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APPENDIX 'F'

(See Instruction 74)

**¹INSTRUCTIONS REGARDING THE CONDUCT OF
CASES OF THE FEDERAL GOVERNMENT IN
COURTS, ETC.**

Suit or legal proceedings by Government

1. No-civil suit or legal proceedings shall be instituted or initiated on behalf of the Federal Government by any Division/Department without the prior consultation with the Law, Justice and Human Rights Division.

2. When the administrative Division/Department concerned considers it advisable that a suit or legal proceedings be instituted or initiated on behalf of the Federal Government a detailed and clear summary should be furnished to the Law, Justice & Human Rights Division showing:-

- (a) The circumstances which, in the opinion of the administrative Division/Department, render institution of the suit or legal proceedings in the court of law.
- (b) The subject of the claim and the relief sought.
- (c) The steps which have been taken so far to obtain satisfaction of the claim.
- (d) The comments or objections, if any, which have been urged by the opposite party against the claim.
- (e) The evidence, which is believed to be obtainable and which it is proposed to adduce in support of the claim.
- (f) Any other facts which the administrative division/ department may consider material or relevant to the case.
- (g) List of property movable and immovable and/or securities from which it is proposed to realise the amount claimed, if decreed.

¹These Instructions apply *mutatis mutandis* to service appeals before the Service Tribunals and cases before special courts and tribunals.

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3. Copies of all documents referred to in the report should, as far as possible, accompany the report; where for any reason, the copies cannot be supplied the originals should be submitted.

4. If the Law, Justice and Human Rights Division agrees it will nominate a counsel to file and conduct the suit or legal proceedings.

Defence of suits, etc.

5. No suit/legal proceedings be defended if the claim and relief sought is justified and genuine.

6. The object of the notice prescribed by section 80 of the Code of Civil Procedure, is to allow ample time to the Government to inquire into the genuineness or otherwise of the claim or relief sought and to affect a settlement of all just claims before a suit is brought, and the best use should be made of the opportunity thus given by the law towards equitable and amicable adjustment of claims.

7. When notice of an intended suit is given under section 80 of the Code of Civil Procedure, the officer to whom it is delivered, or the head of office at which it is left, should forthwith endorse, or cause to be endorsed, on the notice:—

- (a) the date and time of receipt;
- (b) the manner of delivery; and
- (c) the signature of the officer making the endorsement, with date.

8. The departmental officer concerned should, immediately on receiving any notice of an intended suit, proceed to enquire into the matter and to consider the claim put forward and move the proper authority to decide, in consultation with the Law, Justice and Human Rights Division, whether any and, if so, what steps should be taken to adjust the claim (whether in whole or in part) or whether the notice-giver be left to take such legal action as he may deem proper.

9. When the departmental authority having power to deal with the case is clearly of the opinion that the whole or any part of the claim put forward is justly due he should, in consultation with the Law, Justice and Human Rights Division, proceed to endorse settlement thereof accordingly.

10. Any amount held to be justly due to the claimant should be formally and unconditionally tendered to him without prejudice and

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without requiring him to give an acquittance in full adjustment of his claim, but upon a receipt for the sum tendered. No tender of payment or payments should be made after the suit has been brought except with the approval of and in accordance with the instructions of the Law, Justice and Human Rights Division.

11. Under Order V, rule 2, C.P.C. the summons in a suit is required to be accompanied by a copy of the plaint or concise statement thereof. If a summons is not accompanied by a copy of plaint/petition, or concise statement, service should be refused, if possible, with a note requesting for a copy of the plaint/petition and the matter should be brought to the notice of the Law, Justice and Human Rights Division forthwith. In no case the duplicate copy of the summons, when received, should be returned to the court before showing the case to the Law, Justice and Human Rights Division.

12. At subsequent stages of a suit and in appeals copy of plaint/petition, or of memo of appeal, is not sent with the notice and quite often Ministries/Divisions find it difficult to link those notices with the main case in dispute. It is, therefore, imperative that in each Division/Department, a Section, hereinafter referred to as the Litigation Section, should be earmarked for dealing with or co-ordinating the litigation cases. This Section should receive all summons/notices from courts, maintain a nominal index of litigation cases in the following form, in a Register, and keep a watch over their progress.

