्ता की आयु सामान्यतः 62 वर्ष से अधिक नहीं होना चाहिये. इसलिये उपरोक्त के संबंध में भविष्य में विवाद से बचने के लिये जन्मतिथि और व्यवसाय से संबंधित प्रमाण-पत्र संलग्न कराया जाना उचित है.
- (8) पैनल में सम्मिलित किये जाने वाले अधिवक्ता क्या आयकर दाता हैं? यदि हां तो कब से? उल्लेख करना चाहिये.
- (9) पैनल में सम्मिलित किये जाने वाले अधिवक्ताओं से लिखित में यह भी सहमति लेना चाहिये कि वे विधि विभाग नियमानवली के नियम 16 के अनुसार शासकीय/अतिरिक्त शासकीय अभिभाषक के रूप में कार्य करते हुए किसी राजनैतिक गतिविधि में भाग नहीं लेंगे और उन्हें नियुक्त होने पर लिखित में यह भी घोषित करना होगा कि वे आर्थिक कठिनाइयों से विमुक्त हैं.
- (10) शासकीय अभिभाषक/अतिरिक्त शासकीय अभिभाषक के विरुद्ध जो शिकायत प्राप्त होती है उसे जिला दण्डाधिकारी स्वयं या किसी वरिष्ठ अधिकारी से जांच कराकर जांच प्रतिवेदन विधि और विधायी कार्य विभाग को भेजेंगे.
- (11) शासकीय अभिभाषक एवं अतिरिक्त शासकीय अभिभाषक के कार्यकाल में वृद्धि के संबंध में उनके कार्य, व्यवहार, आचरण की समीक्षा की जाकर प्रतिवेदन विधि और विधायी कार्य विभाग को भेजा जाए.

इस विभाग के आदेश क्रमांक फा. 1(बी) 4-99-इक्कीस-ब (दो), दिनांक 1 अप्रैल 1999 को निरस्त किया जाता है.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,  
बी.एस. परमार, उपसचिव

## मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

क्रमांक

/

/04

भोपाल, दिनांक 16-6-04

प्रति,

1. समस्त सचिव,
2. समस्त विभागाध्यक्ष  
भोपाल, (म. प्र.)

**विषय.-** अधिवक्ताओं की नियुक्ति के संबंध में.

प्रायः यह देखा गया है कि न्यायालयीन प्रकरणों में प्रशासकीय विभाग/विभागाध्यक्ष, विधि विभाग की पूर्व अनुमति/अनुमोदन के बिना ही अपने स्तर पर प्रतिरक्षण हेतु अधिवक्ता को उनकी शर्तों के अनुसार शुल्क पर नियुक्त कर प्रतिरक्षण करवाने की कार्यवाही कर लेते हैं.

अतः प्रशासकीय विभाग न्यायालयीन प्रकरणों में विधि एवं विधायी कार्य विभाग की अनुमति/सहमति/अनुमोदन के बिना ही न्यायालयीन प्रकरणों में प्रतिरक्षण हेतु किसी भी अधिवक्ता को नियुक्त नहीं करें अन्यथा अधिवक्ता को देय शुल्क के भुगतान हेतु प्रशासकीय विभाग स्वयं उत्तरदायी होगा.

यदि प्रशासकीय विभाग द्वारा विधि विभाग की पूर्व सहमति/अनुमति/अनुमोदन के बिना अधिवक्ता को किसी प्रकरण में नियुक्त किया जाता है तो विधि विभाग द्वारा कार्योत्तर आदेश/प्रतिरक्षण आदेश जारी किया जाना संभव नहीं होगा.

प्रशासकीय विभाग न्यायालय में सुनवाई हेतु नियत तिथि से कम से कम एक सप्ताह पूर्व प्रतिरक्षण आदेश जारी करने हेतु नस्ती विधि विभाग को भेजा जाना सुनिश्चित करें. ताकि अग्रिम कार्यवाही सुनिश्चित करने में सुविधा हो.

हस्ता./-

(पी. पी. तिवारी)

प्रमुख सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

क्रमांक 4031/21-अ (प्रा.)

भोपाल, दिनांक 7 अगस्त, 2004

प्रति,

शासन के समस्त विभाग,  
समस्त विभागाध्यक्ष,  
मध्यप्रदेश, भोपाल.

**विषय-** विधि विभाग को अभिमत, प्रारूपण, परिमार्जन/परीक्षण हेतु प्रकरण भेजते समय अपनाई जाने वाली प्रक्रिया के संबंध में.

इस विभाग द्वारा यह अनुभव किया गया है कि प्रशासकीय विभाग अभिमत, प्रारूपण, परिमार्जन/परीक्षण हेतु प्रकरण भेजते समय विधि विभाग में वर्णित प्रक्रिया का पालन नहीं करते हैं.

इस विभाग को परामर्श/अभिमत के लिये भेजी गई नस्तियां अनेक अवसरों पर सिर्फ इसलिये वापस भेजना होती है कि, उनमें वह बिन्दु ही स्पष्ट नहीं होता है जिस पर कि इस विभाग का परामर्श अथवा अभिमत चाहा गया है.

हाल ही में अवर सचिव स्तर से सीधे ही इस विभाग को नस्तियां अंकित करने की प्रवृत्ति भी बढ़ी है जो उचित नहीं है. संबंधित विभाग के सचिव अथवा उपसचिव द्वारा अनुमोदित नस्तियां ही इस विभाग को अंकित की जाना चाहिए तथा प्रशासनिक सुविधा की दृष्टि से, उन्हें भेजने वाले अधिकारी का नाम, पदनाम तथा दूरभाष क्रमांक स्पष्टतः और अनिवार्य रूप से नस्ती पर अंकित होना चाहिये, साथ ही नस्ती भी अपने आप में व्यवस्थित होना चाहिये.

