



LAW AND JUDICIARY DEPARTMENT

**GIST OF RELEVANT PROVISIONS OF
THE MAHARASHTRA LAW OFFICERS (APPOINTMENT,
CONDITIONS OF SERVICE AND REMUNERATION)
RULES, 1984)**

AND

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

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CHAPTER-I

Introduction

The Law & Judiciary Department functions as legal advisory department to Government and as an administrative department for the Judiciary, Office of Government Pleader, Office of Chief Presenting Officer, MAT, Charity Organization, Sheriff Office, Register of Partnership Firm, Administrator General and Official Trustee.

This department tenders legal advice to the administrative departments in the Mantralaya on the following subjects:-

- (1) Legal points arising under the Constitution, State and Central Act, Rules, Regulations, Service Matters etc.;
- (2) Legislation (both principal and subordinate);
- (3) Litigation (both civil and criminal);
- (4) Conveyancing.

The Law and Judiciary Department mainly consist of following wings:-

- A) Legal Wing &
- B) Administration Wing (Non Legal Wing)

Above Legal Wing consists of following Branches:-

- 1) "A" Branch
- 2) "B" Branch
- 3) "E" Branch
- 4) "M" Branch
- 5) "R" Branch

Item-10 of the First Schedule to the Maharashtra Government Rules of Business made under Article 166 of the Constitution, the Government litigation, civil and criminal, is subject to the control of the Law and Judiciary Department.

The Remembrancer of Legal Affairs is the *ex-officio* Secretary to Government, and he is the head of the Law and Judiciary department.

CHAPTER-II

Brief notes on Rules of Law & Judiciary Department

The Law and Judiciary Department is guided by two sets of Rules, namely:-

- (i) The Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules, 1984, which are statutory Rules made by the Governor of Maharashtra in exercise of the powers conferred by the proviso to Article 309 read with Article 165 of the Constitution of India; and
- (ii) The Rules for conduct of the Legal Affairs of Government of Maharashtra, 1984, which are procedural rules issued by Government by an executive Order, laying down the procedure to be followed by the Law Officers and Panel Counsels appointed to conduct Government litigations.

Said Rules laid down the comprehensive procedure in respect of:-

- 1) Appointment of Special Counsel, Special Public Prosecutor, Panel Counsel and Advocate-on-Record.
- 2) Procedure for filing and defending Civil Suits, Land Acquisition Cases & other Civil Proceedings in Civil Courts in the Mofussil, City Civil Court and Small Causes Court at Bombay and in the High Court.
- 3) Civil Appeals and other Civil Proceedings in the District Court and High Court (Original Side) and (Appellate Side).
- 4) Suit and Appeals by Indigent Person.
- 5) Criminal Matters in the Sessions Courts and High Court.
- 6) Writ Petitions and Appeals arising therefrom in the High Court (Original Side) at Bombay and Writ Petitions in the High Court (Appellate Side) at Bombay, Nagpur & Aurangabad.
- 7) Civil and Criminal Appeals and other Proceedings in the Supreme Court.
- 8) Execution of Decree.
- 9) General Rules for conduct of Suits, Appeals and Other Civil and Criminal Proceedings.
- 10) General and Legal assistance to Government Servants.
- 11) Cases before the Maharashtra Revenue Tribunal.
- 12) Institution and Defense of Suit on behalf of Central Government.

CHAPTER-III

The following are the contents of the relevant provisions used on day to day basis:-

The administrative departments while making reference to the Remembrancer of Legal Affairs for advice has to follow the requirements as provided in Rule 7 of the Rules for conducting the Legal Affairs of Government of Maharashtra, 1984 (hereinafter referred as Rules 1984). The requirements are as follows:

- (a) *the facts of the case in which the opinion is required should be clearly stated;*
- (b) *the point or points on which the advice or opinion is required should be stated as precisely as possible; and*
- (c) *the reference should be made by an officer authorised to do so, officer not below the rank of a Deputy Secretary or the concerned Desk Officer;*
- (d) *before making a reference, the department concerned should consider such previous opinions of the Remembrancer of Legal Affairs, as may available in the Digests of Opinions, which have been supplied to all the departments. These Digests as also recent opinions should be consulted before seeking the Remembrancer of Legal Affairs's opinion, and a reference should be made to any relevant opinion that may have a bearing on the point at issue. This procedure would help the Remembrancer of Legal Affairs, in giving expeditious advice to the referring department;*
- (e) *the drafts and the cases for 'opinion should not be sent to the Remembrancer of Legal Affairs till all the administrative questions finally decided in consultation with the various authorities;*
- (f) *the drafts or notes should as far as possible be self-contained; a suggestion which have been approved in the course of correspondence should be embodied in the drafts or notes forwarded to the Remembrancer of Legal Affairs;*
- (g) *before sending the case to the Remembrancer of Legal Affairs for opinion the concerned department should consider the case on merits*

and come to a certain conclusion and then refer the case for advice whether that conclusion is right or wrong;

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

Rule 8 of the Rules 1984 provides that the opinion of RLA may not be sought on the matters wherein the points concerns mainly with the question of facts or policy matters, cases of hypothetical nature, ordinary departmental procedure or administrative matters or scrutiny of letters and resolutions which do not involve any legal point.

Rule 9 provides that, all the advices and opinions given by RLA and Advocate General to the administrative departments are confidential and shall not be disclosed to the public or other governments including the Central Government without permission of RLA. Wherever cases are referred to RLA for advice, that information should not be divulged to parties interested and they shall not be directed to contact the RLA or his subordinates.

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

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

CHAPTER- IV

Brief Note on 'A' Branch-Criminal

1. Sanction for Prosecution:-

Rule 10 provides for the grant of sanction for departmental enquiries and prosecutions. The Statement of facts on which prosecution is to be based shall be embodied in the sanction or consent order. Many times facts are not correctly and precisely stated in the sanction orders with the result that the sanction or consent becomes vulnerable and the prosecution results in failure. In order to avoid any such contingency, the drafts of sanction orders, and consent orders referred to in sub-rule (1), as far as possible, shall be shown to the concerned Public Prosecutors before sending them to the RLA. The Public Prosecutors shall also scrutinize such sanction orders received from Government before they are filed in the courts and to bring any defects therein to the notice of the appropriate officer before the commencement of the prosecution. Before giving sanction or consent to the prosecution it is necessary to apply mind to the facts of each case; the concerned administrative department of the Mantralaya shall, therefore, call for all the relevant investigation papers and carefully go through them and get itself satisfied about the merits of each case.

While dealing with the files relating to sanction for prosecution, one has to see whether it relates to sanction under section 19 of Prevention of Corruption Act or under section 197 of Cr.P.C.

The attention is invited to G.R dated 12-02-2013 issued by the General Administration Department regarding the prosecutions under Prevention of Corruption Act, 1988. The details as to competent authorities to accord sanction therein and the procedure thereto is to be followed by the administrative departments while preparing the proposals for sanction of prosecution.

Office order dated 12.05.2005 issued by the Central Vigilance Commission is about the guidelines to be followed by the authorities competent to accord sanction for prosecution u/s.19 of Prevention of Corruption Act, 1988. The said guidelines are reproduced herein for sake of convenience:

- (i) Grant of sanction is an administrative act. The purpose is to protect the public servant from harassment by frivolous and vexatious prosecution and not to shield the corrupt. The question of giving opportunity to the public servant at that stage does not arise. The sanctioning authority has only to see whether the facts would *prima-facie* constitute the offence.
- (ii) The competent authority cannot embark upon an inquiry to judge the truth of the allegations on the basis of representation which may be filed by the accused person before the sanctioning authority, by asking the IO to offer his comments or to investigate the matter in the light of representation made by the accused person or by otherwise holding a parallel investigation /enquiry by calling for the record /report of his department.
- (iii) When an offence alleged to have been committed under the PC Act has been investigated by the SPE, the report of the IO is invariably scrutinized by the DIG, IG and thereafter by DG(CBI). Then the matter is further scrutinized by the concerned Law Officers in CBI.
- (iv) When the matter has been investigated by such a specialized agency and the report of the IO of such agency has been scrutinized so many times at such high levels, there will hardly be any case where the Government would find it difficult to disagree with the request for sanction.
- (v) The accused person has the liberty to file representations when the matter is pending investigation. When the representation so made have already been considered and the comments of the IO are already before the Competent Authority, there can be no need for any further comments of IO on any further representation.
- (vi) A representation subsequent to the completion of investigation is not known to law, as the law is well established that the material to be considered by the Competent Authority is the material which was collected during investigation and was placed before the Competent Authority.
- (vii) However, if in any case, the Sanctioning Authority after consideration of the entire material placed before it, entertains any doubt on any point the competent authority may specify the doubt with sufficient particulars and may request the Authority who has sought sanction to clear the doubt. But

that would be only to clear the doubt in order that the authority may apply its mind proper, and not for the purpose of considering the representations of the accused which may be filed while the matter is pending sanction.