Name of parties	Nature of cases	Subject	Court	Counsel	File No.	Result
A B C vs Pakistan	Civil suit or appeal	Service matter, arbitration	High Court, Peshawar	A.G., Peshawar		Dismissed

13. Where service of a summons/notice not accompanied by a copy of plaint has been affected, the court issuing the summons, not being a High Court or the Supreme Court, should be immediately requested to supply the same and extend the date of hearing accordingly. The matter should simultaneously be reported to the Law, Justice and Human Rights Division for further advice and appropriate action in the matter. The envelopes of such summons/notice should be kept intact.

14. When a summons has been duly served, the Litigation Section should, after noting its particulars in the nominal Index Register, pass it on to the concerned officer or department who should collect relevant

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information and documents/papers from the concerned quarters, examine the matter thoroughly and then refer it to the solicitor to the Government of Pakistan in the Law, Justice and Human Rights Division for further examination and nomination of an Advocate to undertake the defence of the case, if considered necessary.

15. Where a summons does not give adequate time for examination and arranging defence, an authorised officer of the administrative department concerned should appear *in person* in the court and apply, under rule 5, Order XXVII of the First Schedule to the Code of Civil Procedure, for a reasonable extension of time. In the absence of prior notice under section 80 CPC, the court is obliged to give at least 3 months time for the filing of written statement and first hearing.

16. In case of applications for interim injunction *pendente lite*, time allowed is usually 3 to 7 days. If, for any reason, it is not possible to arrange defence in time, some recognised agent, *i.e.* a person holding power-of-attorney in this behalf, should appear in the court on the date of hearing and seek adjournment for about 15 days. Thereafter the case should be referred to the Solicitor with utmost despatch.

Usually, complaints are to be read as part of the application for interim injunctions but quite often copies of complaints are not supplied by courts alongwith notices for the hearing of such applications. Where copies of complaints are not so received, the same should be procured from the court before referring the case to the Law and Justice Division.

17. After the Law, Justice and Human Rights Division has examined the case and nominated an Advocate to defend/conduct it in a court of law, a responsible officer of the administrative department concerned *well-conversant with the facts* of the case, and preferably stationed at or near the seat of the court, should contact and brief the counsel at the earliest and well before the next date of hearing of the case. *This responsibility should never be left to the sub-ordinate staff.*

18. Although it should not normally be necessary for the departmental representative to be present in the court on each date of hearing, he should remain in touch with the counsel and keep watch over the progress of the case. Whenever required by the counsel he must present himself in the court and render all possible assistance to the counsel in the conduct of the case, as if it was his personal case. Where, however, a department has an

office at the station where the suit is pending, some one may be deputed to attend the court and assist the counsel on each date of hearing if possible.

Action on Termination of Proceedings

19. As soon as a suit is decided, particularly when the decision is adverse to the Government, the administrative department concerned should apply, in the prescribed form, to the concerned Court/Copying Branch or the District Judge for copies of judgment and decree-sheet "for official use". These would be supplied free of cost. In addition, the counsel should also be asked to apply separately for certified copies of judgment and decree-sheet.

Appeals.

¹20. If the decision is either wholly or partially adverse to the Government, the matter should be reported immediately to the Solicitor, Complete record of the case, along with copies of judgment and decree-sheet and comments of the department, should be sent to him thereafter as soon as these copies become available.

21. Although time is the essence in litigation in general, in appeal it is of utmost importance because the time allowed for appeals is limited and appeals filed after the expiration of limitation period are ordinarily dismissed as barred by time and no appeal lies against the refusal of a court to condone delay. It is, therefore, very necessary that the litigation cases in general and appeals in particular should be handled with promptness and diligence.

²*When time left for filing an appeal is less than 7 days, an officer of the administrative department, not below the rank of Deputy Secretary, should bring the file personally to the solicitor.*

¹Certified copies of judgment *etc.* should be kept by the Department in safe custody, as the same may have to be filed in court if appeal is to be filed and photo-stat copies thereof should be placed on the file. In fact, original of all important documents should be kept by the Department in safe custody as soon as litigation or threat of litigation starts.