प्रशासकीय विभाग, विधि विभाग को नस्ती भेजते समय निम्नलिखित बिन्दुओं का पालन सुनिश्चित करें :-

1. वह बिन्दु जिस पर परामर्श/अभिमत चाहा गया है, स्पष्ट रूप से उल्लेखित किया जाये. इसी बिन्दु पर इस विभाग का कोई पूर्व मत हो तो संदर्भ के लिये वह भी भेजा जाये.
2. मूल विधायन अथवा संशोधन विधेयकों के प्रारूप परिमार्जन के लिये भेजे जाते समय तत्संबंधी प्रशासकीय अनुमोदन, शासन निर्णय, मंत्रिपरिषद आदेश, सुसंदर्भित संक्षेपिका तथा प्रस्तावित विधान का हिन्दी व अंग्रेजी भाषा का पाठ एक साथ रखा जावे, साथ ही प्रारूप का स्रोत तथा जिस राज्य की अधिनियमिता पर वह आधारित हों, उसकी प्रति भी साथ रखी जावे.
3. जिन अधिनियमों/ नियमों में संशोधन प्रस्तावित किया गया है, उनके संबंध में वर्तमान प्रावधान, प्रस्तावित संशोधन एवं संशोधन के कारण/आधारों का उल्लेख करते हुये एक तालिका भी नस्ती के साथ संलग्न की जाये. ऐसी तालिका होने से प्रारूप के त्वरित परिमार्जन में सहायता मिलेगी.
4. विभिन्न अधिनियमों के अधीन बनाये जाने वाले नियम, विनियम, उपनियम जारी की जाने वाली अधिसूचनाओं की विधिक्षा की दशा में भी हिन्दी व अंग्रेजी भाषा में एक साथ प्रारूप रखे जावे, ताकि उनका समयबद्ध परिमार्जन सुनिश्चित हो सके. साथ ही राजपत्र में उसके दोनों भाषाओं के पाठ एक साथ प्रकाशित करने का संवैधानिक दायित्व भी पूर्ण हो सके.
5. नियमों, विनियमों, अधिसूचनाओं में कोई संशोधन अपेक्षित होने की दशा में उनके राजपत्र के मूल प्रकाशन भी संदर्भ हेतु नस्ती पर रखे जाये, साथ ही समय-समय पर किये गये संशोधन की राजपत्र की प्रतियां भी रखी जावे.
6. यदि प्रकरण में कोई जटिल प्रश्न अंतर्वलित हो, तो नस्ती पर संक्षेपिका आवश्यक रूप से रखी जाये.
7. जिन मामलों में प्रशासकीय विभाग की समीक्षा आवश्यक हो वहां विभागाध्यक्ष, संदर्भों को संबंधित प्रशासकीय विभागों के माध्यम से ही इस विभाग को भेजे.

प्रशासकीय विभाग तथा विभाग प्रमुख अपने अधीनस्थों को उपरोक्त बिन्दुओं से अवगत कराने का कष्ट करें ताकि अपेक्षित प्रक्रिया का पालन सुनिश्चित हो सके.

हस्ता./-

(पी. पी. तिवारी)

प्रमुख सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

फा. क्रमांक 12/122/92/7187/10177/21-क (आप.)

भोपाल, दिनांक 30-10-04

प्रति,

1. महाधिवक्ता, मध्यप्रदेश, जबलपुर,
2. अतिरिक्त महाधिवक्ता, जबलपुर/इन्दौर/ ग्वालियर,
3. उप महाधिवक्ता, जबलपुर,
4. शासकीय अधिवक्ता, जबलपुर, इन्दौर, ग्वालियर,
5. सभी जिला मजिस्ट्रेट, सभी पुलिस अधीक्षक, मध्यप्रदेश

शासन के ध्यान में यह बात आयी है कि राज्य शासन की अनुमति प्राप्त किये बिना ही दोषमुक्ति के विरुद्ध माननीय उच्च न्यायालय में विधि विभाग की स्वीकृति की प्रत्याशा में अपील प्रस्तुत की जा रही हैं. यह प्रक्रिया विधिसम्मत नहीं है. दण्ड प्रक्रिया संहिता की धारा 378 (1) अंतर्गत राज्य शासन के निर्देश प्राप्त होने के पश्चात् ही माननीय उच्च न्यायालय के समक्ष लोक अभियोजन द्वारा अपील प्रस्तुत की जा सकती है.

अतएव इस विभाग द्वारा जारी आदेश क्रमांक 12/122/92/7187/10177/21-क (आप.), दिनांक 18-11-96 की ओर ध्यान आकर्षित करते हुए लिखा जाता है कि उक्त पत्र में दिये गये निर्देशों का कड़ाई से पालन किया जाना सुनिश्चित किया जावे.

विधि विभाग की नियमावली के नियम 94 की ओर समस्त जिला मजिस्ट्रेट से अपेक्षा की जाती है कि वे दोषमुक्ति के विरुद्ध अपील प्रस्ताव इस प्रकार इस विभाग को भेजा जाना सुनिश्चित करें कि ऐसा प्रस्ताव निर्णय दिनांक से 45 दिवस के अंदर इस विभाग को आवश्यक रूप से प्राप्त हो जावें.