- (viii) If the sanctioning authority seeks the comments of the Investigating Agency while the matter is pending before it for sanction, it will almost be impossible for the sanctioning authority to adhere to the time limit allowed by the Supreme Court in *Vineet Narain's case*.

In view of the **G.R dated 12.02.2013** stated above, only if the concerned administrative department, is of the view that the case is not fit for according sanction for prosecution or if the department is unable to form its definite view on the point of according sanction, it shall seek opinion of Law & Judiciary Department on the point of according sanction and after obtaining the opinion, the concerned department shall place the entire investigation papers before the competent authority so as to enable it to take appropriate and conscious decision in the matter by application of mind so as to prosecute such public servant.

Section 197 of Cr.P.C. protects the public servant from frivolous or vexatious complaints / prosecution or any other prosecution, if the act alleged is committed by the public servant while acting or purporting to act in discharge of his official duty. Cognizance of any offence, against the public servant, by any court is barred by section 197 of Cr.P.C., unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect of law if the conditions are satisfied.

Sanction of competent authority under the Central or State Government is necessary u/s.197(1) of Cr.P.C., 1973, if the public servant is accused of any IPC offence, alleged to have been committed by him while acting or purporting to act in discharge of his official duties.

If such an officer at the time of committing the alleged IPC offences, is or was employed in connection with the affairs of the Central Government, such sanction u/s.197(1) of Cr.P.C. is required to be accorded by the Central Government. If such

public servant is or was serving in connection with the affairs of the State Government, such sanction u/s.197(1) of Cr.P.C. for the IPC offences will be required to be accorded by the State Government concerned. In view of the same, we have to examine the draft sanction order and schedule thereto.

The decision to accord sanction is to be taken by the sanctioning authority concerned by following the mandate given by the Hon'ble Supreme Court in the case of *Central Bureau of Investigation Vs. Ashok kumar Agarwal (Cr. Appeal No.1838 of 2013)*, which reads as under:

- a) *The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material /document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.*
- b) *The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.*
- c) *The power to grant sanction is to be exercised strictly keeping in mind the public interest and the prosecution available to the accused against whole the sanction is sought.*
- d) *The order of sanction should make it evident that the authority has been aware of all relevant facts/materials and had applied its mind to all the relevant material.*
- e) *In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.*

Many a times it happens that the erring public servant makes representation to the department about his non-involvement in the crime and hence the concerned department refers the file to the Law & Judiciary Department. While dealing with those references, one has to keep in mind the observations of the Hon'ble Supreme Court in WP (C) No.305 of 2007 in the case of *Manzoor Ali Khan Vs. Union of India and others* decided on 06.08.2014, wherein it has been held that, the competent authority cannot embark upon an inquiry to judge the truth of the allegations on the basis of representation which may be filed by the accused person before the sanctioning authority, by asking the IO to offer his comments or to further investigate the matter in the light of representation made by the accused person or by otherwise holding a parallel investigation/enquiry by calling for the record/report of his department.

The occasion arises wherein the administrative department makes enquiry with the investigating officer or the Director General of Police asking his comments on the representation made by accused, even after all the police papers /chargesheet is sent to it and after collecting the comments thereon, asks the Law & Judiciary Department to opine about the truthfulness of the allegations against the public servant. Attention is also invited to the judgment of the Hon'ble Supreme Court in the case of *Subramaniam Swamy Vs. Manmohan Singh and another reported in (2012) 3 SCC 64*, wherein it has been observed that, the grant or refusal of sanction is not quasi-judicial function. What is required to be seen by the competent authority is whether all facts placed before it which in a given case may include the material collected by the complainant or investigating agency, prima facie discloses commission of offence by a public servant. If the competent authority is satisfied with the material placed before it as to sanction for prosecution of public servant, then it is required to grant sanction. If the satisfaction of the competent authority is otherwise, then it can refuse sanction. The competent authority cannot undertake a detailed enquiry to decide whether or not the allegations made against the public servant are true.

After obtaining the sanction of the competent authority, the administrative department refers the file to Law & Judiciary Department for scrutiny of draft sanction order and schedule thereto. Thereupon the Law & Judiciary Department is supposed to scrutinize the draft sanction order and schedule thereto.

2. **Litigation:-**

Rule 11- Local authorities such as Municipalities, Zilla Parishads in the State shall as a general rule, be required to defend the legality of their own acts and proceedings and shall not seek advice of RLA or any other law officers.

RLA supervises all litigation, civil and criminal, in which the State or its officers are either parties, or interested.

As regards criminal litigation, he has to examine the proposals for filing criminal appeals, applications against the decisions or orders of acquittal or sentence or any interim orders passed by the subordinate courts and the High Court and to decide whether the said decisions or orders should be acquiesced in or not;

Rule- 13 As per rule 13, RLA accords sanction for filing of criminal appeals/applications in the High Court and the Supreme Court and to instruct the Public Prosecutor in the High Court or the Government Advocate in the Supreme Court, as the case may be, for the purpose.

3. **Criminal Litigation:-**

Rule-50 provides procedure for filing of appeals, revisions or other applications in the High Court, when the decision is adverse to prosecution. Where in any Sessions Trial, Criminal Appeal, revision or any other criminal proceeding, the decision of the court is adverse to the prosecution, the Public Prosecutor will propose filing of appeal under Section 378 of the Code of Criminal Procedure, 1973 against the order of acquittal of the accused or an appeal under section 377 of the said Code for enhancement of sentence or any other appeal or an application for revision or any other application to be filed in the High Court. The Public Prosecutor, submit his proposal to that effect to the RLA, as the case may be along with the information and case papers as provided in Rule 50.

In view of the provisions of Rule 50 of the Rules, 1984, Law & Judiciary Department has to scrutinize as to whether the said received proposal is complete or not. If the said proposal is complete, then it is to be examined on merit and by taking appropriate decision to file appeal against the decision of the lower court to the higher court, the Government Resolutions are issued in that respect. Further, attention is also invited to directions given by Hon'ble High Court in the case of *State of Maharashtra Vs. Devidas Nivrutti Gawali & Anr in Criminal Application No.508 of 2012*, to the

Public Prosecutor, High Court, Mumbai, regarding unwarranted challenges to findings of acquittal and to check whether the view taken by trial court is perverse or impossible.

Rule 50(6) - When appeal is filed by a complainant under section 378 (4) of the Code of Criminal Procedure, the Public Prosecutor concerned in the High Court has to immediately forward the High Court notice and other enclosures to the, RLA and seek Government's instructions whether the State should support the appeal or not. .

Thereupon, Law & Judiciary Department examines the matter on merit and if necessary issues instructions to file appeal before Hon'ble High Court in view of notice issued by Hon'ble High Court. Further, attention is invited to circular dated 30th August 2022 issued by Law and Judiciary Department giving instructions to follow Rule 50(6) of the Rules 1984 by all Public Prosecutors, Additional Public Prosecutors.