²This should be followed in other court cases as well when the date of hearing falls within 7 days

22. The periods of limitation prescribed for various kinds of appeals, etc., are as under:-

No. of article of the first schedule to the Limitation Act, 1908, or other relevant rule and description of appeal or application.	Period of Limitation
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151. From a decree or order of a High Court in the exercise of its original jurisdiction.	20 days.
152. Under the Code of Civil Procedure to the court of a District Judge.	30 days.
156. Under the Code of Civil Procedure to a High Court.	90 days.
158. Application to set aside or to get an award remitted for reconsideration.	30 days from the date of service of notice of filing of the award.
161. For a review of judgment by a court of Small Causes.	15 days.
162. For a review of judgment by a High Court.	20 days.
164. Application by a defendant to set aside a decree passed <i>ex-parte</i> .	30 days from the date when he has knowledge of the decree.
178. Application for the filing in court of an award.	90 days from the date of service of notice of making of award.

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Order XIII. Supreme Court Rules, 1956	For petition for special leave to appeal to the Supreme Court.	30 days where leave to appeal is refused by the High Court; otherwise 60 days.
Order XII, Rule 6B. Supreme Court Rules, 1956.	For appeal to the Supreme Court where certificate of fitness is granted by a High Court.	30 days from the date of grant of certificate.

23. In computing the period of limitation, the days from which such period is to be reckoned and in case of appeals, or application for review, the day on which the judgment complained of is pronounced and the time requisite for obtaining a copy of the judgment/decreed appealed from or sought to be reviewed is to be excluded.

Execution.

24. A decree favourable to government may be executed either by the court which passed it or by such other court in whose jurisdiction the judgment-debtor voluntarily resides or carries on business, or personally works for gain or owns property sufficient to satisfy the decree. While referring a case for execution of a decree it is, therefore, necessary that an inventory of the movable property, containing a reasonably, accurate description of the same, and a list of immovable property, containing a description and location of such property sufficient to identify the same, and a specification of the judgment-debtor's share or interest in such property should be furnished to the Solicitor.

If an appeal is instituted by the opposite party and the execution of the decree is stayed by the order of the court, the interval before the decision of the appeal should be made use of in making inquiries as to the property of the judgment-debtor.

Writ Petitions.

25. The instructions in the preceding paragraphs apply *mutatis mutandis* to Writ Petitions. It is, however, to be noted that High Courts usually call for reports/comments from the administrative departments

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concerned before admitting the p..... 126 .. regular hearing. Failure to comply with the orders of the High Court may lead to the admission of petitions to regular hearing which may then take long time to be decided. It is, therefore, imperative that the reports/comments asked for should be promptly supplied to the High Courts and where it is not possible the High Court may be requested, before the expiry of the time allowed, for reasonable extension. The report/comments should be shown to the Law, Justice and Human Rights Division before sending the same to the High Court.

Arbitration.

26. According to Government decision no provision is to be made in agreements with domestic contractors for resolution of disputes through arbitration. However, if the agreements already concluded by or on behalf of the Government contained any condition of getting any question, difference or dispute decided by reference to arbitration then the same has to be acted upon and the instructions contained herein before apply *mutatis mutandis* to the conduct of arbitration proceedings to which a Ministry/ Division/Department of the Federal Government is a party.

Expenses.

27. All expenses on the conduct of litigation, including costs, court fees, counsel fees, not being the decretal amount of costs payable to the other party under the decree or order of the court, are payable by the Law and Justice Division out of the funds placed at its disposal. The penal costs ordered by the court to be paid to the other party for any default on the part of the government and the charges payable to the witnesses are, however, to be paid by the administrative department concerned.

All expenses in criminal cases are payable by the administrative departments concerned.

Mode of submission of cases

28. To ensure quick disposal of files and to avoid un-necessary correspondence and delay a self-contained summary of the case indicating the point or points on which the advice of the Law, Justice and Human Rights Division is required should be placed on the file *in duplicate in the opinion cases* and at least *in triplicate in court cases*. In court cases, para-wise comments, on complaints/petitions should also be furnished in triplicate. Such references to the Law, Justice and Human Rights Division from the Ministries/ Divisions should be made preferably at a senior level.

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29. Draft of para-wise comments, etc., should be typed in double space and half-margin should be left to enable the Law, Justice and Human Rights Division to carry out amendments wherever considered necessary.

30. Standardised court labels (S-209-A to 212-B) obtainable from the Controller of Stationery and Forms, should be used while sending a court case to the Law, Justice and Human Rights Division.