हस्ता./-

**(डी. के. पालीवाल)**

सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

क्रमांक 10217/21-क(या.)

भोपाल, दिनांक 30-12-04

प्रति,

समस्त प्रमुख सचिव,  
म. प्र. शासन,  
मंत्रालय, भोपाल.

**विषय.-** मान. म. प्र. उच्च न्यायालय, उच्चतम न्यायालय में अपील/एल.पी.ए./एस.एल.पी. किए जाने हेतु भेजे गए प्रस्ताव के साथ संलग्न किए जाने वाले दस्तावेजों के संबंध में.

प्रायः यह देखा गया है कि, प्रशासकीय विभागों के द्वारा न्यायालय के निर्णय के विरुद्ध अपील एल.पी.ए./एस.एल.पी. प्रस्तुत करने के संबंध में जो नस्ती भेजी जाती है, वह अपूर्ण होती है.

नस्ती के साथ याचिका की प्रति, जवाब की प्रति, संबंधित नियमों की प्रति प्रकरण के तथ्यों की संक्षेपिका, विभाग की नोटशीट पर वे विधिक कारण व आधार जिनके आधार पर उनके द्वारा अपील किया जाना प्रस्तावित किया जाता है, उपलब्ध नहीं होते. नस्ती के साथ शासकीय अधिवक्ता का स्पष्ट अभिमत भी नहीं होता है कि, किन् कारणों से प्रश्नाधीन निर्णय/आदेश उचित एवं विधि सम्मत नहीं है.

उपरोक्त दस्तावेजों के अभाव में एवं शासकीय अधिवक्ता के स्पष्ट मत के अभाव में विधि विभाग को एल.पी.ए./विशेष अनुमति याचिका की प्रस्तुति हेतु अनुमति दिए जाने के लिए विधिक परीक्षण करने में कठिनाई होती है. नस्ती पुनः विभागों को वापस भेजना पड़ता है और इससे न्यायालय में अपील प्रस्तुत करने में काफी विलम्ब हो जाता है.

अतः सभी संबंधित अधिकारियों को निर्देशित करना चाहेंगे कि, वे विधि विभाग मैनुअल के नियम-91 के अनुसार उपरोक्त दस्तावेजों सहित ही नस्ती यथाशीघ्र समयावधि में/समुचित समय पूर्व, विधि विभाग को प्रेषित किया जाना सुनिश्चित करें.

हस्ता./-

(पी. पी. तिवारी)

प्रमुख सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

आदेश

भोपाल, दिनांक 31 मई, 2005

फा. क्रमांक 1 (अ)2/95/21-ब (दो).-राज्य शासन, एतद् द्वारा विधि विभाग नियमावली के अध्याय-2, नियम 33(1)(ए) के उप नियम (1) के अंतर्गत, महाधिवक्ता को उच्चतम न्यायालय में शासन की ओर से पैरवी करने के फलस्वरूप देय फीस समसंख्यक आदेश दिनांक 21-5-1999 में निम्नानुसार आंशिक संशोधन करता है :-

- (1) महाधिवक्ता को उच्चतम न्यायालय में शासन के प्रकरणों में पैरवी करने के फलस्वरूप, रुपये 7000/- (रुपये सात हजार) केवल के स्थान पर रुपये 10000/- (रुपये दस हजार) प्रतिदिन नियत करता है.
- (2) मुख्यालय से बाहर किसी न्यायालय अथवा अधिकरण में उपस्थित होने पर देय फीस रुपये 4000/- (रुपये चार हजार) केवल प्रतिदिन के स्थान पर रुपये 6000/- (रुपये छः हजार) केवल प्रतिदिन नियत करता है.

2. उक्त व्यय मांग संख्या 29-2014-न्याय प्रशासन (14) कानूनी सलाहकार और परिषद (3428) महाधिवक्ता 01-वेतन-001 अधिकारियों के वेतन के अंतर्गत विकलनीय होगा.

3. यह स्वीकृति वित्त विभाग के पृष्ठांकन क्रमांक 513/प.क.प./चार, दिनांक 27-5-05 द्वारा प्रदान की गयी है. अतः यह प्रशासकीय विभाग इस आदेश को वित्त विभाग द्वारा प्रदत्त शक्तियों के तहत महालेखाकार (म.प्र.) ग्वालियर को पृष्ठांकित करता है.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,  
हस्ता./-

(सत्येन्द्र कुमार सिंह)

अतिरिक्त सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

पृ. क्र. 1 (अ) 2/95/21-ब (दो)

भोपाल, दिनांक 31-5-2005

प्रतिलिपि :-

1. प्रमुख सचिव, मध्यप्रदेश शासन, वित्त विभाग, मंत्रालय, भोपाल की ओर उनके यू.ओ.क्र. 513/प.क.प./चार, दिनांक 27-5-05 के संदर्भ में सूचनार्थ एवं आवश्यक कार्यवाही हेतु अग्रेषित.
2. उपनियंत्रक, शासन केन्द्रीय मुद्रणालय, अरेरा हिल्स, भोपाल की ओर राजपत्र में प्रकाशित करने हेतु.
3. महाधिवक्ता, मध्यप्रदेश, जबलपुर.
4. अतिरिक्त महाधिवक्ता, खण्डपीठ इन्दौर/ग्वालियर.
5. बजट शाखा, स्थापना शाखा, याचिका शाखा, सिविल शाखा, विधि विभाग, की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु अग्रेषित.