As per Rule 49(9)(a) and (b), in case the Public Prosecutor is not so inclined to recommend an appeal against the order of acquittal or an appeal for enhancement of sentence or any revision or other application to be filed in the High Court, he shall forward the certified copy of judgment alongwith his opinion giving reasons for the same to the District Magistrate or the Commissioner of Police concerned for onward transmission to the Director of Public Prosecutions, Bombay for scrutiny. A copy of his opinion may also be forwarded to the Superintendent of Police or the Government officer concerned. In such case, if the District Magistrate, the Commissioner of Police, the Superintendent of Police or the Government officer concerned differs from the Public Prosecutor and considers the case fit for moving the High Court, he may forward the copy of judgment in that case with his remarks for consideration directly to the RLA as the case may be.

Rule 49 - In a case in which proposal is made by the Assistant Public Prosecutor to the Public Prosecutor recommending an appeal against the order of acquittal or an appeal for enhancement of sentence or any revision or other application but the Public Prosecutor does not consider the case to be a fit one for moving the High Court and the District Magistrate or the Commissioner of Police concerned is also of the same opinion, such proposal need not be forwarded to the Law and Judiciary Department for further scrutiny. However the reasons for not recommending the appeal or revision, shall be recorded by the Public Prosecutor and the District Magistrate or the Commissioner of

Police concerned. They shall also invariably intimate such decision to the Superintendent of Police concerned in respect of cases arising from the mofussil area.

Attention is invited to Law & Judiciary department Circular dated 30th August 2022 giving instructions to follow Rule 49 (9) (a) & (b) of the Rules 1984, by all Public Prosecutors, Additional Public Prosecutors.

Rule 52- It is duty of concerned Public Prosecutor as soon as the appeal, revision or other criminal proceeding has been decided by the High Court, to inform the result of the case to the RLA, and also to the Public Prosecutor concerned in the Sessions Court and all the Government officers concerned. He shall also apply immediately for a certified copy of judgment. If the High Court upholds the State appeal, revision or other application or passes order in favour of the State, the Public Prosecutor concerned in the High Court has to send the certified copy of judgment to the Government officer concerned, who proposed the appeal, revision or other application.

4. Filing of Appeal in the Supreme Court of India:-

Law and Judiciary Department examines the proposal for filing of appeal, whether Civil or Criminal, to the Supreme Court, either received from the Government Pleader or Public Prosecutor in the High Court or other Government officer, interested in the case, through his administrative department, and examine whether there is a strong probability of success and/or substantial question of law of general importance or interpretation of the Constitution is involved.

Rule 63- If it is decided to file an appeal in the Supreme Court against the judgment decree, order or sentence passed or made by the High Court, or any other court or tribunal, the RLA, sends instructions in Form No. 12 to the Government Advocate for the State, appointed by Government in the Law and Judiciary Department in the Supreme Court, for filing Special Leave Petition in the Supreme Court under Article 136(1) of the Constitution, along with the case papers mentioned in Rule 63. On receipt of communication from Law and Judiciary Department to the above said effect the administrative department concerned has to depute a responsible official, having actual knowledge of the case, to contact the Government Advocate for swearing an affidavit in Form No. 14 in support of the statement of facts and other contents contained in the petition to be filed in the Supreme Court as required under rules 4(2) and 5(ii) of Order

XVI of the Supreme Court Rules, 1966. The Government Advocate shall file a petition, for special leave in the Hon'ble Supreme Court within the time limit.

5. **Appointment of Special Public Prosecutor:-**

Rule 18 - No special counsel on behalf of the State or its officers shall be engaged in any civil case in the High Court and subordinate courts in this State or in other States and in civil and criminal cases in the Supreme Court without the sanction of the RLA. The fees, travelling allowances and other charges of such counsel shall also be settled by the RLA. The procedure for engagement has to be followed as provided in Rule 18.

Rule 21 - RLA is empowered to appoint under **sub-section (8) of section 24 of the Code of Criminal Procedure**, any person, who has been in practice as an advocate for not less than ten years, as a Special Public Prosecutor on behalf of the State to conduct any criminal case or class of cases in the High Court or subordinate court. The proposal to that effect shall be made to him either by the District Magistrate, Commissioner of Police, Public Prosecutor or the Government officer concerned, through his administrative department.

Rule 22 - Rule 22 of the Rules for conduct of the legal affairs of Government 1984, came to be substituted by the Amendment Rules, 2004. **Amended Rule 22** provides that the Government in the Law and Judiciary Department, either *suo-motu*, or on the request of any aggrieved party or the concerned Department in the Government, may, engage an advocate who has been in practice as an advocate for not less than ten years, and having regard to his general repute, legal acumen and suitability, by appointing him, as a Special Public Prosecutor in any criminal case or class of cases, as the case may be, having regard to the nature of the case, gravity of the matter and public interest involved in the matter that, such appointment is necessary. On the request of a private complainant not being the aggrieved party, the Government in Law and Judiciary Department may, appoint any of the Public Prosecutor or Additional Public Prosecutor as a Special Public Prosecutor in accordance with the provisions of sub-rule (1), for conducting any such case.

Fees for such Special Public Prosecutor, appointed under sub-rule (1) and (2), may be borne by the Government or the aggrieved party or the private complainant, as may be directed by the RLA. In cases where the aggrieved party is, a Bank or an Institution or Trust or the like, the fees shall be borne by such aggrieved party. The amount of the fees to be paid to such Special Public Prosecutor, is required to be deposited with the Government in the Law and Judiciary Department first, and the same shall be paid by it to such Special Public Prosecutor on completion of the trial, unless directed otherwise by the RLA.

While appointing any Advocate as a Special Public Prosecutor, Law and Judiciary Department is guided by the judgment of the Hon'ble Supreme Court in the case of Mukul Dalal and others v/s Union of India, 1988 SCC (3) 144 and amended Rule 22 of Rules of Conduct of Legal Affairs of Government, 1984. The Special Public Prosecutor is appointed under the following categories:-

- A) Public interest,
- B) Atrocities against backward classes of citizens and women,
- C) Planned and premeditated murder, multiple murders,
- D) Violence by an organized group,
- E) Cheating of citizens in pursuance of a conspiracy,
- F) Economic offenses involving the cheating of citizens,
- G) Offences affecting the integrity and security of the State and,
- H) Other grave matters.

The Special Public Prosecutor are supposed to assist the court independently and shall not be guided by some other factors.

6. Withdrawal of Prosecution:-

Rule 49 (7) (a), Provides that, the Public Prosecutor shall not withdraw any prosecution without obtaining the sanction of Government in the Home Department. He shall except upon a suggestion by the court or for other special reasons which it will be for him to substantiate, withdraw any prosecution without first consulting Government in the Home Department through the District Magistrate, other Government officers responsible for the prosecution. When the prosecution has to be withdrawn, the Public

Prosecutor is normally expected to consult and obtain sanction of the District Magistrate concerned before applying withdrawal of such prosecution.

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

Under Section 321 of the Code of Criminal Procedure, the discretion to withdraw from a prosecution with the consent of the court, vests with Public Prosecutor. In view of this legal position, the Public Prosecutor is expected to apply his mind to the facts and circumstances of the particular case and place before the court suitable grounds for withdrawing the prosecution in such cases.

While dealing with the files relating to the withdrawal of prosecution, one has to see whether parameters framed by concerned Home Department / Labour Department are fulfilled. For general reference attention is invited to GR dated 14/03/2016 and 10/11/2022 issued by Home Department from time to time. directing for withdrawal of prosecution taking policy decision, Further, as regards withdrawal of prosecution cases under Factories Act, it has to see compliance of conditions letter dated 14/06/2005 and it has to take informed and conscious decision in these cases on administrative level, and issue instructions.

Further, attention of Home Department and Industries, Energy and Labour Department is also invited to the guidelines and directions given by the Hon'ble Supreme Court of India, vide its orders, in the matter of *Ashwini Kumar Upadhyay V/s. Union of India & Anr. in Writ Petition (s) (Civil) No (s). 699/2016* regarding the withdrawal of prosecution, in respect of sitting or former M.P./M.L.A.