31. If a reference is made to any earlier advice of the Law, Justice and Human Rights Division the number and date of that advice must invariably be quoted and if possible, a copy of the same be placed on the file. Whenever a case is referred to the Law, Justice and Human Rights Division and any previous opinion of the Law, Justice and Human Rights Division on the point at issue is within the knowledge of the referring Division, it should also invariably be quoted in the referring note indicating the number and date of that previous opinion.

32. Unnecessary references on which the Ministries/Divisions should themselves be able to formulate opinion should not be referred to the Law, Justice and Human Rights Division. With particular reference to drafting of pleadings and affidavits it should be noted that while an officer signing any pleading or affidavit on behalf of the Government has every right to be satisfied that there is no mis-statement of facts, actual drafting of pleadings and affidavits and the choice of wording have always been the privilege and the responsibility of the counsel conducting a case on behalf of the Government. Therefore, so long as facts are correctly set out in the pleadings or affidavit there should hardly be any occasion for objection as to the contents, arrangement or wording used by counsel in such pleadings or affidavit and should not normally be referred to the Law, Justice and Human Rights Division for vetting.

For list of officers authorised to sign and verify complaints/written statements Law and Justice Division's Notification No. SRO, 1013/(K)/71 dated 28.08.1971 may be consulted.

33. (i) Under paragraph 44 of the Secretariat Instructions, the Attached Departments of the Government of Pakistan are authorised to make unofficial references to the Law, Justice and Human Rights Division under intimation to the parent Ministry/Division. Such references should clearly show that the reference is being made under intimation to the parent Ministry/Division.

(ii) Subordinate Offices and the Statutory and autonomous bodies which are not authorised to make direct references to the Justice Division should, route their references only through the Ministries/Divisions concerned.

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34. In case of Departments authorised to correspond directly with the Law, Justice and Human Rights Division, the references should come under the signature of a fairly senior officer. In case of Attached Departments the officers sending the reference should indicate their *ex-officio* Secretariat status.

35. The cases touching upon service matters and interpretation of financial rules and regulations should be referred to the Establishment Division or, as the case may be, to the Ministry of Finance in the First instance and the assistance of Law, Justice and Human Rights Division should be sought only if a question of law is involved.

36. Where a Division obtains an opinion from the Law, Justice and Human Rights Division, the referring Division should not in announcing Government's decision (*i.e.* that Division's own decision) disclose that the Law, Justice and Human Rights Division was consulted. Care should be taken that endorsement in such cases meant for the Law, Justice and Human Rights Division are not carried out in the copies meant for other Divisions and Departments.

37. While the Law, Justice and Human Rights Division would welcome, where considered expedient, back references from the administrative Divisions for reconsideration of its opinions, but such references should be at least from the same level at which legal opinion was tendered in the Law, Justice and Human Rights Division.

38. Where in any case there is a difference of opinion between the Law, Justice and Human Rights Division and the Division concerned and the latter desires to consult the Attorney-General, it should send to the former all relevant papers together with a self-contained summary of the case precisely indicating the points on which the advice of the Attorney-General is sought. *Under no circumstances a case is to be referred to the Attorney-General by the administrative Divisions directly.*

39. The Secretary in each Division will be personally responsible for the observance of these instructions by his subordinates including the officers in the attached and subordinate offices. He should ensure that his subordinates do not disregard these instructions. When a case is finally disposed of and decided against the Government he should have an inquiry instituted in the matter and take appropriate action against the concerned officials where the judgment has gone against the Government because of the non-observance of the rules of procedure on the part of the dealing officials. Where any lacuna in law or procedure is revealed steps should be taken to amend the law or the rules, as the case may be, if considered necessary and expedient.

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**Implementation of Judgements/Orders passed by the
Federal Services Tribunal.**

¹40. On acceptance of an appeal by the Federal Services Tribunal, a written order is communicated to the concerned parties and respondent Ministries/Divisions/Departments. On receipt, the judgement is to be examined on top priority basis with a view to filing a Civil Petition for Special Leave to appeal (CPSLA) before the Supreme Court of Pakistan for which 60 days time is available to the aggrieved parties. In case, it is decided in consultation with the Law, Justice and Human Rights Division that an order passed by the Tribunal does not involve any substantial question of law of public importance for moving a CPSLA before the Supreme Court of Pakistan, the order should be implemented forthwith under intimation to the Registrar, Federal Services Tribunal, Islamabad.

¹Inserted *vide* Establishment Division's O. M. No. F. 10/14/92-Lit-I dated 4.5.1993.