हस्ता./-

(व्ही. के. जैन)

अवर सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

क्रमांक 5803/21/ग्रा.न्या./2005/भोपाल

भोपाल, दिनांक 19 सितम्बर, 2005

प्रति,

कलेक्टर,  
जिला  
मध्यप्रदेश.

**विषय.**-ग्राम न्यायालय के सदस्यों को मानदेय, दैनिक भत्ता एवं यात्रा भत्ता के भुगतान के संबंध में.

अधिकांश ग्राम न्यायालयों के सदस्यों द्वारा यह शिकायत की जा रही है कि ग्राम न्यायालयों के सदस्यों को समय पर मानदेय एवं दैनिक भत्ता तथा यात्रा भत्ते का भुगतान नहीं किया जा रहा है, उक्त परिस्थिति को दृष्टिगत रखते हुए, निम्नानुसार कार्यवाही किया जाना सुनिश्चित किया जाये :-

1. आहरण एवं संवितरण अधिकारी द्वारा ग्राम न्यायालयों के सभी सदस्यों के राष्ट्रीयकृत अथवा सहकारी बैंक में खाते खुलवाये जायें.
2. ग्राम न्यायालय के प्रधान द्वारा बैठकों की संख्या एवं सदस्यों की उपस्थिति के संबंध में प्रमाण-पत्र प्रस्तुत करने की दिनांक से प्रमाण-पत्र को ही आधार मान कर एक माह के अंदर आहरण एवं संवितरण अधिकारी वित्त विभाग के निर्देशानुसार सदस्यों को देय राशि ग्राम न्यायालय के सदस्यों के खाते में जमा की जाये.
3. पूर्व की लंबित देय राशि का भुगतान आवश्यक रूप से दो माह के अंदर सदस्यों को कर विधि विभाग को व्यय पत्रक सहित सूचित करें. यदि आवंटित राशि देय राशि से कम हो तो विधि विभाग को लिखें ताकि आगामी बजट आवंटन के साथ अतिरिक्त आवंटन जारी किया जा सके. यदि भुगतान के संबंध में कोई कठिनाई हो तो तत्संबंध में विधि विभाग को लिखा जावे एवं ग्राम न्यायालय के प्रधान को प्रतिलिपि प्रेषित की जावे.
4. ग्राम न्यायालय प्रधान द्वारा प्रमाण-पत्र प्रस्तुत करने की दिनांक से एक माह में सदस्यों को देय राशि यदि उनके खाते में जमा नहीं होती है तो उसके लिए आहरण एवं संवितरण अधिकारी की व्यक्तिगत जवाबदारी होगी.
5. ग्राम न्यायालयों के प्रारंभ होने पर अधिकांश ऐसे ग्राम न्यायालय थे जिनमें प्रकरण पंजीबद्ध ही नहीं हुए थे, लेकिन ग्राम न्यायालयों के सदस्यों द्वारा बैठक आहूत कर मानदेय एवं दैनिक भत्ता तथा यात्रा भत्ता प्राप्त किया जा रहा था, उक्त स्थिति को देखते हुए पूर्व में निर्देश दिए गये थे कि ग्राम न्यायालय में प्रकरण पंजीबद्ध होने और न्यायालयीन कार्यवाही संपन्न होने की स्थिति में ही मानदेय एवं अन्य भत्तों का भुगतान किया जाय. परन्तु ग्राम न्यायालय प्रारंभ हुए अधिक समय हो गया है और अब ऐसी स्थिति नहीं है कि ग्राम न्यायालय में प्रकरण पंजीबद्ध होकर लंबित न हो. उक्त वस्तुस्थिति को ध्यान में रखते हुए पूर्व में दिये गये निर्देश कि "ग्राम न्यायालय के सदस्यों को मानदेय एवं यात्रा भत्तों का भुगतान न्यायालय में दर्ज प्रकरणों में न्यायालयीन कार्यवाही सम्पन्न किये जाने पर ही देय होगा," को शासन वापिस लेता है.

अतः समस्त कलेक्टर उपरोक्तानुसार संबंधित अधीनस्थ अधिकारियों एवं कर्मचारियों को निर्देशित करना सुनिश्चित करें.

हस्ता./-

**(आर. के. पांडे)**

सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

पृ. क्र. 5803/21/ग्रा.न्या./प्रशा./2005/भोपाल

भोपाल, दिनांक 19 सितम्बर, 2005

प्रतिलिपि :-

1. मुख्य कार्यपालन अधिकारी जनपद पंचायत जिला (म. प्र.) की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित.
2. प्रधान ग्राम न्यायालय, जनपद पंचायत जिला की ओर इस निर्देश के साथ प्रेषित है कि, वे प्रत्येक माह की बैठकों एवं सदस्यों की उपस्थिति के संबंध में प्रमाण-पत्र आहरण एवं संवितरण अधिकारी को अग्रिम माह की 10 तारीख तक निश्चित रूप से प्रस्तुत करें.

हस्ता./-

(आर. के. कुल्हारे)

उप सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.



**विधि और विधायी कार्य विभाग**

भोपाल, दिनांक 27 जनवरी, 2006

फा. क्र. 17-ई-380-इक्कीस-ब(दो)05.-शपथ अधिनियम, 1969 (1969 का सं. 44) की धारा 3 की उपधारा (2) के खण्ड (ख) द्वारा, प्रदत्त शक्तियों को प्रयोग में लाते हुये, राज्य सरकार, एतद् द्वारा, मध्यप्रदेश राज्य के समस्त सरकारी हाईस्कूल/हायर सेकेण्डरी स्कूलों के प्राचार्यों (प्रिंसीपल) को, छात्रवृत्ति के संबंध में उनकी अपनी-अपनी अधिकारिता के भीतर उनके समक्ष प्रस्तुत जाति प्रमाण-पत्र से संबंधित शपथ-पत्र के प्रयोजन के लिये शपथ दिलाने या प्रतिज्ञान कराने के लिये सशक्त करती है.