7. Cancellation of Bail:-

If the Public Prosecutor or the District Magistrate or the Commissioner of Police concerned is of the opinion that any person released on bail by any court should be rearrested and committed to custody, he shall immediately send his proposal for cancellation of bail to the Remembrancer of Legal Affairs. In such cases this Department will examine the matter on merit and if it comes to conclusion the order passed by concerned court is not impossible or perverse then State shall proceed to file revision

before Hon'ble High Court. If State Government is of opinion that, this is not fit case then this Department communicated to concerned Public Prosecutor vide letter.

8. Institution or defend of criminal proceeding in the court situated in other State:-

Rule 102 - The Government officer, through his head of the department, who wants to institute or defend any suit, appeal or any other civil or criminal proceeding in the court situated in other State has to approach the RLA, while doing so, he shall follow the procedure as laid down in the foregoing rules. On receipt of the report and the relevant documents from the head of the department concerned, the RLA, corresponds with the RLA of the State Government concerned for asking their Law Officer to appear on behalf of this State or its officers or both in such suit, appeal or any other criminal proceeding. On receipt of the intimation from the RLA of the State Government concerned about the engagement of a particular Law Officer, the Government officer concerned shall make available all the information required by such Law Officer. The fees for the conduct of such case, as certified by the RLA of the State Government concerned on the basis of the rules 91 prescribed by the State Government concerned for payment of fees to its Law Officers, shall be paid from the grants of the RLA of this State.

Similarly, RLA can call upon the Government Pleader or Public Prosecutor to appear on behalf of other State Government in the cases, whether Civil or Criminal filed in the court to which he is attached, when required to do so Rule 14 (6) of Chapter-IV of the Maharashtra Law Officers (Appointments, Conditions of Service and Remuneration) Rules, 1984.

Rule 92 and 109 of the Rules for the Conduct of Legal affairs of the Government, 1984 and the **Circular dated 20.12.2011 read with Corrigendum dated 18.07.2014 issued by this department** (Circulars are available on official website of Government), it is seen that, the Government in the administrative department may grant legal assistance to its officers, who have to institute civil or criminal proceedings in respect of acts done, in good faith, by or purported to have been done by them in discharge of their official duties or to defend such proceedings in which they have been sued by name and designation, or in their personal capacity, for the acts done by them in the discharge of their official duties and it appears to Government in the administrative department that they have acted in good faith and in due discharge of their official duties.

Chapter-V

Brief Note on 'A' Branch-Civil

Rule 7 - The procedure for making reference for legal opinion is prescribed under Rule 7 of the Rules for the Conduct of Legal Affairs of Government, 1984 (the said Rules, 1984), and it is binding on all the departments of Mantralaya to make reference to this department accordingly. No opinion is expected to be tendered by 'A' Branch, if the reference is not made in the prescribed manner given under Rule 7 of the said Rules, 1984.

(A) While making reference to this department for opinion in civil matter, the administrative department in Mantralaya shall ensure that:-

(1) The reference should be made by an officer authorized to do so:-

It is necessary to see that, whether the reference has been made by the higher authority of that administrative department, such as, Secretary/ACS/Chief Secretary /Minister/Chief Minister or any authority duly authorised officer by the higher authority. If the reference is not made through authorised authority, then the same is required to be returned to avoid further administrative issues;

(2) The facts of the case in which the opinion is required should be clearly stated:-

To enable this branch to understand the background of the issue under consideration, it is for the concerned administrative department to discuss the entire factual position related to the issue under consideration in the chronological sequence and to make available all the relevant documents pertaining to that factual position on the file;

(3) The issue under consideration is required to be discussed in the light of the relevant laws and/or policy decision and/or court judgments, etc.:-

The administrative department shall discuss the issue under consideration in the light of the relevant laws, such as Acts /Rules /Regulations /Notifications /Government Resolutions /Circulars/ Government Orders etc.. In case, the issue under consideration is based on any policy decision, then, the administrative department shall discuss the said policy decision in detail. It is also necessary to see that the administrative department has referred all the relevant court judgments in the reference.

(4) The point or points on which the advice or opinion is required should be stated as precisely as possible:-

To enable this branch to tender precise opinion on the issue under consideration, it is necessary to see that the reference is made on the specific point(s) on which the opinion of this branch is sought. The nature of those point(s) must not be hypothetical.

(5) Previous Opinion of all the other concerned administrative departments and the concerned authorities to be taken before making the reference:-

It is necessary for the concerned administrative department to decide all the administrative questions/issues in consultation with the concerned administrative departments or concerned authorities, as the case may be, before making reference to this department for opinion on the legal issues.

(6) To consider previous opinions of this department on the similar issue, if any:-

It is mandatory for the department concerned that, before making a reference for opinion of this department, to consider the opinion, if any, tendered previously by this department, on the similar issue.

(7) To consider the case on merit, and come to conclusion and then refer the conclusion for confirmation of this Branch:-

It is expected from the concerned administrative department to consider the issue under reference in the light of relevant factual as well as legal matrix. After considering the case on merit, specific perception or conclusion is required to be drawn by that department and, then the reference is to be made to this branch for advice whether that conclusion or perception is right or wrong.

(B) The concerned officer of the 'A' Branch to whom the reference is assigned is required to examine the reference in the following manner:-

- (1) Generally, at the outset, to mention the specific question or issue or point of reference on which legal opinion of this branch is sought.
- (2) The factual position of the case to be discussed in brief in chronological manner.
- (3) To answer the issue under consideration, all the relevant laws to be discussed, such as relevant provisions of Acts /Rules/Regulations/Notifications/Government Resolutions /Circulars/ Government Orders etc., which are applicable in the matter under consideration.

- (4) If the issue under consideration related to any policy decision, then, it is necessary to discuss the relevant policy, too.
- (5) It would be appropriate to discuss the ratio laid down by the Apex Court, alongwith other relevant Judgments and Orders of the Court of law applicable in the matter under consideration.
- (6) Then, to discuss the issue under consideration in the light of the factual and legal matrix of the case.
- (7) At the end, it for the concerned officer to whom the reference is assigned, to come to definite conclusion and, thereby, frame precise legal opinion on the issue under consideration, and, thereafter, submit the same for the approval of the Remembrance of Legal Affairs through concerned higher officer of the branch.
- (8) After obtaining the approval of Remembrance of Legal Affairs to the Note submitted by the concerned officer to whom the reference is assigned, the final Civil Opinion shall be issued to concerned administrative department or office of the Governor or office of the Chancellor of State University, as the case may be.

Rule-6 of the Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules, 1984:-

As per rule 6 of the Rules 1984, the Advocate General shall advise the Government upon such legal matters including prepositions of legislation on which he may be consulted and perform such other duties of legal character as may from time to time be referred to him by the Remembrance of Legal Affairs.

In view of the above rule, either at the instance of the administrative departments or suo moto, this Branch through Remembrance of Legal Affairs seeks opinion of Ld. Advocate General, M.S. in the matters involving interest of State Government or important question of law or having far reaching consequences, etc.

1. 'E' Branch and its functions

The work of this branch is broadly categorized as follows:-

- I) City litigation
- II) Conveyancing
- III) Notary
- IV) Miscellaneous

I) City litigation:

City litigation refers to the civil litigation arising out of Mumbai city. Broadly it includes following matters.

- a) Supreme Court civil matters
- b) Writ Petition in the High Court (Original Side and Appellate Side)
- c) High Court suits
- d) High Court Appeal arising from the Civil Courts in Mumbai
- e) Sales tax/GST matters in the High Court
- f) Company petitions
- g) Arbitration matters
- h) City Civil Court suits and appeals etc. arising therefrom
- i) Small Causes Court suits and appeals etc. arising therefrom
- j) Service related matters before the Maharashtra Administrative Tribunal and Central Administrative Tribunal in Mumbai and matters connected therewith
- k) Litigation in other Tribunals and Commissions in Mumbai

II) Conveyancing:

The conveyancing work is broadly divided into two categories, namely,

- a) City conveyancing: This work is related to scrutiny/drafting of the documents in respect of the properties in Mumbai city where State of Maharashtra is one of the parties to such documents. e.g. Scrutiny/drafting of the agreement for lease/leave and license in respect of lands in the city of Mumbai.
- b) General conveyancing: The conveyancing work other than the city conveyancing is included in general conveyancing.