2. यह अधिसूचना मध्यप्रदेश राजपत्र में उसके प्रकाशन की तारीख से प्रवृत्त होगी.

F.No. 17-E-380-XXI-B(ii)-05.-In exercise of the powers conferred by clause (b) of sub-section (2) of Section 3 of the Oths Act, 1969 (No. 44 of 1969), the State Government hereby empowers the Principals of all Government High Schools/Higher secondary Schools in the State of Madhya Pradesh to administer Oths as affirmation for the purpose of affidavits relating to Caste Certificate produced before them within their respective Jurisdiction in connection with scholarship.

2. This notification shall come into force with effect from the date of publication in the Madhya Pradesh Gazette.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,  
**सत्येन्द्र कुमार सिंह**, अपर सचिव.

## मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

क्रमांक 17(ई)/235/06/21-ब(दो)

भोपाल, दिनांक 19-9-2006

प्रति,

जिला एवं सत्र न्यायाधीश,  
समस्त जिला ..... , (म.प्र.)

विषय.- नोटरी के पद पर नियुक्ति में अनुसूचित जाति, अनुसूचित जनजाति, पिछड़ा वर्ग एवं महिला वर्ग के अधिवक्ताओं को प्राथमिकता देने के संबंध में.

कृपया इस विभाग के पत्र क्रमांक 17(ई)72/94/21-ब(दो), दिनांक 5-9-1994, पत्र क्रमांक 4489/17 (ई)72/94/21-ब(दो), दिनांक 6-5-1997 एवं पत्र क्रमांक 72/सी.एम./21-ब(दो)/7695, दिनांक 22-12-2001 का अवलोकन करें.

उक्त संदर्भ में शासन की यह मंशा है कि नोटरी के पदों की नियुक्ति के संबंध में अनुसूचित जाति, अनुसूचित जनजाति, पिछड़ा वर्ग एवं महिला वर्ग के अधिवक्ताओं को प्राथमिकता दी जाये.

अतः निर्देशानुसार अनुरोध है कि जब भी नोटरी के पद हेतु आवेदन आमंत्रित किये जाये तब उपरोक्त वर्गों के आवेदकों के नाम भी नियुक्ति हेतु अनुशंसित किये जाएं.

हस्ता./-

(एच.के. पेटकर)

अवर सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

भोपाल, दिनांक 30 अक्टूबर 2006

फा. क्र. 1(बी)1-इक्कीस-ब (दो) 06.-यतः कलेक्टर, बड़वानी ने सूचित किया है कि इस जिले में कोई उप संचालक (अभियोजन) कार्यरत नहीं है तथा कलेक्टर, बुरहानपुर ने सूचित किया है कि नवगठित जिले बुरहानपुर में स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम, 1985 (1985 का 61) के अधीन प्रकरण के संचालन हेतु उप संचालक (अभियोजन) का पद स्वीकृत नहीं है, परिणामतः उक्त अधिनियम के अधीन गठित विशेष न्यायालयों में उक्त अधिनियम के अधीन राज्य सरकार की ओर से प्रकरणों के संचालन में अनेक कठिनाईयां महसूस की जा रही है,

और, यतः, राज्य सरकार की राय है कि उप संचालक (अभियोजन) खरगौन तथा उप संचालक (अभियोजन) खण्डवा को, जो उपरोक्त दोनों जिलों में कार्य कर रहे हैं, क्रमशः जिला बड़वानी तथा जिला बुरहानपुर के लिये लोक अभियोजक या अतिरिक्त लोक अभियोजक के रूप में घोषित किया जाए ;

अतएव, दण्ड प्रक्रिया संहिता, 1973 (1974 का सं. 2) की धारा 24 की उपधारा (6-क) द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, राज्य सरकार, एतद् द्वारा, उप संचालक (अभियोजन), जिला खरगौन तथा उप संचालक (अभियोजन) जिला खण्डवा को, स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम, 1985 के अधीन प्रकरणों में इस प्रयोजन के लिये उक्त अधिनियम के अधीन गठित विशेष न्यायालयों में राज्य सरकार की ओर से अभियोजन संचालन के लिये, क्रमशः जिला बड़वानी तथा जिला बुरहानपुर के लिये लोक अभियोजक या अतिरिक्त लोक अभियोजक के रूप में घोषित करती है.

F.No. 1(B)-1-XXI-B-II-06.-W<sub>HEREAS</sub>, the Collector, Barwani has informed that no Deputy Director (Prosecution) is working in this district and the Collector, Burhanpur has informed that the post of Deputy Director (Prosecution) is not sanctioned in newly constituted District Burhanpur to conduct cases under narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) due to which difficulties are being felt in conduction of prosecution cases under the said Act in Special Courts constituted under the said Act on behalf of the State Government.

AND, W<sub>HEREAS</sub>, the State Government is of opinion that Deputy Director (Prosecution) Khargone and Deputy Director (Prosecution) Khandwa who are working in both the above districts, should be declared Public Prosecutor or Additional Public Prosecutor for the District Barwani and District Burhanpur respectively;

Now, T<sub>HEREFORE</sub>, in exercise of the powers conferred by sub-section (6-A) of Section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the State Government hereby declares the Deputy Director (Prosecution), District Khargone and Deputy Director (Prosecution), District Khandwa as a Public Prosecutor or Additional Public Prosecutor for District Barwani and District Burhanpur respectively to conduct prosecution on behalf of the State Government in the cases under the Narcotic Drugs and Psychotropic Substances Act, 1985 in the Special Courts constituted under the Said Act for the purpose.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,  
विनोद भारद्वाज, अपर सचिव.

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग  
अधिसूचना

भोपाल, दिनांक 23-11-06

फा. क्र. 17(ई)60/95/21-ब(दो).-राज्य शासन, इस विभाग के समसंख्यक आदेश दिनांक 25-6-1999 को अतिष्ठित करते हुए शासकीय अभिभाषक, अतिरिक्त शासकीय अभिभाषक तथा अशासकीय अभिभाषक पैनल लायर्स, जो शासकीय कार्य के लिए मध्यप्रदेश में नियुक्त किये जाते हैं, को दिनांक 1-10-2006 से निम्नलिखित दरों पर अभिभाषक शुल्क दिया जाना निश्चित करता है :-

- |       |  |     |   |
|-------|--|-----|---|
| 1 (अ) | शासकीय अभिभाषक एवं लोक अभियोजक.  | (क) | रु. ) -/250रु. दो सौ पचास) प्रति दिन एक घंटे से कम कार्य करने के लिये   |
|       |  | (ख) | रु. -/500( रु. पांच सौ) प्रति दिन एक घंटे से अधिक कार्य करने के लिये. अधिकतम रु. 10,000/- (रु. दस हजार) प्रतिमाह. |
| (ब)   | अतिरिक्त शासकीय अभिभाषक/अतिरिक्त लोक अभियोजक.  | (क) | रु. 250/- (रु. दो सौ पचास) प्रति दिन एक घंटे से कम कार्य करने के लिए.   |
|       |  | (ख) | रु. 500/- (रु. पांच सौ) दिन एक घंटे से अधिक कार्य करने के लिये. अधिकतम रु. 9000/- (रु. नौ हजार) प्रतिमाह.         |
| (स)   | शासकीय अभिभाषक/ लोकअभियोजक/ अतिरिक्त शासकीय अभिभाषक / अतिरिक्त लोक अभियोजक रिटेनर फीस.                                   |     | रु. 2000/- (दो हजार) प्रतिमाह   |
| (2)   | शासकीय अभिभाषक/पैनल लायर्स जो शासकीय कार्य हेतु शासकीय अभिभाषक/अतिरिक्त शासकीय अभिभाषक की अनुपस्थिति में कार्य करते हैं. |     |   |
| (1)   | आपराधिक प्रकरणों में सत्र प्रकरणों/ फौजदारी अपील पुनरीक्षण (सत्र न्यायालयों में)   | (क) | रु. 200/- (दो सौ) प्रतिदिन एक घंटे से कम कार्य करने के लिए.   |
|       |  | (ख) | रु. 400/- (चार सौ) प्रतिदिन एक घंटे से अधिक कार्य करने के लिए.  |
| (2)   | सत्र न्यायालयों में अकिंचन अभियुक्तों का पक्ष समर्थन हेतु शुल्क.   |     | रु. 400/- (चार सौ) प्रति प्रभावी तिथि अधिकतमरु. 3000/- (रु. तीन हजार) प्रति प्रकरण अंतिम निर्णय होने पर.          |

निम्नलिखित परिस्थितियों में प्रकरणों में न्यायालयीन कार्यवाही न होने की स्थिति में किसी भी प्रकार की फीस का भुगतान देय नहीं होगा.

- (1) नियत तिथि को अचानक न्यायालयीन कार्यवाही स्थगित होने पर,
- (2) किसी भी पक्ष द्वारा किसी भी कारण से प्रकरणों की तिथि स्थगित किये जाने हेतु दिये गये आवेदन-पत्र पर,
- (3) अभियुक्त/गवाह के अनुपस्थित होने के कारण.

इस संबंध में होने वाला व्यय मांग संख्या-29-न्याय प्रशासन-2014-न्याय प्रशासन कानूनी सलाहकार और परामर्शदाता-3572-मुफास्सील स्थापना एवं ग्राम न्यायालय की मद-31-003 "अभिभाषकों की फीस" के अंतर्गत विकलनीय होगा.

उक्त स्वीकृति आदेश में वित्त विभाग के यू.ओ. क्रमांक 1092/1593/06/ब-8 दिनांक 13-10-06 द्वारा सहमति प्राप्त की गई है.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,  
हस्ता./-  
(आर. के. पांडे)  
सचिव,  
मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

पृ. क्र. 17/(ई)60/95/21-ब(दो)

भोपाल, दिनांक 21-11-06

प्रतिलिपि :-

- (1) प्रमुख सचिव, मध्यप्रदेश शासन, वित्त विभाग, भोपाल बजट 8 मंत्रालय की ओर उनके यू.ओ. क्र. 1092/1593/06/बी-8 दिनांक 13-10-06 के संदर्भ में सूचनार्थ अग्रेषित.
- (2) महालेखाकार मध्यप्रदेश, ग्वालियर.
- (3) उप नियंत्रक, शासन केन्द्रीय मुद्रणालय, अरेरा हिल्स, भोपाल की ओर मध्यप्रदेश राजपत्र के अगले प्रकाशन में अनिवार्य रूप से प्रकाशित करने हेतु.
- (4) समस्त जिला एवं सत्र न्यायाधीश, मध्यप्रदेश.
- (5) समस्त जिला दण्डाधिकारी, मध्यप्रदेश.
- (6) समस्त शासकीय अभिभाषक/अतिरिक्त शासकीय अभिभाषक, मध्यप्रदेश.
- (7) बजट शाखा, विधि और विधायी कार्य विभाग, भोपाल की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु अग्रेषित.