III) Notary: This includes following work in respect of notary appointed by the State of Maharashtra.

- a) appointment of notaries,
- b) extension of area of practice of a notary,
- c) renewal of notary certificates,
- d) inquiry into the complaints received against the notaries appointed by the State of Maharashtra and disciplinary action against such notaries.

IV) Miscellaneous:

Broadly the miscellaneous work in branch includes:

- a) Proposals for engagement of Special Counsels in the Supreme Court, High Court (O.S/A.S.) Bombay, Tribunals in Mumbai, City Civil Court, Small Causes Courts etc., as per provisions of Rule 18 of the Conduct of Legal Affairs Rules.
- b) Proposals for grant of legal assistance to the Government employees/officers who are impleaded as party respondent in the litigation by name and designation in respect of acts done by them in good faith, or purported to have been done in discharge of official duties as per provisions of rule 92 and 109 of the Conduct of Legal Affairs Rules and circular dated 20.12.2011 r/w corrigendum dated 18.07.2014.
- c) Proposals for filing of caveat on behalf of State of Maharashtra as per the provisions of rule 64 (6) and 108 of the Conduct of Legal Affairs Rules.
- d) Direct correspondence from the allied offices and Ministers' Office.

2. Stages of Processing of references by 'E' branch

- I) Pre-Preliminary Stage.
- II) Preliminary Stage.
- III) Final Stage.

I) Pre-Preliminary Stage:

When the reference does not pertain to 'E' branch.

- a) Where on preliminary examination of the reference it reveals that the reference does not pertain to 'E' branch but it pertains to other desk/ branch of the Law and Judiciary Department in Mumbai then, by giving brief reasons, such reference be transferred at once with approval at appropriate level to the concerned desk/ branch for necessary action.
- b) Where on preliminary examination of the reference it reveals that the reference does not pertain to 'E' branch but it pertains to the office of Joint Secretary at Nagpur or Aurangabad, as the case may be, in view of the provisions of rule 16 and 17 respectively, of the Conduct of Legal Affairs Rules, then the reference be returned, with approval at appropriate level, to the department inviting its attention to the provisions of rule 16 or rule 17, as the case may be, and it shall be requested to make a reference directly to the office of Joint Secretary, Nagpur/Aurangabad as the case may be.
- c) where direct reference is received from the allied offices, the attention of the concerned allied office be invited to rule 6 of the Conduct of Legal Affairs Rules and such references be returned to the concerned allied office with a request to make such reference through the concerned administrative department in Mantralaya as per said rule 6.

II) Preliminary Stage:

when the reference pertains to 'E' branch

A) General scrutiny of opinion matters:

Where the reference pertains to 'E' branch, before detailed scrutiny of the said reference, it shall be ensured that,

- i) The reference is made in strict compliance with the provisions of rule 7(1) of the Conduct of Legal Affairs Rules, i.e. the department before making a reference has considered the case on its merits in the light of the relevant provisions of Acts/Rules/Policy, orders of the Courts, if any, and has drawn a concrete conclusion and then referred the file to this department for remarks whether the conclusion drawn by the department is right or

wrong; also, it has finally decided all the administrative questions in consultation with various authorities/departments.

- ii) The reference is not covered under rules 8 and 11 of the Conduct of Legal Affairs Rules, or otherwise.

Where the reference is not made in strict compliance with provisions of rule 7(1) or is covered under rule 8 or 11 of the Conduct of Legal Affairs Rules, the file of the department be returned, with approval at appropriate level, inviting attention of the department to the applicable rule.

B) Subject specific scrutiny of matters:

i) Special Leave Petition (SLP)/Appeal / Revision / Review/Writ proposals.

a) SLP/ Appeal before Supreme Court:

Where a proposal is received from the department for examining feasibility of filing of SLP /appeal before the Hon'ble Supreme Court against the orders of Hon'ble High Court / Green Tribunal etc., before undertaking the scrutiny, it shall be ensured that such proposal is in compliance with the provisions of rule 63 of the Conduct of Legal Affairs Rules and the papers, namely, copy of impugned order, copy of judgment and order proposed to be challenged, the copy of affidavit filed in the matter with annexure, memo of writ petition, detailed note explaining the law and facts of the case, opinion of concerned Government Pleader / Counsel on the point of filing of SLP/ appeal, other relevant papers, such as, copy of Government Resolutions/ Circulars/Rules/Acts etc. involved in the matter.

b) Appeal / Writ Petition before High Court, Bombay:

Where a proposal is received from the department for examining feasibility for filing of Writ Petition /appeal before the High Court against the orders of Maharashtra Administrative Tribunal, Mumbai (MAT)/ Central Administrative Tribunal (CAT) at Mumbai; City Civil Court, Mumbai; Small Causes Court, Mumbai and / or other Tribunals/ Commissions in Mumbai etc., before undertaking the scrutiny, it shall be ensured that such proposal is in compliance with the provisions of rule 35 or 57 of the Conduct of Legal Affairs Rules, as the case may be, along with the papers, namely, copy of impugned order, copy of judgment and order proposed to be challenged, the copy of affidavit/written statement filed in the matter with annexure, memo of Original Application / Suit, detailed note explaining the law and facts of the case, opinion of concerned Presenting Officer/ Government Pleader / Counsel on the point of filing of appeal/ writ petition, other relevant papers, such as, copy of Government Resolutions/ Circulars/Rules/Acts etc. involved in the matter.

ii) **Conveyancing matters:**

Before undertaking the scrutiny of the documents it shall be ensured that, the proposal is in strict compliance with the provisions of rule 7 (2) (e) of the Conduct of Legal Affairs Rule.

Where on scrutiny of the reference it reveals that the reference is not made in compliance with the aforesaid requirements, the file of the department shall be returned at the earliest with a request to the department for making a reference in compliance with the requirements as stated above.

NOTE: While dealing with the reference received it is very important to adhere to the limitation prescribed under law. Where the time does not permit for returning the file for compliances as mentioned above, instead of returning the file to the department the concerned officer of the department shall be contacted on email/phone etc. and he be asked to make compliances at the earliest.

III) **Final Stage:**

Where the reference received is complete in all respect, the scrutiny of such reference shall be undertaken as under;

A) **General scrutiny of opinion matters:**

a) the concerned legal officer shall minutely go through the entire file wherein reference is made for remarks /opinion of the department.

b) i) **Where same/similar reference was received earlier:**

Before proceeding to prepare note, it shall be verified whether, the same or similar reference involved in the file, was received in the branch and same has been dealt with in the branch. Where such a reference is received earlier, all earlier papers with the branch be taken out from the concerned clerk. Where on scrutiny of earlier papers in the branch it is revealed that very similar reference was received and dealt with this branch, attention of the department be invited to such a reference and the file be returned.

ii) **Where same/similar reference is not received earlier:**

Where no similar reference was received earlier, the concerned legal officer shall proceed to prepare a note keeping in mind following points;

- language of the note shall be simple, clear and grammatically correct.
- note shall be precise and consists of paragraphs duly numbered.
- generally, the paragraphs be in certain chronology.
- the first paragraph shall consist of query posed by the department in clear and precise manner.

- the next paragraph, shall consist of the facts of the case in the appropriate sequence, if necessary, this paragraph be divided in appropriate sub-paragraphs.
- the subsequent paragraph shall consist of the views of the concerned department, other administrative authorities/departments, concerned law officer, if any, on the issue under reference shall be narrated.
- in the next paragraph the views expressed by the department on the reference made for remarks/opinion shall be examined in the light of relevant provisions of Acts/Rules/Regulations/GRs/Circulars/Orders of the Court/Tribunal, if any, applicable to the case under reference by appreciating the factual and legal matrix.
- in the penultimate paragraph, a conclusion be drawn on the reference made by the department for remarks/opinion by appreciating facts and legal provisions. Whenever possible, the conclusion drawn shall be supported by a judicial pronouncement of Hon'ble Supreme Court/High Court and reference of such judicial pronouncement be made clearly in the note.
- In the last paragraph the reference of the department be answered in clear and unambiguous words.

B) Subject specific scrutiny of matters:

i) Special Leave Petition (SLP)/Appeal / Revision / Review/Writ proposals.

a) SLP/ Appeal before Supreme Court:

On receipt of complete proposal for examining the feasibility on filing SLP/Appeal before the Hon'ble Supreme Court, the legal officer shall take following steps.

Steps before proceeding to prepare note:

- go through the note of the department proposing appeal.
- go minutely through the petition /application, affidavit /written submissions, order of the High Court/Tribunal which is proposed to be challenged before the Supreme Court.
- go through the opinion of the Ld. Government Pleader/Counsel on the point of filing of appeal before the Supreme Court.
- peruse other relevant papers relating to the issue involved in the litigation.

Steps for preparing note:

The note shall be prepared on the lines set out below;

- language of the note shall be simple, clear and grammatically correct.
- note shall be precise and consists of paragraphs duly numbered.

- generally, the paragraphs be in certain chronology.
- the first paragraph shall consist of the details about the order of the Court/Tribunal which is proposed to be challenged before the Supreme Court .
- the next paragraph, shall consist of the brief facts of the case in the appropriate sequence, if necessary, this paragraph be divided in appropriate sub-paragraphs. While recording the facts it shall reflect the stand of the Government taken in the affidavit-in-reply/written submission. The copying of facts from the judgment/order of the High Court/Tribunal be avoided.
- in the next paragraph, the findings and directions of the Court in the order proposed to be challenged and the reasons recorded in the order of the Court in support of its findings and directions shall be mentioned in brief.
- the subsequent paragraph shall consist of the views of the concerned department; other administrative authorities/departments, if any; and concerned law officer with reasons in support of their views on the point of filing of appeal before the Supreme Court.
- in the next paragraph the legality of the order of the Court/Tribunal proposed to be challenged shall be examined in the light of allegations of the petitioner/applicant in Writ Petition/Application, stand of the Government in affidavit/written submission, views expressed by the department/law officer on the point of filing of appeal, relevant decisions of Hon'ble Supreme Court on the issue and relevant provisions of Acts/Rules/Regulations/GRs/Circulars applicable to the case under reference. After examination, a conclusion be drawn by giving detailed reasons in support thereof, on the point whether it is necessary to challenge the order in question before the Hon'ble Supreme Court or otherwise. Generally, the conclusion drawn be supported by the appropriate rulings of the Hon'ble Supreme Court.
- In the last paragraph the conclusion on the point of challenging the orders before the Supreme Court be recorded in clear words.

b) Appeal / Writ Petition before High Court, Bombay:

The steps/procedure as mentioned above, in respect of filing of SLP/Appeal before the Supreme Court shall be followed with appropriate modification in dealing with the proposals for filing of Appeal/Writ Petition before the High Court.

3. Conveyancing Matters

This Branch undertakes the scrutiny of the conveyancing documents to be executed for and on behalf of the Hon'ble Governor (Art. 299 of the Constitution of India)

Rule 7 (2) (e) of the Rules for the Conduct of Legal Affairs of Government provides with the compliances to be made while referring document of contract or conveyancing to this department for drafting or scrutiny.

After receiving a particular document for scrutiny it should be verified whether, it is to be executed on behalf of the Hon'ble Governor. It should also be ensured that the approval of the Government is duly obtained to the proposal. Else, the file may be returned to the concerned department with a request to move the Law and Judiciary Department once Government approval is obtained. The very object behind insisting for the approval of the Government is to enable this department to scrutinize the document in the line of the terms and conditions agreed between the parties. It is to be made sure that the interest of the State is protected after going through all the clauses of the documents. It is also to be taken care that the object and the purpose of the Government stands served.

Further, this department merely, scrutinizes the document from legal perspective and not the technical ones.

Following are the documents this department generally scrutinize:

- 1) Memorandum of understanding.
- 2) Article of Association and Memorandum of Association of a company.
- 3) Leave and License Agreement.
- 4) Lease deeds.
- 5) Tender documents.
- 6) Contract Agreement.
- 7) Memorandum of Association and Rules and Regulations of a Society.
- 8) State Support Agreement.

Notification dated 26.06.1971 is issued by this department enumerating the officers authorized to enter into agreement on behalf of the Hon'ble Governor under Art. 299 (1) of the Constitution of India.

This department has also issued GR dated 13.10.2016 on the dispute resolution mechanism through institutional arbitration with reference to contracts exceeding 5 crores.

4. Notary Cell

The Notaries Act, 1952 is a Central Act. The Central Government has powers to make Rules as per section 15 of the Notaries Act, 1952. The appointment of Notaries in the State of Maharashtra is done as per the provisions of Notaries Act 1952 and Rules thereunder of 1956. Accordingly, the State of Maharashtra may appoint Notaries all over Maharashtra.

Status Of Notary Application For Online Appointments

In the year 2019, the Government of India amended the Notaries Rules, 1956, w.e.f. 05.11.2019 thereby mandating the appointment of Notaries through online system.

The statutory provisions eligibility criteria for appointment of Notary are as under-

1. 10 years practice for General Advocates.
2. 7 years practice for SC/ST/OBC & Female and PWDs Advocates, etc..

On receipt of the applications, the eligible candidates are called for interview and are interviewed by the Interview Board that is constituted with the approval of the PS & RLA and the qualified candidates are notified by the Government of Maharashtra as a Notary Public for a particular area. Rejected candidates are also informed about their rejection.

Annual publication of lists of notaries.-

At the beginning of every year in the month of January, the list of Notaries is published in view of Section 6 of the Notaries Act, 1952 r/w Rule 17 of the Notaries Rules, 1956 by the State of Maharashtra recording the qualifications, residential and professional addresses, area of practice, etc. of the Notaries.

Renewal of Certificate of Practice-

If application for renewal of Certificate of Practice is received in Form XVI before (six months) from the date of expiry of its period of validity; after scrutiny of the relevant documents viz. annual reports, Inspection Reports, the renewal is granted for the next five years from the date of expiry of the Certificate of Practice after the payment of prescribed fees.

The delay in making the application for renewal of Certificate of Practice may be condoned by the appropriate Government in virtue of the recent amendment dated 22.07.2022.

Removal of Notaries:-

In view of Section 10 of the Notaries Act, 1952, the State Government may remove the name of the Notaries for the following reasons:

1. request is made for surrender of certificate of Practice
2. prescribed fee is not paid by the Notary
3. if the Notary is an undischarged insolvent;
4. the Notary is found guilty of professional or other misconduct upon inquiry
5. the Notary is convicted by any court for an offence involving moral turpitude;
6. The Notary does not get his certificate of practice renewed.

The proposal for removal of Notary is submitted for the aforesaid reasons quoting the grounds and recording particular provision of Section 10 of the Notaries Act, 1952 for the approval of the competent Authority viz. Principal Secretary & R.L.A. and/or the Government. After approval, the names are removed and the Notary is informed accordingly.

Such removal or renewal of Certificate of Practice is recorded in the annual publication of Notaries List regularly.

Inquiry into the allegations of professional or other misconduct of a notary.

An inquiry may be initiated by the Appropriate Government either *Suo Motu* or on a complaint received in Form XIII.

After scrutiny, if such complaint is not in proper form or does not contain particulars, namely:

- (a) the acts and omissions which, if proved, would render the person complained against unfit to be a notary;
- (b) the oral or documentary evidence relied upon in support of the allegations made in the complaint.

the complaint is returned the complainant for representation after compliance with such objections and within time specified.