हस्ता./-  
(विनोद भारदाज)  
अतिरिक्त सचिव,  
मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

क्रमांक 74Q/21-ब(दो)

भोपाल, दिनांक 21-3-2007

प्रति,

समस्त जिला दण्डाधिकारी,  
मध्यप्रदेश.

**विषय.-** शासकीय अभिभाषकों/अतिरिक्त शासकीय अभिभाषकों एवं विशेष न्यायालय में शासकीय अधिवक्ता के पदों पर नियुक्ति हेतु पैनल गठन की प्रक्रिया में अनुसूचित जाति/अनुसूचित जनजाति महिला एवं पिछड़ा वर्ग को प्राथमिकता देने बाबत.

उपरोक्त विषय में शासन की यह मंशा है कि शासकीय अधिवक्ता/अतिरिक्त शासकीय अभिभाषकों का पैनल तैयार करते समय अनुसूचित जाति/अनुसूचित जनजाति, पिछड़ा वर्ग महिला वर्ग के अधिवक्ताओं को प्राथमिकता के साथ सम्मिलित करें.

हस्ता./-

(विनोद भारद्वाज)

अपर सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

पृ. क्रमांक. 740/21-ब(दो)/07

भोपाल, दिनांक 21-3-2007

प्रतिलिपि :-

समस्त जिला एवं सत्र न्यायाधीश, (मध्यप्रदेश)

हस्ता./-

(विनोद भारद्वाज)

अपर सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

**मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग**

क्रमांक 654/21-ब(दो)07/1071

भोपाल, दिनांक 5-3-2007

प्रति,

समस्त कलेक्टर एवं जिला दण्डाधिकारी,  
मध्यप्रदेश.

**विषय.-** अनुसूचित जाति/अनुसूचित जनजाति (अत्याचार निवारण) हेतु गठित विशेष न्यायालयों में पैनल गठन में अनु. जाति/अनु. जनजाति वर्ग के अधिवक्ताओं को प्राथमिकता के साथ लिए जाने संबंधी.

माननीय मुख्यमंत्रीजी की अध्यक्षता में आयोजित राज्य स्तरीय सतर्कता एवं मानीटरिंग समिति की बैठक में शासन द्वारा लिये गये निर्णयानुसार आपको निर्देशित किया जाता है कि अनुसूचित जाति/अनुसूचित जनजाति (अत्याचार निवारण) हेतु गठित विशेष न्यायालयों में शासन का पक्ष समर्थन करने हेतु प्रस्तावित पैनल में अनु. जाति/अनु. जनजाति वर्ग के अधिवक्ताओं को प्राथमिकता के साथ सम्मिलित करें.

हस्ता./-

**(विनोद भारद्वाज)**

अपर सचिव,

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग.

**मध्यप्रदेश शासन,**  
..... **विभाग**  
**आदेश**

भोपाल, दिनांक .....

क्रमांक .....

सिविल प्रक्रिया संहिता 1908 (1908 का अधिनियम संख्यांक 5) के आदेश सत्ताईस के नियम 1 तथा 2 के अधीन प्रदत्त प्रदत्त शक्तियों को प्रयोग में लाते हुए, श्री.....को (पक्षकारों के नाम).....में मध्यप्रदेश राज्य के लिए तथा उसकी ओर से प्रभारी अधिकारी के रूप में अभिवचनों पर हस्ताक्षर करने और उन्हें सत्यापित करने के लिए तथा कार्य करने, आवेदन करने और उप संजात होने के लिए नियुक्त करते हैं. प्रभारी अधिकारी को यह आदेश दिया जाता है कि मध्यप्रदेश विधि और विधायी कार्य विभाग, नियमावली में वर्णित कर्तव्यों तथा उत्तरदायित्वों के अतिरिक्त वह अपनी नियुक्ति के तुरंत पश्चात् अन्य बातों के साथ ऐसी रीति में जिसके ब्यौरे नीचे दिए गए हैं, निम्नलिखित कार्य करेगा :-