Further, if the subject-matter in a complaint is already covered in any previous complaint and if there is no additional ground, the Government shall file the said complaint without any further action and inform the complainant accordingly.

Within sixty days ordinarily of the receipt of complaint, the appropriate Government shall send a copy thereof to the notary at his address as entered in the Register of Notaries and where an inquiry is initiated, *suo motu* by the appropriate Government, the appropriate Government shall send a statement to the Notary specifying the charge or charges against him with particulars of the oral or documentary evidence relied upon.

On the Written Statement from the Notary, the Competent Authority to draw *prima facie* case and decision is taken by the Appropriate Government thereafter whether to cause enquiry in the matter further or otherwise.

As per the practice of this department after *Prima Facie* case, if it is decided to cause an enquiry a charge is framed and then evidence is taken.

Thereafter, the competent authority submits his report to the Government, accordingly, after approval of the appropriate Government, the decision is taken in the matter in view of provisions of Rule 13 of the Notaries Rules, 1956.

5. Miscellaneous work of 'E' branch

Special Counsel Appointments:- The Remembrancer of Legal Affairs is empowered to appoint Special Counsels on behalf of the State to conduct any Civil case in the Hon'ble Supreme Court and High Court, etc.

The administrative departments refer the proposal for appointment of Special Counsels for conducting cases before the Hon'ble Supreme Court, High Court & Tribunals. This department examines the proposal on various points including nature of case, compelling circumstances, necessity for engagement of Special Counsel, standing of the proposed Counsel, consent and professional fees.

If, the department is satisfied that Special Counsel is required to be engaged in the matter, then, instructions to the Government Pleader, High Court and/or Government Advocate, Supreme Court OR the Chief Presenting Officer, as the case may be, shall be issued to that effect.

Even services of the Ld. Advocate General are availed in matters involving challenge to the vires of a particular statutes OR the ones of the Constitutional importance.

Filing of Caveat:

If any of the administrative departments of Mantralaya refers the proposal for filing of Caveat on anticipation that Special Leave Petition may be filed against the State in any matter, this department issues instructions to the Government Advocate, Supreme Court for filing of caveat.

For filing of Caveat before the Hon'ble High Court, the concerned administrative department may issue the instructions to the concerned Government Pleader at its administrative level under intimation to this department.

In this regard Rule 64 (6) and Rule 108 of LOR may be referred.

Granting Legal Assistance to Government Officers:

This department receives proposals to provide legal assistance to Government Officers in any court proceedings, wherein, they are party by name and designation in respect of acts done by them in good faith, or purported to have been done in the discharge of official duties.

In such cases, the concerned administrative department is informed that, Rule 92 & 109 of LOR and circular dated 20.12.2011 read with corrigendum dated 18.07.2014 authorises them to issue necessary instructions to the Government Pleader for conducting the matter on behalf of the concerned Government Officer/s.

Court Proceedings in other States:

The concerned administrative department makes reference to this department, when the State of Maharashtra desires to institute/file or defend any civil proceeding in Court situated in other States.

In such cases, as per **Rule 102 of the LOR**, this department corresponds with the Law department of the concerned State Government requesting them to engage their Law Officer for the aforesaid purpose on behalf of the State of Maharashtra. The fees of the Counsel so appointed shall be borne by the State of Maharashtra.

6. References to Ld. Advocate General

Where this department receives requests from the administrative departments in Mantralaya for seeking opinion of the Ld. Advocate General on any legal issue, the said legal issue is thoroughly examined and opinion is formed. Thereafter, the file is referred to Ld. Advocate General, after preparing "Statement of Case" with remarks of the Law and Judiciary Department for the esteemed opinion of the Ld. Advocate General. On receipt of the opinion from the Ld. Advocate General, the same is forwarded to the concerned administrative department in Mantralaya.

Also where the Principal Secretary and RLA in his discretion thinks it appropriate to have opinion of Ld. Advocate General on particular legal issue, he may make a reference accordingly to the Ld. Advocate General.

7. Important Circulars issued by 'E' Branch

No.	Circular No. and date	Subject of Circular
1	5118/E 28.02.1985	Law Officers to represent the State and its authorities
2	7031/E 06.04.1985	Appointment of a Law Officer on behalf of the Chancellor and payment of his professional fees
3	14142/E 14.08.1985	Procedure to be followed by Secretaries of the Departments of Mantralaya in arranging conferences with law officers
4	1769/Confl/E 11.12.1987	Issue of Contempt Notices by Courts procedure to be followed by Law Officers
5	3822/E 11.08.1989	Writing of letters by the Government Pleaders to the concerned Administrative Departments of Mantralaya involved in Writ Petitions and other litigation filed against the Government in the High Courts
6	4190/E 06.09.1989	Report under rule 58 of the Rules for the conduct of the Legal Affairs of Government, 1984, all Departments of Mantralaya, to send direct to the Government Pleader concerned
7	4757/E 16.10.1989	Not to engage a Counsel who is not on Government Panel to conduct any proceedings before the Court on behalf of Government and its officers
8	4758/E 16.10.1989	Making of reference in litigation arising out of Vidharbha and Marthwada Regions directly to the Joint Secretary, Law and Judiciary Department, Nagpur and Aurangabad, respectively
9	545/E 15.02.1993	Maharashtra Administrative Tribunal Procedure regarding service of notices, filing of affidavits in reply in cases filed before MAT
10	1287/E 02.05.1996	Maharashtra Administrative Tribunal Procedure regarding service of notices filing of affidavits in reply in cases filed before MAT as well as High Court, Mumbai and its benches and Supreme Court
11	1685/E 25.06.1996	Maharashtra Administrative Tribunal procedure regarding filing of Para wise remarks in cases filed before MAT
12	8818/E 15.10.1997	Procedure for filing Caveat in the Maharashtra Administrative Tribunal, Mumbai and its Benches the High Court, Mumbai and its Benches and the Supreme Court
13	975/E 07.04.1998	Procedure to be followed by the Under Secretaries (Legal) of the various Departments of Mantralaya regarding pending Litigation in the Courts
14	1291/E 28.05.1998	Procedure to be followed by the various Departments of Mantralaya while forwarding documents for scrutiny

15	1701/E 15.07.1998	Procedure regarding service of notice, filing of Affidavits-in-reply in cases filed before MAT its benches at Aurangabad and Nagpur as well as High Court, Mumbai and its benches and Supreme Court
16	1669/E 05.09.2001	Strict and scrupulous observance of Rule 53, 60 and 68 of the Rules for the Conduct of the Legal Affairs of Government, 1984, for filing appeal/Special Leave Petition to the Hon'ble Supreme Court
17	1523/E 14.08.2002	Filing of affidavits/affidavit-in-reply before the Supreme Court, High Court (OS), (AS), Bombay and its Benches at Aurangabad & Nagpur & Maharashtra Administrative Tribunal, Bombay, Aurangabad & Nagpur.
18	885/E 01.07.2003	Attending the matters in the High Court of Judicature at Bombay, Appellate Side by the Additional Government Pleader and Assistant Government Pleaders
19	1117/E 05.09.2003	Precautions to be taken by all Administrative Departments in Mantralaya and their Allied/Subordinate offices while filing Affidavits in the Courts/Tribunals
20	102/E 30.01.2006	Strict and scrupulous observance of rule 60 of the Rules for the Conduct of the Legal Affairs of Government, 1984, after the matter is decided by the Hon'ble High Court.
21	299/E 31.03.2006	Compliance of the orders of the Hon'ble High Court for personal appearance in Contempt matters
22	637/E 26.06.2006	Regarding filing appeal in Supreme Court within time limit.
23	556/E 18.05.2007	Regarding submission of affidavit promptly and within the prescribed time frame in the cases filed against the Government before the Hon'ble High Court/Administrative Tribunals
24	73/VIP/E 06.09.2007	Regarding the earliest action on the representations submitted by the employees to the Government/ concerned authorities...
25	1108/E 03.10.2007	Filing of affidavit by the Government and concerned officers before the Maharashtra Administrative Tribunal within the prescribed period.
26	203/E 29.02.2008	Regarding English translation of Orders, Rules, Regulation, etc. made under the Constitution of India and other Acts.
27	AG/292/2009 16.07.2009	Affidavits to be filed on behalf of the State
28	5/VIP 30.03.2010	Regarding filing of Para wise remarks / Affidavits in cases filed against or on behalf of Government Officers before Civil Court, Tribunal and Hon'ble High Court
29	2573/Misc/E 23.08.2010	Making of Statements by the Law Officers before Courts/Tribunal, only on written Instructions from the