1. प्रभारी अधिकारी, मामले में तथ्यों के बारे में तुरंत ऐसी जांच करेगा जैसी कि आवश्यक हो और याचिका में उठाए गए समस्त बिन्दुओं का पैरा अनुसार उत्तर देते हुए और ऐसी अतिरिक्त जानकारी देते हुए, जिनसे कि मामले के संचालन में महाधिवक्ता/ शासकीय अभिभाषक को सहायता पहुंचने की संभावना है, रिपोर्ट तैयार करेगा. यदि किसी प्रक्रम पर विधि विभाग से परामर्श किया गया था, तो उस विभाग की राय भी रिपोर्ट में विनिर्दिष्ट रूप से निर्दिष्ट की जाएगी.
2. समस्त सुसंगत फाइलें, दस्तावेज, नियम, अधिसूचनाएं तथा आदेश एकत्रित करेगा.
3. वाद पत्र/याचिका में उठाए गए समस्त बिन्दुओं का पैरा अनुसार उत्तर देते हुए और ऐसी अतिरिक्त जानकारी देते हुए, जिनसे कि शासकीय अभिभाषक को सहायता पहुंचने की संभावना है, एक रिपोर्ट तैयार करेगा.
4. उक्त रिपोर्ट तथा सामग्री के साथ शासकीय अधिवक्ता से संपर्क करेगा.
5. शासकीय अधिवक्ता की सहायता से लिखित कथन/उत्तर तैयार करवाएगा.
6. प्रभारी अधिकारी निम्नलिखित कागज पत्र भेजेगा :-  
(क) वाद पत्र की एक प्रति के साथ सरकार की एक रिपोर्ट.  
(ख) प्रस्तावित लिखित कथन का एक प्रारूप.  
(ग) उन सभी दस्तावेजों की एक सूची, जिन्हें साक्ष्य स्वरूप फाईल करना..... प्रस्तावित है और जिनकी प्रस्तुत रिपोर्ट में अपेक्षा की गई है.  
(घ) मामले के विशदीकरण के लिए आवश्यक कागज पत्रों की प्रतियां, इसमें वाद की सुनवाई की तारीख भी वर्णित होनी चाहिए.
7. मामले के तैयारी और संचालन करने में शासकीय अधिवक्ता का सहयोग करना और मामले उसके प्रक्रम और प्रगति में नियत किए गए कर्तव्यों से स्वयं को सदैव ही अवगत रखना.
8. जब भी कोई आदेश/निर्णय विशिष्टतया मध्यप्रदेश राज्य के विरुद्ध पारित किया जाता तब विधि विभाग को सूचित करना तथा उसकी प्रमाणित प्रति प्राप्त करने के लिए उसी दिन या आगामी कार्य दिवस को आवेदन करना.
9. अपनी रिपोर्ट के साथ आदेश/निर्णय की प्रमाणित प्रति तथा शासकीय अधिवक्ता की राय अगली कार्यवाही किए जाने के लिए इस विभाग को भेजेंगे.



10. यह देखना कि आवेदन करने में तथा प्रमाणित प्रतियां प्राप्त करने, रिपोर्ट बनाने, राय प्राप्त करने और उसकी सूचना देने में समय नष्ट नहीं हो.
11. जैसे ही उसे अपना स्थानान्तरण आदेश प्राप्त होता है वह अर्द्ध शासकीय पत्र के माध्यम से तत्काल जानकारी देगा. वह वर्तमान पद का भार सौंप देने के पश्चात् भी तब तक प्रभारी अधिकारी बना रहेगा, जब तक कि अन्य प्रभारी अधिकारी नियुक्त नहीं कर दिया जाए.
12. प्रभारी अधिकारी, मामला तैयार करने में शासकीय अधिवक्ता को हरसंभव सहयोग देगा तथा इस बात के लिए उत्तदायी होगा कि कोई महत्वपूर्ण तथ्य या दस्तावेज अप्रकटित/छुपी हुई नहीं रह जाए.
13. प्रभारी अधिकारी, या यदि लोक अभियोजक मुर्कर है तो वह, जैसे ही वाद का विनिश्चय होता है परिणाम की रिपोर्ट विभागाध्यक्ष के माध्यम से सरकार को करेगा. निर्णय की एक प्रति अभिप्राप्त की जाए और रिपोर्ट के साथ भेजी जाए,
14. प्रभारी अधिकारी, या यदि लोक अभियोजक मुर्कर है तो वह, इस बात के लिए उत्तरदायी होगा कि उन मामलों में जहां किसी वाद के प्रक्रम में पारित किए गए किसी अंतरिम आदेश का पुनरीक्षण अपेक्षित है, समय पर कार्यवाही की गई है. अतएव, वह उस आदेश के प्रति, जैसे ही वह पारित किया जाए विभागाध्यक्ष के माध्यम से अपनी अनुशंसा के साथ सरकार (प्रशासकीय विभाग ) को अग्रेषित करें.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,  
हस्ता./-

( )

उपसचिव,

मध्यप्रदेश शासन, .....विभाग.

पृ. क्रमांक.....

भोपाल, दिनांक

प्रतिलिपि :-

1. महाधिवक्ता/अतिरिक्त, महाधिवक्ता /उप महाधिवक्ता, मध्यप्रदेश जबलपुर, इन्दौर, ग्वालियर.
2. प्रमुख सचिव, मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग, भोपाल.
3. संबंधित जिलाध्यक्ष, मध्यप्रदेश.
4. ....प्रभारी अधिकारी की ओर अग्रेषित साथ ही शासकीय अधिवक्ता से संपर्क करने और उपस्थिति प्रमाण पत्र प्रगति रिपोर्ट प्राप्त करने तथा अपनी प्रत्येक भेंट (विजिट) पर शासकीय अधिवक्ता से आगे की कार्यवाही के लिए सलाह करने और मामले में अपनी प्रगति रिपोर्ट के साथ उसे उसके विभागाध्यक्ष को भेजने हेतु अग्रेषित. मामले की प्रगति रिपोर्ट की एक प्रति इस विभाग के साथ विधि विभाग को सदैव ही भेजनी चाहिए. वाद पत्र की एक प्रति इस विभाग को आवश्यक रूप से भेजी जाए. मामले की सुनवाई तारीख ..... को..... हेतु नियत की गई है.
5. शासकीय अधिवक्ता/ प्लीडर/ (अभिभाषक)  
की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु अग्रेषित.

( )

उपसचिव,

मध्यप्रदेश शासन, .....विभाग.