		Administrative Department concerned or competent Government Officer
30	17/VIP-Lit/E 07.03.2011	Civil Writ Petitions, Appeals, Suits, Revision and Review Applications filed against Government addressing the correspondence in respect of litigation to the concerned Administrative Department/concerned Officers of Department under endorsement to Law and Judiciary Department and incorporation of detailed subject matter in the reference
31	9421/Misc./E 08.06.2011	Grant of Legal Assistance to the Government Servants Under Rules 92 and 109 of the Rules for the Conduct Legal Affair of Government, 1984
32	9739-2011/E 10.10.2011	Procedure to be followed, for engaging services of Special Counsel, A-Panel Counsels in Civil Cases
33	9336/Misc/E 20.12.2011	Grant of Legal Assistance to the Government Servants Under Rules 92 and 109 of the Rules for the Conduct Legal Affair of Government, 1984
34	960-2011/E 05.05.2012	Procedure for filing of Civil and Criminal appeal/Review/Revision/SLP per rules 35, 49, 50, 57, 60, 63 of the Rules for the Conduct of the Legal Affairs of Government, 1984.
35	760-2013/E 22.10.2013	Attending the Court matter by a Senior Officer of the Administrative Department who had participated in decision making process
36	820-2014/E 02.04.2014	Action to be taken when the decision of High Court is adverse to the State and is not stayed by Hon'ble the Supreme Court of India
37	1193- Misc/E 18.07.2014	Regarding provision of legal aid to Government servants under Rule 92 and 109 of the Rules for the Conduct of the Legal Affairs of Government, 1984
38	1745(37)- 2014/ Misc/E 28.11.2014	Regarding the follow-up of the cases by giving instructions to the concerned Government Pleaders in court cases within the prescribed period....
39	306-2016/E 31.03.2016	Regarding not filing unnecessary cases in the court by the government.
40	435-2016- Misc.-E 12.07.2016	Instructions regarding precautions to be taken while making submissions by the Law Officers before Hon'ble High Court.
41	521- 2016/Misc/E 10.11.2016	Instructions regarding Judicial/Quasi Judicial orders
42	628- 2016/Misc/E 02.12.2016	Instructions regarding compliance of the judicial/quasi-judicial orders and the caution to be taken in filing of affidavits.

43	681- 2016/Misc./E, 28.02.2017	Directions for adherence to General Judicial Principle in service matters.
44	223- 2017/Misc./E, 11.08.2017	Instructions regarding judicial or quasi judicial orders in the matters sub-judice.
45	383- 2017/Misc./E 23.08.2017	Precautions to be taken by the concerned Government Officers before filing Affidavit-in-reply in the Maharashtra Administrative Tribunal
46	489- 2018/Misc./E. 04.09.2018	Precautions to be taken by Government Departments while filing Special Leave Petition before the Hon'ble Supreme Court of India
47	465-2022/ संकीर्ण./ई शाखा 17.01.2023	राज्य शासनावर आर्थिक भार पडणाऱ्या आणि शासनाच्या धोरणावर परिणाम होण्याची शक्यता असणाऱ्या न्यायालयीन प्रकरणी शपथपत्र दाखल करण्यापूर्वी संबंधित मंत्री महोदयांना अवगत करण्याबाबत.

Brief Note on 'M' BRANCH:-

Like other legal branches of the Law and Judiciary Department the "M" Branch is pivotal branch which deals with the proposals/references involving legal issues. All *Mofussil* Litigations excluding *Vidarbh* and *Marathwada* region are within the jurisdiction of this branch. Moreover, all Civil matters pending against the Government of Maharashtra in the Civil Courts outside Maharashtra are also handled/coordinated by this branch. Some of the cases handled by this branch are as under:-

1. Civil Suits:-

Rule 32 Defence of Suits Civil Suits on behalf of State or its Officers:-

All civil suits in which Government of Maharashtra is one of the party and effective relief is claimed against it are handled by "M" branch of this Department. All necessary instructions related to the Civil Suit are issued by the "M" branch, whenever proposal in that regard is received from concerned officer through his/her administrative Department in the Government of Maharashtra. Chapter-IV laid down the procedure for filing, defending & conducting Civil Suits before Mofussil Court.

Rule 35:- Where the Government Officer or the Government Pleader is of the opinion that, the order passed by the Sub-ordinate Civil Court is adverse to the Government then he/she ought to follow the procedure laid down in Rule 35 and by complying course of action mentioned in said rule, has to forward the proposal to this Branch. However, if the opposite party bring the Appeal against Government then the Government Officer has to follow Rule-36 of the Rules, 1984.

2. Arbitration Cases:-

For the development of infrastructure purpose, the Government Authorities assign work to the contractor by tender process. In case any dispute arises between the contractor and the State Government, the aggrieved party invoke arbitration clause and file its grievances/claims before the Arbitral Tribunal. When the arbitral award is against public policy or ultra-virus to the Tender Agreement, the concerned department moves the proposal to challenge the award passed by the Arbitrator to this Branch. Accordingly, this branch examines the feasibility of challenging the arbitral award.

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Accordingly, the concerned expropriated persons file references before the Reference Court for enhancement of compensation fixed by the Special Land Acquisition Officer. If the Reference Court allowed reference and enhanced the compensation, the concerned Special Land Acquisition Officer follow the guidelines laid-down in the GR issued by the Revenue and Forest Department dated 03.11.2016, 23.02.2017 & 04.05.2017 and, thereafter, if necessary, forwards the appeal proposals to this Department through the Collector Office. Land Acquisition cases are covered by Chapter-IV of the Rules.

7. Appointment of Advocate General, Special Counsel or Government Advocates in Civil matters before the High Court, District Court:-

Civil Cases where huge Stakes of the State Government are involved and/or cases having important issues involved which needs to be represented by the Ld. Advocate General, Special Counsel or Government Advocate, the concerned Department forward its proposal to this Department. In such cases, after examining facts, instructions for appointment Advocate General / Special Council are issued by this Branch.

8. Cases arising from the orders of Quasi-Judicial Authorities:-

When the Government Officer desires that the order passed by any Quasi-Judicial Authority composed under any statues is against the State Government and needs to be challenged before court, in that case, after examining feasibility in challenging the same necessary instructions are issued by this branch.

9. Un-Official References:-

Cases where litigations are pending before the subordinate courts and the concerned Administrative Government Department requires legal opinion from the Law and Judiciary Department, in that matter this branch tenders legal opinion in the said Unofficial Reference.

10. Inspection of the offices of the Government Pleader:-

Inspection of the Office of the Government Pleader is conducted to improve efficiency of the Government Pleader Office and to avoid delay in filing or defending the Government litigations.

11. Accord sanction to the Government Advocates to appear & conduct the Civil matter:-

Court cases in which the State Government is arrayed as party respondent are represented by the concerned Government Advocate. In the said matters *post facto sanctions* are considered by this Branch.

12. Sanction to the Fees and Legal charges of the Government:-

Desk-18 of this Department scrutinizes bills and law charges as per the Resolution dated 15th February, 2014 issued by this Department in respect of Revision of Fees and Allowances payable to the Law Officers and Panel Counsel in the State of Maharashtra. Thereafter, this branch accord necessary sanction to the said bills.
